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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ex Parte Appeal - Serial No.	88498224
Appellant	Sunflora, Inc.
Applied for mark	SUNMED
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of

SunFlora, Inc.

For: 

Serial No. 88/498,224

Filed: July 2, 2019

Trademark Law Office: 123

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APPLICANT'S BRIEF ON APPEAL

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INTRODUCTION


Applicant SunFlora, Inc. respectfully appeals from the Trademark Attorney's refusal to register under Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant's mark is  ("Applicant's Mark") for skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; none of the foregoing being a medicine or medical treatment or promoted as a medicine or medical treatment, in International Class 003 ("Applicant's Non-medicated Skincare Products"). The Trademark Attorney has refused registration of Applicant's Mark on grounds that there is a likelihood of confusion with the marks of U.S. Registration No. 5,913,315


(the "'315 Registration") for the mark  ("SUNMED GROWERS MEDICINE FROM THE SUN and Design") and U.S. Registration No. 5,913,258 (the "'258 Registration") for the mark SUNMED GROWERS, both for providing medical information, agricultural information, and news in the field of medical cannabis (collectively, "Registrant's Medical Cannabis Information Services"). The SUNMED GROWERS MEDICINE FROM THE SUN and Design mark and the SUNMED GROWERS mark are hereafter referred to collectively as the "Registrant's Marks").

For the reasons set forth hereafter, there is no likelihood of confusion between the SUNMED, on the one hand, and the mark SUNMED GROWERS MEDICINE FROM THE SUN and Design or the mark SUNMED GROWERS, on the other hand.

FACTS

Applicant filed this application, U.S. Application Ser. No. 88/498,433 (“Applicant’s Application”) on July 2, 2019, for the mark  for “skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC,” in International Class 003.

On September 25, 2019, the Trademark Attorney issued a Non-final Office Action requiring a disclaimer of the word “med” in Applicant Mark and identifying each of U.S. Application Serial Nos. 88387465, 88384248 and 88045764 as having an earlier filing date or effective filing date than Applicant’s Application, and if the marks in the cited applications registered, the U.S. Patent & Trademark Office may refuse registration of Applicant’s Mark under Section 2(d) because of a likelihood of confusion with the registered marks.

On March 25, 2021, Applicant filed a response to the September 25, 2019, Non-final Office Action entering a disclaimer of the word “med.”

On April 2, 2020, the Trademark Attorney issued a Suspension Notice based upon U.S. Application Serial Nos. 88387465, 88384248 and 88045764.

On August 26, 2021, the Trademark Attorney refused registration of Applicant’s Mark because of a likelihood of confusion with the Registrant’s Marks. In support of the refusal, the Trademark Attorney stated that Applicant’s Mark, on the one hand, and the Registrant’s Marks on the other hand, convey the same overall meaning and commercial impression of being from SUNMED. In support of the Trademark Attorney’s position that Applicant’s skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC, the Trademark Attorney attached Internet evidence from Wellcare Botanicals, Im-bue Botanicals and Hemplucid for establishing that the same entity

commonly manufactures, produces, or provides the relevant goods and services and markets the goods and services under the same mark and that the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use.

On February 28, 2021, Applicant filed an amendment in response to the Office action mailed on August 26, 2021, wherein Applicant amended the description of goods to read, “Skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; none of the foregoing being a medicine or medical treatment or promoted as a medicine or medical treatment, in Class 003.” In the amendment, Applicant stated that Applicant’s Mark and the Registrant’s Marks have different meanings when used in connection with the parties’ respective goods and services and therefore convey different overall commercial impressions. Applicant stated further that Applicant’s Non-medicated Skincare Products are unrelated to Registrant’s Medical Cannabis Information Services since non-medicated cosmetic preparations that are not promoted as medicines or medical treatments are different from providing medical information, agricultural and news about medical cannabis. Applicant also pointed out that the USPTO has not accorded a broad scope of protection to the mark SUNMED when used in connection with providing medical information, agricultural information, and news in the field of medical cannabis.


On March 17, 2022, the Trademark Attorney issued a final refusal to register Applicant’s Mark because of a likelihood of confusion with the Registrant’s Marks. In support of the refusal, the Trademark Attorney stated again that Applicant’s Mark, on the one hand, and the Registrant’s Marks on the other hand, convey the same overall meaning and commercial impression of being from SUNMED. In support of the Trademark Attorney’s position that Applicant’s Non-medicated

Skincare Products and Registrant's Medical Cannabis Information Services are considered related for likelihood of confusion purposes, the Trademark Attorney attached Internet evidence from Kingdom Harvest, Calm by Wellness, Highline Wellness, Cheef Botanicals, First Crop, SimplyCBD, Green Leaf, Tanasi, and Redeem Therapeutics for establishing that the same entity commonly manufactures, produces, or provides the relevant goods and services and markets the goods and services under the same mark and that the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use.


In response to the arguments and evidence submitted by Applicant in the amendment dated February 28, 2022, the Trademark Attorney concluded that the parties' respective marks convey the same overall meaning and commercial impression of being from "sun med". The Trademark Attorney further concluded that the parties' respective goods and services are similar since Applicant's Non-medicated Skincare Products containing CBD derived from hemp and less than 0.3% THC and the evidence in the record demonstrates that CBD can provide medical benefits and the phrase "medical cannabis" could encompass the entire industry of cannabis and cannabis-derived products, including CBD, which can all provide medical benefits.

On September 19, 2022, Applicant filed a Notice of Appeal to the Trademark Trial & Appeal Board, (the "Board").

ISSUES

Whether there is a likelihood of confusion between the mark  for “Skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; none of the foregoing being a medicine or medical treatment or promoted as a medicine or medical treatment,” in International Class 003, on

SUNMED GROWERS


the one hand, and the mark  and the mark SUNMED GROWERS, both for providing medical information, agricultural information, and news in the field of medical cannabis.

ARGUMENT


The test for determining the applicability of § 2(d) of the Trademark Act is whether an appreciable number of ordinarily prudent purchasers are likely to be misled or confused as to the source of the products or services. *McGregor-Doniger, Inc., v. Drizzle, Inc.*, 202 USPQ 81 (2nd Cir. 1979) (holding no likelihood of confusion between DRIZZLE for women’s overcoats and DRIZZLER for golf jackets). In considering the issue of likelihood of confusion, the trademarks must be compared in their entirety and must be considered in conjunction with the particular goods and/or services with which they are used. *In re National Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). Likelihood of confusion has been said to be synonymous with “probable” confusion—it is not sufficient if confusion is merely “possible.” *See Rodeo Collection, Ltd. v. W. Seventh*, 812 F.2d 1215, 1217 (9th Cir. 1987) (stating that “[l]ikelihood of confusion requires that confusion be probable, not simply a possibility”); *see also* J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition (“McCarthy”) § 23:3, 16-17 (4th ed. 2004). Further, the Trademark Office must take into consideration the scope of protection to be accorded the marks.

Similarities or differences in the appearance, sound, meaning, and commercial connotation of trademarks play a significant role in determining whether a likelihood of confusion exists. *See AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 351 (9th Cir. 1979). However, “[s]imilarity of the marks in one respect—sight, sound or meaning—will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related.” TMEP § 1207.01(b)(i); *see also* McCarthy § 23:21.

Here, the marks look different in that Applicant’s Mark consists of two words, six letters

and the design  located between the two words, while the mark of the ‘258 Registration

consists of a thirteen letters and two words, *i.e.*, SUNMED GROWERS, and the mark of the ‘315 Registration consists of thirty-one letters and six words, *i.e.*, SUNMED GROWERS MEDICINE FROM THE SUN. Additionally, the parties’ respective marks sound different in that Applicant’s Mark consists of two-syllables, while the mark of the ‘258 Registration consists of a four syllables and the mark of the ‘315 Registration consists of ten syllables. The sound of the parties’ marks are further distinguished since the mark of the ‘258 Registration includes the word “growers,” a word that is absent from Applicant’s Mark, while the mark of the ‘315 Registration includes the words “growers,” “medicine,” “from,” “the” and “sun,” all of which are absent from Applicant’s

SUNMED mark. Furthermore, Applicant’s Mark includes the design  located between the words “sun” and “med”. Contrary thereto, the Registrant’s Marks include, *inter alia*, the single, unitary term SUNMED, which is not SUN MED and does not and cannot include the design



or any other design between SUN and MED.

The marks also have different meanings. Applicant’s Mark includes the phrase “sun med,” and the Registrant’s Marks include the term “sunmed,” which consists of a combination of the word “sun” and the word “med.” “Sun” can mean “the luminous celestial body around which the earth and other planets revolve, from which they receive heat and light, which is composed mainly of hydrogen and helium, and which has a mean distance from earth of about 93,000,000 miles (150,000,000 kilometers), a linear diameter of 864,000 miles (1,390,000 kilometers), and a mass 332,000 times greater than earth,” “the heat or light radiated from the sun,” “one resembling the sun (as in warmth or brilliance)”, “to expose to or as if to the rays of the sun” or “to sun oneself.”

See definition of “sun” at <https://www.merriam-webster.com/dictionary/sun>, a copy which is attached hereto as **Exhibit A**. The word “med” can mean “medical” or “medication.” See definition of “med” at <https://www.merriam-webster.com/dictionary/med>, a copy of which is attached hereto at **Exhibit B**. “Medical” can mean “of, relating to, or concerned with physicians or the practice of medicine” or “requiring or devoted to medical treatment.” See definition of “medical” at <https://www.merriam-webster.com/dictionary/medical>, a copy of which is attached hereto at **Exhibit C**. “Medicine” can mean “a substance or preparation used in treating disease,” “the science and art dealing with the maintenance of health and the prevention, alleviation, or cure of disease” and “an object held in traditional American Indian belief to give control over natural or magical forces.” See definition of “medicine” at <https://www.merriam-webster.com/dictionary/medicine>, a copy of which is attached hereto at **Exhibit D**. In addition to “sunmed,” each of the cited marks also includes the word “growers.” “Growers” can mean “a persons who grows something” or “a person or thing that grows in a certain way,” (see definition of “grower” at <https://www.dictionary.com/browse/grower>, a copy of which is attached hereto at **Exhibit E**).

When used in connection with Applicant’s Non-medicated Skincare Products, “sun med” connotes brilliance and, in particular, that use of Applicant’s Non-medicated Skincare Products promotes wellness and healthy, brilliant skin. In Applicant’s Mark, “sun med” may also connote that Applicant’s Non-medicated Skincare Products help maintain healthy skin that has potential to be damaged by sun exposure or other concerns or to prevent sun damage. Contrary thereto, when used in connection with providing medical information, agricultural information, and news in the field of medical cannabis, “sunmed growers” connotes that Registrant’s Medical Cannabis Information Services are intended for use by or directed towards cultivators of medical cannabis,

i.e., cannabis grown as a source of THC. Applicant's Mark does not connote that Applicant's Non-medicated Skincare Products are intended for use by growers of medical cannabis. This connotation is completely absent from the Applicant's Mark. Similarly, Registrant's Marks do not connote brilliance or that use of Registrant's Medical Cannabis Information Services promote healthy, brilliant skin.

Interpretation of a mark is not carried out in a vacuum and must be done in view of the relevant goods and services. Thus, even marks that are *identical* in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties' goods or services so that there is no likelihood of confusion. *See, e.g., In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314 (TTAB 1987) (holding CROSS-OVER for bras and CROSSOVER for ladies' sportswear not likely to cause confusion, noting that the term "CROSS-OVER" was suggestive of the construction of applicant's bras, whereas "CROSSOVER," as applied to registrant's goods, was "likely to be perceived by purchasers either as an entirely arbitrary designation, or as being suggestive of sportswear which "crosses over" the line between informal and more formal wear . . . or the line between two seasons"); *In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984) (holding PLAYERS for men's underwear and PLAYERS for shoes not likely to cause confusion, agreeing with applicant's argument that the term "PLAYERS" implies a fit, style, color, and durability suitable for outdoor activities when applied to shoes, but "'implies something else, primarily indoors in nature'" when applied to men's underwear); *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (holding BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's clothing not likely to cause confusion, noting that the wording connotes the drinking phrase "Drink Up" when applied to men's clothing, but does not have this connotation when applied to ladies' and children's underwear).

The differences between the parties' respective marks, when taken together, undoubtedly preclude a likelihood of confusion. See *EZ Loader Boat Trailers, Inc. v. Cox Trailers, Inc.*, 706 F.2d 1213 (Fed. Cir. 1983) (finding SUPERLOADER not confusingly similar to EZ LOADER or MINI LOADER for boat trailers). "[T]he mere fact that the marks in issue share elements, even dominant elements, does not compel a conclusion of likelihood of confusion." *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627 (11th Cir. 1985).

The Trademark Attorney's sole basis for refuting the Applicant's position that the parties' respective marks convey different meanings and commercial impressions is that,

"the sole wording in the applied-for mark is SUN MED. As discussed above, the dominant wording of registrant's marks is SUNMED. These wordings are identical except for a slight difference in appearance between registrant's mark, which appears as a compound word with no space separating the words, that is, SUNMED; and applicant's mark, which appears as multiple words with space separating the words, that is, SUN MED. As such, these wordings are identical in sound and virtually identical in appearance, and are thus confusingly similar for the purposes of determining likelihood of confusion."

This conclusion fails to address the crux of Applicant's arguments which is the marks convey different commercial meanings when considered in view the goods and services with which they are used. The Trademark Attorney completely fails to address this point. The Trademark Attorney also fails to address the cited Board's decisions in *In re Sears, Roebuck & Co.*, *In re British Bulldog, Ltd.*, and *In re Sydel Lingerie Co.*, wherein the Board held that identical marks (*i.e.*, CROSS-OVER vs CROSS OVER, PLAYERS vs. PLAYERS and BOTTOMS UP vs BOTTOMS UP) for goods (*i.e.*, brassieres vs ladies' sportswear, men's underwear vs shoes and ladies' and children's underwear vs men's clothing) that are much more similar to one another than are Applicant's Mark and Non-medicated Skincare Products and Registrant's Marks and Medical Cannabis Information Services were not confusingly similar because the subject marks create

sufficiently different commercial impressions when applied to the subject goods or services. Certainly, if CROSS-OVER for brassieres conveys an overall different meaning and commercial impression than CROSS OVER for ladies' sportswear, then SUNMED for Applicant's Non-medicated Skincare Products conveys an overall different meaning and commercial impression than SUNMED GROWERS for providing medical information, *agricultural* information, and news in the field of medical cannabis, especially given the Trademark Attorney has failed to address the overall meaning and commercial impression of the parties' marks when used in connection with their respective goods and services.

Furthermore, the Trademark Attorney gives absolutely no weight to the existence of the



design in Applicant's Mark or the affect of the separation of the word "sun" from the word "med" by the design. Thus, contrary to the Trademark Attorney's representation, Applicant's Mark is not fully encompassed within the Registrant's Marks and they are not virtually identical in appearance. Lastly, the dominant portion of Applicant's Mark is not even "sun med," but instead is "sun" since Applicant's Mark begins with the word "sun." Contrary thereto, each of the Registrant's Marks begins with the term "sunmed."

In addition to the differences between the parties' respective marks, the parties' respective goods/services are not related. Applicant's goods are Skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; none of the foregoing being a medicine or medical treatment or promoted as a medicine or medical treatment, in Class 003. By virtue of their inclusion in Class 003 and the express language of the goods description in the application, Applicant's skincare products are limited to non-medicated products. Registrant's services are providing medical information, agricultural

information, and news in the field of medical cannabis. Registrant's Medical Cannabis Information Services do not include Applicant's Non-medicated Skincare Products, and vice-versa. For example, providing medical information, agricultural information, and news in the field of medical cannabis in Class 044 is different than skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; none of the foregoing being a medicine or medical treatment or promoted as a medicine or medical treatment, in Class 003. Because Applicant's Non-medicated Skincare Products are different from the Registrant's Medical Cannabis Information Services (*e.g.*, non-medicated cosmetic preparations that are not promoted as medicines or medical treatments vs. providing medical information, agricultural and news about medical cannabis), potential consumers of Applicant's Non-medicated Skincare Products will not be confused into purchasing any of the Registrant's Medical Cannabis Information Services since these services simply would not suit the consumers' needs and would, therefore, not confuse the consumers as to source. The same is true with respect to potential purchasers of Registrant's Medical Cannabis Information Services. Applicant's Non-medicated Skincare Products would not serve the needs of consumers of any of Registrant's Medical Cannabis Information Services, and therefore, they would not be confused as to source. Thus, there is no likelihood of confusion between Applicant's Mark and the Registered Marks because of the extremely different applications of the goods and services sold under each of the marks. *See Checkpoint Sys., Inc. v. Check Point Software Techs., Inc.*, 269 F.3d 270, 282 (3d Cir. 2001) ("mark similarity is not necessarily determinative of likely confusion, particularly when the products do not directly compete"); *see also W.W.W. Pharmaceutical Co., Inc. v. Gillette Co.*, 808 F. Supp. 1013 (S.D.N.Y. 1992), order amended, (July 14, 1992) and judgment *aff'd*, 984 F.2d 567

(2d Cir. 1993)(RIGHT GUARD SPORT STICK for deodorant does not infringe SPORTSTICK for lip balm).

The Trademark Attorney argues that the parties' respective goods and services are related since the same entity commonly manufactures, produces, or provides the relevant goods and services and markets the goods and services under the same mark and that the relevant goods and services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. In support of this argument, the Trademark Attorney provided two third-party trademark registrations and website screen shots from twelve third-party websites showing that skincare products containing CBD and information about medical cannabis emanate from the same source. However, as is the case here, when the relatedness of the goods and services is not evident, well known, or generally recognized, "something more" than the mere fact that the goods and services are used together must be shown. *In re St. Helena Hosp.*, 774 F.3d 747, 754, 113 USPQ2d at 1087 (Fed. Cir. 2014) (finding that substantial evidence did not support relatedness of hospital-based residential weight and lifestyle program and printed materials dealing with physical activity and fitness).

In *In re St. Helena Hosp.*, the Board affirmed the examiner's rejection of St. Helena's trademark application for the mark TAKETEN for health care services, namely, evaluating weight and lifestyle health and implementing weight and lifestyle health improvement plans in a hospital-based residential program as likely to cause confusion with the mark TAKE 10 for printed manuals, posters, stickers, activity cards and educational worksheets dealing with physical activity and physical fitness. The Board concluded that consumers are likely to believe that health care services and "similarly marked" printed materials come from the same source or are somehow connected with or sponsored by a common company based on several examples of organizations that render

health care services and distribute printed materials. The Board further found that St. Helena's services and the registrant's printed materials "would be encountered by the same persons under conditions and circumstances that could, because of the similarity of the marks, cause them to believe that they emanate from the same source."

The U.S. Court of Appeals for the Federal Circuit disagreed finding that, while the references relied on by the examiner do show that printed materials are used "in connection" with various health services programs, that the mere fact that goods and services are "used together" does not, on its own, show relatedness. The Court stated that to rely on the similarity of the goods and services as a basis for refusing registration, the USPTO must come forth with a persuasive evidentiary showing of relatedness between the goods and services at issue since the relatedness of the goods and services is obscure or less evident. In that instance, the USPTO is required to show "something more" than the mere fact that the goods and services are "used together." The "something more" standard has application whenever the relatedness of the goods and services is not evident, well-known or generally recognized. In this case, the Trademark Attorney has not shown that Applicant's Non-medicated Skincare Products and the Registrant's Medical Cannabis Information Services are generally recognized as being related, nor has the Trademark Attorney shown "something more" to establish relatedness in the circumstances of this case.

Further, upon inspection of the twelve third-party websites, none of the twelve sellers identified in the evidence relied upon by Examining provide information in the field of medical cannabis. To the contrary, each of the sellers provide information in the field of hemp and CBD, while, at times, distinguishing hemp and CBD from marijuana and THC, respectively. Thus, the Trademark Attorney's reliance on the twelve sellers is misplaced and improper.

More particularly, Kingdom Harvest is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Kingdom Harvest evidence relied by the Examiner Attorney shows that Kingdom Harvest promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. To the extent the evidence includes information about medical cannabis, that information is limited to information about the legal status of medical cannabis. *See* pages 30-59 of Final Office action, mailed on March 17, 2022. The Kingdom Harvest evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

Calm by Wellness is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Calm by Wellness evidence relied by the Examiner Attorney shows that Calm by Wellness promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. To the extent the evidence includes information about medical cannabis, that information is limited to information about the differences between medical marijuana and hemp and the legal status of medical marijuana. *See* pages 69-74 and 77 of Final Office action, mailed on March 17, 2022. The Calm by Wellness evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

Highline Wellness is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Highline Wellness evidence relied by the Examiner Attorney shows that Highline Wellness promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. To the extent the evidence includes information about medical cannabis, that information is limited to information about the differences between THC and CBD, differences between hemp and

marijuana, and general information about CBD and THC. *See* pages 94-112 of Final Office action, mailed on March 17, 2022. The Highline Wellness evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

Cheef is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Chief evidence relied by the Examiner Attorney shows that Chief promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. Chief also provides news information about the legal status of recreational marijuana, general and historical information about marijuana and comparisons of marijuana and hemp and THC and CBD. *See* pages 130-133, 135-138, 140-143 and 145-152 of Final Office action, mailed on March 17, 2022. Recreational marijuana and medical marijuana are not the same. Medical cannabis is used to ease symptoms caused by certain medical conditions, while recreational marijuana is used to get intoxicated. The Chief evidence includes no agriculture information, no medical information or news in the field of medical cannabis.

First Crop is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The First Crop evidence relied by the Examiner Attorney shows that First Crop promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. First Crop also provides information comparing CBD to THC and agriculture information about growing hemp. *See* page 157-163 and 172 of Final Office action, mailed on March 17, 2022. The First Crop evidence includes no agriculture information, news or medical information in the field of medical cannabis.

Simply CBD is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Simply CBD evidence includes medical information about products

containing CBD derived from hemp and less than 0.3% THC, information comparing and contrasting medical cannabis and CBD-containing products and the legal status of medical marijuana and CBD-containing products. *See* page 174-182 of Final Office action, mailed on March 17, 2022. The Simply CBD evidence includes no agriculture information and no medical information in the field of medical cannabis. The evidence does include news in the field of medical cannabis.

The Green Leaf evidence includes medical information about products containing CBD derived from hemp and less than 0.3% THC, and information comparing and contrasting medical cannabis and CBD-containing products. *See* pages 201-205 of Final Office action, mailed on March 17, 2022. The Green Leaf evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

The Tanasi evidence includes medical information about products containing CBD derived from hemp and less than 0.3% THC. The Tanasi evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

The Redeem Therapeutics includes medical information about products containing CBD derived from hemp and less than 0.3% THC and general information about medical marijuana. *See* page 232-233 of Final Office action, mailed on March 17, 2022. The Tanasi evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

Wellcare Botanicals is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Wellcare Botanicals evidence relied by the Examiner Attorney shows that Wellcare Botanicals promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. Additionally, Wellcare Botanical provides general information about THC. *See* page 23 of Non-

final Office action, mailed on August 26, 2021. The Wellcare Botanicals evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

Imbue Botanicals is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Imbue Botanicals evidence relied by the Examiner Attorney shows that Imbue Botanicals promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. Additionally, Imbue Botanical provides information comparing hemp and marijuana, general information about THC and information about the legal status and history of hemp and marijuana. *See* pages 37-41 of Non-final Office action, mailed on August 26, 2021. The Imbue Botanicals evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

Hemplucis is an online provider of topical products containing CBD derived from hemp and less than 0.3% THC. The Hemplucis evidence relied by the Examiner Attorney shows that Imbue Botanicals promotes its products by providing on its website health benefits information about products containing CBD derived from hemp and less than 0.3% THC. Additionally, Hemplucis provides information comparing hemp and marijuana, general information about THC and information about the legal status and history of hemp and marijuana. *See* pages 49-57 of Non-final Office action, mailed on August 26, 2021. The Hemplucis evidence includes no agriculture information and no medical information or news in the field of medical cannabis.

In addition to relying upon the seller evidence, the Trademark Attorney relies on two third-party trademark registrations to show that sellers of topical preparations containing CBD derived from hemp and less than 0.3% THC allegedly also regularly provide medical information, agriculture information and news in the field of medical cannabis. Two third-party registrations

hardly evidence that sellers of topical preparations containing CBD derived from hemp and less than 0.3% THC regularly provide medical information, agriculture information and news in the field of medical cannabis. Further, one of the third-party references, namely, U.S. Trademark Registration No. 6,041,429 for the mark U NUHUMUN (stylized) does not encompass providing information about THC or marijuana, much less medical information, agriculture information and news in the field of medical cannabis. Instead, that registration's goods and services are limited to "Non-medicated herbal skin salves containing cannabidiol (CBD) derived from cannabis with a delta-9 THC concentration of not more than 0.3% on a dry weight basis" and "Providing information in the fields of health and wellness; providing a website featuring information in the fields of health and wellness; providing health and wellness information regarding cannabinoids, cannabidiol (CBD), and cannabidiol products; providing a website featuring health and wellness information regarding cannabinoids, cannabidiol (CBD), and cannabidiol products." The Trademark Attorney's reliance on U.S. Trademark Registration No. 6,041,429 is misplaced and does not evidence that sellers of topical preparations containing CBD derived from hemp and less than 0.3% THC also regularly provide medical information, agriculture information and news in the field of medical cannabis.

Lastly, with respect to the relatedness of the Applicant's Non-medicated Skincare Products and the Registrant's Medical Cannabis Information Services, the Trademark Attorney's arguments are flawed because the Trademark Attorney has improperly construed the breadth of Registrant's "providing medical information, agricultural information, and news in the field of medical cannabis" services, while ignoring the phrase "none of the foregoing being a medicine or medical treatment or promoted as a medicine or medical treatment," as set out in the Applicant's Non-medicated Skincare Products description. The Trademark Attorney's improper construction of

Registrant's Medical Cannabis Information Services arises from the Trademark Attorney's failure to give meaning to the word "medical" in the phrase "medical cannabis," which functions to narrowly define the information services of the Registrant. Registrant's Medical Cannabis Information Services do not relate broadly to cannabis but instead to the field of *medical* cannabis. Further, Applicant's Non-medicated Skincare Products are not merely products that contain CBD. Instead, Applicant's Non-medicated Skincare Products are products that contain CBD *derived from hemp* and less than 0.3% THC. CBD derived from hemp and less than 0.3% THC is not derived from medical marijuana. Hemp is not medical marijuana or medical cannabis.

According to the Mayo Foundation for Medical Education and Research (MFMER), "medical cannabis" means "medical marijuana" and is "a term for derivatives of the Cannabis sativa plant that are used to ease symptoms caused by certain medical conditions." See <https://www.mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/art-20137855>, attached hereto at **Exhibit F**. U.S. federal law prohibits the use of whole plant Cannabis sativa, *i.e.*, "medical marijuana," or its derivatives for any purpose. See *id.* In contrast, CBD derived from the hemp plant (less than 0.3% THC) is legal under federal law. See *id.* In the 2018 Farm Act, Congress removed hemp from the definition of marijuana in the Controlled Substances Act and defined the term hemp to mean cannabis or any part of that plant, "including ... all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers" that had "a delta-9 [THC] concentration of not more than 0.3% on a dry weight basis." 7 U.S.C. ¶1639o(1). Because hemp-derived products like Applicant's Non-medicated Skincare Products are not marijuana, much less medical marijuana or medical cannabis, when considered in view of a proper interpretation of Registrant's Services, much of the evidence relied upon by the Trademark Attorney to show that the parties' respective goods/services are related falls away.

In addition to the facts that Applicant's Mark and Applicant's Non-medicated Skincare Products are different from Registrant's Marks and Registrant's Medical Cannabis Information Services, respectively, the buyers of Applicant's Non-medicated Skincare Products are consumers seeking non-medicated skincare and cosmetics preparations. Contrary thereto, buyers of Registrant's Medical Cannabis Information Services are growers and distributors of medical cannabis. The sophisticated purchasers of the parties' respective services are not likely to be confused as to source by the use of Applicant's Mark and Registrant's Marks because of the differences between the parties' respective goods/services and because the purchasers are knowledgeable about the specific types of goods/services they need. Furthermore, because the parties' respective purchasers are concerned with their health or the health of others they exhibit a heightened standard of care when shopping for Applicant's Non-medicated Skincare Products and Registrant's Medical Cannabis Information Services. *See Hewlett-Packard Co. v. Human Performance Measurement, Inc.*, 23 U.S.P.Q.2d 1390 (no confusion between the marks HP and HPM for medical equipment, in part, because the potential purchasers were "highly educated, sophisticated purchasers who [knew] their equipment needs and would be expected to exercise a great deal of care in [their] selection[s]"); *Blue Bell Bio-Med. v. Cin-Bad, Inc.*, 864 F.2d 1253, 1260 (5th Cir. 1989) (finding that when hospitals purchase medical carts, a mistaken purchase is unlikely due to the high degree of care with which such purchases are made); *see also, In re Bunn-O-Matic Corporation*, 2010 WL 1502438 (TTAB, March 30, 2010)(finding evidence showing the subject goods are of a kind that may emanate from a single source under a single mark insufficient to establish that the goods and services are related where the goods do not serve the same purpose and given the care of the purchasing decision and sophistication of the purchasers in the

overlapping channel of trade.) Accordingly, given the sophisticated nature of the targeted markets, there is no likelihood of confusion between Applicant's Mark and Registrant's Marks.

Applicant also notes that the Trademark Office has not accorded a broad scope of protection to marks that include the term "sunmed" when used in connection with providing medical information, agricultural information, and news in the field of medical cannabis. For example, each of the '258 Registration and the '315 Registration was published for opposition and registered on the Principal Register despite the existence of Applicant's then and currently pending, prior-filed U.S. Application Ser. No. 88/112,131 for the mark SUNMED CBD for herbal and nutritional supplements containing lawful CBD "cannabidiol" from industrial hemp; medicinal herbal preparations; and dietary and nutritional supplements (see **Exhibit G**) and a third-party, then-pending U.S. Appl. Ser. No. 88/045,76 for the mark SUNMEDCBD for nutritional skin care supplements, namely creams, balms, lotions, ointments, salves, sprays, and oils, each containing cannabidiol (CBD) derived from industrial hemp and including a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; nutritional supplements in lotion form sold as a component of nutritional skin care products and containing cannabidiol (CBD) derived from industrial hemp and including a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; nutritional skin care supplements for maintaining homeostasis containing cannabidiol (CBD) derived from industrial hemp and including a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis (see **Exhibit H**). Certainly, if SUNMED GROWERS for providing medical information, agricultural information, and news in the field of medical cannabis is not confusingly similar to SUNMED CBD for herbal and nutritional supplements containing lawful CBD "cannabidiol" from industrial hemp, then Registrant's Marks are not confusingly similar to

Applicant's SUNMED mark for skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC.

Additional evidence of the narrow scope of protection afforded by the Trademark Office for marks that include the term "sunmed" when used in connection with providing medical information, agricultural information, and news in the field of medical cannabis, is the coexistence on the Principal Register of the '258 Registration and the '315 Registration with Applicant's U.S. Registration No. 6,555,712 for ILLUMINATE WITH SUNMED and Design for retail store services featuring topical oils, topical creams, topical lotions, lip balm and cosmetic skin care preparations, all containing CBD derived from hemp and less than 0.3% THC. *See **Exhibit I***. Again, if SUNMED GROWERS for providing medical information, agricultural information and news in the field of medical cannabis is not confusingly similar to ILLUMINATE WITH SUNMED and Design for Retail store services featuring topical oils, topical creams, topical lotions, lip balm and cosmetic skin care preparations, all containing CBD derived from hemp and less than 0.3% THC, then Registrant's Marks are not confusingly similar to Applicant's SUNMED mark for skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; all of the foregoing being non-medicated and none of the foregoing being promoted as a medicine or as a medical treatment.

The Trademark Trial and Appeal Board and the courts have held in a number of cases that even though trademarks may be similar *or the same* in sound and appearance, where the goods/services are different, or the purchasers of the goods/ services are different or sophisticated, there will be no likelihood of confusion. *See Reedco Inc. v. Hoffmann-LaRoche Inc.*, 2 USPQ2d 1994 (1987) (finding TEGRIN for the over the counter medicated soaps and salves and TEGISON for oral prescription drugs for treating psoriasis not confusingly similar since, *inter alia*, products'

forms, channels of trade and treatment uses make them distinguishable); *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (no likelihood of confusion found between PLAYERS in stylized form for men's underwear and PLAYERS for shoes); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (no likelihood of confusion found between BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's suits, coats and trousers); *Morton-Norwich Products, Inc. v. N. Siperstein, Inc.*, 222 USPQ 735 (TTAB 1984) (holding use of FANTASTIC for paints not confusingly similar to FANTASTIK for spot remover, laundry starch cleaners); *Haydon Switch and Instrument Inc. v. Rexnord, Inc.*, 4 USPQ2d 1510 (D. Conn. 1987) (holding no likelihood of confusion between PLANETGEAR for mechanical drum wheel digital display time counters and PLANETGEAR for planetary gear speed reducers and motor drive shafts).

Further evidence that no likelihood of confusion exists between the parties' respective uses of their marks is that the parties have coexisted and used their respective marks simultaneously since April of 2018. *See In re Guild Mortgage Company*, Case No. 2017-2620 (Fed. Cir. Jan. 14, 2019)(reversing the Trademark Trial & Appeal Board's decision finding a likelihood of confusion because the Board failed to adequately consider relevant evidence and argument directed to *Dupont* factor 8, namely, Applicant's CEO's declaration of length of time during, and conditions under which, there has been concurrent use with the cited mark without evidence of actual confusion). Over that period of 3 years, 8 months, Applicant is not aware of any instance of a consumer of Applicant's goods and services mistakenly believing that Applicant's goods and services originate from Registrant or any instance of a consumer of Registrant's goods and mistakenly believing Registrant's goods and services originate from Applicant because of the parties' use of their respective marks. Furthermore, despite both parties offerings their goods and services over the Internet and in the State of Maryland, Applicant has never received an

communication from Registrant, or from any third party contending that Applicant's use of its SUNMED mark has infringed upon Registrant's Marks, or has caused confusion with regard to the sources of the parties' respective goods and services. *See* Affidavit of Jason Ellis, attached hereto as **Exhibit J**.

CONCLUSION

Due to, *inter alia*, the differences in the parties' marks, goods and services and relevant case law, it is clear that Applicant's Mark and Registrant's Marks are not confusingly similar as an *appreciable number of ordinarily prudent purchasers* of the parties' respective goods and services are not likely to be misled or confused as to the source of the respective goods and services. Therefore, Applicant respectfully requests that the Board withdraw the Trademark Attorney's refusal to register Applicant's Mark.

Respectfully Submitted,

SUNFLORA, INC.

By /C. Brandon Browning/
C. Brandon Browning, Esq.
(205) 254-1036

CBB
Encl. – Exhibits A-J

EXHIBIT A

The screenshot shows a web browser window with the Merriam-Webster website. The address bar shows the URL <https://www.merriam-webster.com/dictionary/sun>. The page header includes the Merriam-Webster logo and the text "SINCE 1828". The main content area displays the definition of "sun" with the phonetic transcription \ 'sən \. The definition is titled "Definition of sun (Entry 1 of 3)". It lists five numbered entries: 1. **a** *often capitalized* : the luminous celestial body around which the earth and other planets revolve, from which they receive heat and light, which is composed mainly of hydrogen and helium, and which has a mean distance from earth of about 93,000,000 miles (150,000,000 kilometers), a linear diameter of 864,000 miles (1,390,000 kilometers), and a mass 332,000 times greater than earth; 2. : the heat or light radiated from the sun, with an example " // played in the sun all day"; 3. : one resembling the sun (as in warmth or brilliance); 4. : the rising or setting of the sun, with an example " // from sun to sun"; 5. : GLORY, SPLENDOR. Below the numbered entries are three phrases: "in the sun" with the definition ": in the public eye", "under the sun" with the definition ": in the world : on earth", and "sun verb". The bottom of the page shows a dark bar with the time "4:49 PM" and the date "4/29/2021".

Merriam-Webster
SINCE 1828

\ 'sən \

Definition of sun (Entry 1 of 3)

1 **a** *often capitalized* : the luminous celestial body around which the earth and other planets revolve, from which they receive heat and light, which is composed mainly of hydrogen and helium, and which has a mean distance from earth of about 93,000,000 miles (150,000,000 kilometers), a linear diameter of 864,000 miles (1,390,000 kilometers), and a mass 332,000 times greater than earth

b : a celestial body like the sun : STAR

2 : the heat or light radiated from the sun
// played in the sun all day

3 : one resembling the sun (as in warmth or brilliance)

4 : the rising or setting of the sun
// from sun to sun

5 : GLORY, SPLENDOR

in the sun
: in the public eye

under the sun
: in the world : on earth

sun verb

4:49 PM
4/29/2021

Merriam-Webster

SINCE 1828

sun verb

sunned; sunning

Definition of *sun* (Entry 2 of 3)

transitive verb

: to expose to or as if to the rays of the sun

intransitive verb

: **to sun oneself**

Sun abbreviation

Definition of *Sun* (Entry 3 of 3)

Sunday

↓ Synonyms

↓ More Example Sentences

↓ Learn More about *sun*

4:50 PM
4/29/2021

EXHIBIT B

The screenshot shows a web browser window with the Merriam-Webster website. The browser's address bar shows the URL <https://www.merriam-...> and the page title is "Med | Definition of Med by ...". The website's header includes the Merriam-Webster logo, the text "SINCE 1828", and navigation icons. The main content area displays the following definitions:

Definition of *med* (Entry 1 of 5)
: MEDICAL
// med school

med **noun**

Definition of *med* (Entry 2 of 5)
: MEDICATION sense 2 —usually used in plural
// took pain meds

med **abbreviation (1)**

Definition of *med* (Entry 3 of 5)

- 1 medicine
- 2 medieval
- 3 medium

Med **abbreviation (2)**

Definition of *Med* (Entry 4 of 5)
Mediterranean

The browser's status bar at the bottom right shows the time "4:53 PM" and the date "4/29/2021".

EXHIBIT C

← → × ⌂ merriam-webster.com/dictionary/medical

Merriam-Webster SINCE 1828

GAMES & QUIZZES | THESAURUS | WORD OF THE DAY | FEATURES | SHOP

medical

Dictionary Thesaurus

That's Daze

medical adjective

Save Word

med-i-cal | \ 'me-di-kəl \

Definition of *medical*

- 1 : of, relating to, or concerned with physicians or the practice of medicine
// the *medical* profession
// a *medical* journal
- 2 : requiring or devoted to medical treatment
// a *medical* problem
// an important advance in *medical* science

↓ Other Words from *medical*

↓ More Example Sentences

↓ Learn More About *medical*

EXHIBIT D

Medicine Definition & Meaning x +

merriam-webster.com/dictionary/medicine

GAMES & QUIZZES | THESAURUS | WORD OF THE DAY | FEATURES | SHOP

Merriam-Webster SINCE 1828

medicine

Dictionary Thesaurus

medicine noun

Save Word

med-i-cine | \ ˈme-di-sən |, British usually ˈmed-sən

Definition of *medicine*

- a** : a substance or preparation used in treating disease
// cough *medicine*

b : something that affects well-being
// he's bad *medicine*
— Zane Grey
- a** : the science and art dealing with the maintenance of health and the prevention, alleviation, or cure of disease
// She's interested in a career in *medicine*.

b : the branch of medicine concerned with the nonsurgical treatment of disease
- 3** : a substance (such as a drug or potion) used to treat something other than disease
- 4** : an object held in traditional American Indian belief to give control over natural or magical forces
also : magical power or a magical rite

EXHIBIT E

The screenshot shows a web browser window with the URL dictionary.com/browse/grower. The page is from Dictionary.com, with a search bar containing the word "grower". The navigation bar includes links for MEANINGS, WORD GAMES, LEARN, WRITING, and WORD OF THE DAY. Below the navigation bar are tabs for Top Definitions, Quizzes, Related Content, Examples, and British. The main content area displays the word "grower" with its phonetic transcription [groh-er], a "SHOW IPA" button, and a star icon. A link to "See synonyms for grower on Thesaurus.com" is provided. The word is classified as a "noun" and has two definitions: 1. a person who grows something (with an example: "He is a grower of flowers and vegetables.") and 2. a person or thing that grows in a certain way (with an example: "This plant is a quick grower."). Below the definitions is a promotional banner for Wayfair, featuring various furniture items with "PRICE DROP" labels. The bottom section of the page is titled "QUIZZES" and features a quiz titled "QUIZ YOURSELF ON THE OXFORD COMMA!". The quiz text explains the Oxford comma and asks the user to determine where it should go in a sentence. The first question is: "Where should the Oxford comma go in a sentence?" followed by a text input field containing the phrase "before the conjunctions 'and' or 'or'". A blue button labeled "Tired of Typos? Get Help Now!" is located on the right side of the quiz section. The browser's address bar and tabs are visible at the top, and the system clock in the bottom right corner shows 4:59 PM on 4/29/2021.

Grower | Definition of Grower at x +

dictionary.com/browse/grower

Apps Google

DICTIONARY.COM THESAURUS.COM

DEFINITIONS ▼ grower

MEANINGS WORD GAMES LEARN WRITING WORD OF THE DAY

Top Definitions Quizzes Related Content Examples British

grower [groh-er] [SHOW IPA](#) ☆

[See synonyms for grower on Thesaurus.com](#)

noun

- 1 a person who **grows** something:
He is a grower of flowers and vegetables.
- 2 a person or thing that **grows** in a certain way:
This plant is a quick grower.

wayfair

QUIZZES

QUIZ YOURSELF ON THE OXFORD COMMA!

The Oxford comma vexes many a writer (to use or not to use!). Whether you're a fan of the Oxford comma or not, take this quiz to see how good you are at using it (and commas in general) correctly.

QUESTION 1 OF 6

Where should the Oxford comma go in a sentence?

before the conjunctions "and" or "or"

[Tired of Typos? Get Help Now!](#)

4:59 PM
4/29/2021

[←](#)
[↻](#)
<https://www.dictionary.com>

[Grower | Definition of Grow...](#)

File Edit View Favorites Tools Help

DICTIONARY.COM

THESAURUS.COM

DEFINITIONS

grower

MEANINGS WORD GAMES LEARN WRITING WORD OF THE DAY

Changing just one word in the sentence "wine *growers* revel in good season" can produce the sentences "wine *growers* revel in strong season" or "wine *growers* revel in flu season."

[AIS THAT READ SENTENCES ARE NOW CATCHING CORONAVIRUS MUTATIONS](#) | WILL HEAVEN | JANUARY 14, 2021 | MIT TECHNOLOGY REVIEW

Gardyn, a plug-in home gardening machine, is designed to let prospective *growers* cultivate fresh leafy greens indoors with the help of artificial intelligence.

[CES GOES FULL PANDEMIC WITH SMART MASKS, STICKERS TO DETECT COVID AND THE BIGGEST WIFI UPDATE IN YEARS](#) | GEOFFREY FOWLER, HEATHER KELLY, DALVIN BROWN, RACHEL LERMAN | JANUARY 12, 2021 | WASHINGTON POST

Oysters typically grow in cages or reefs resting on the bottom of shallow water or in cages floating at the surface, so this technology would allow oyster *growers* to better take advantage of deeper waters.

[SOLAR-POWERED BARGE COULD TAKE OYSTER FARMING DEEPER INTO CHESAPEAKE](#) | CHRISTINE CONDON | JANUARY 11, 2021 | WASHINGTON POST

SEE MORE EXAMPLES

EXPLORE DICTIONARY.COM

600 New Words And

600 New Words And Definitions: The Latest Updates To Dictionary.com

The Dictionary.com Word

The Dictionary.com Word Of The Year For 2020 Is ...

What Is An Em Dash And

What Is An Em Dash And How Do You Use It?

"Have" vs. "Has": When

"Have" vs. "Has": When To Use Each One

Why Do "Left" And "Right"

Why Do "Left" And "Right" Mean Liberal And Conservative?

What Do "a.m." And

What Do "a.m." And "p.m." Stand For?

BRITISH DICTIONARY DEFINITIONS FOR GROWER

grower

/ ('grəʊə) /

Tired of Typos? Get Help Now!

4:35 PM
4/29/2021

Browser address bar: <https://www.dictionary.com> | Grower | Definition of Grow...

File Edit View Favorites Tools Help

Dictionary.com | THE SAURUS.COM

DEFINITIONS grower

MEANINGS WORD GAMES LEARN WRITING WORD OF THE DAY

grower / (grəʊər) /

noun

- 1 a person who grows plants: *a vegetable grower*
- 2 a plant that grows in a specified way: *a fast grower*
- 3 a piece of music that is initially unimpressive but becomes more enjoyable after further hearings

COLLINS ENGLISH DICTIONARY - COMPLETE & UNABRIDGED 2012 DIGITAL EDITION
 © WILLIAM COLLINS SONS & CO. LTD. 1979; 1988 © HARPERCOLLINS
 PUBLISHERS 1998, 2000, 2003, 2005, 2008, 2007, 2009, 2012

OTHERS ARE READING

The Most Surprisingly

Get A Leg Up With These

Relish The Spirit Of Ramadan With These Essential Words

"Affect" vs.

The Most Surprisingly Serendipitous Words Of The Day

Get A Leg Up With These Phrases That Originate From Horse Racing

Relish The Spirit Of Ramadan With These Essential Words

"Affect" vs.

WORD OF THE DAY

refractory

adjective | [ri-frak-tuh-ree]

[SEE DEFINITION](#)

Tired of Typos? Get Help Now!

4:35 PM
4/29/2021

EXHIBIT F

The screenshot shows a web browser window with the URL [mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/ar...](https://www.mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/ar...). The page features a blue header with a COVID-19 update banner. Below the header is the Mayo Clinic logo and a search bar. A navigation menu includes links for 'CARE AT MAYO CLINIC', 'HEALTH INFORMATION', 'FOR MEDICAL PROFESSIONALS', 'RESEARCH', 'COLLEGE OF MEDICINE AND SCIENCE', and 'GIVING TO MAYO CLINIC'. A prominent blue button labeled 'Request Appointment' is visible. The main content area is titled 'Healthy Lifestyle' and 'Consumer health'. A sub-navigation bar includes 'Basics', 'In-Depth', 'Expert Answers', 'Multimedia', 'Resources', 'News From Mayo Clinic', and 'What's New'. The 'In-Depth' section is active, displaying the article 'Medical marijuana'. To the left of the article is a sidebar titled 'Products and services' with a section 'The Mayo Clinic Diet' containing weight-loss goals: '5-10 lbs', '11-25 lbs', and '25+ lbs'. The article text states: 'U.S. federal law prohibits the use of marijuana. However, many states allow medical use to treat pain, nausea and other symptoms.' It is attributed to 'By Mayo Clinic Staff'. The article continues: 'Medical marijuana is a term for derivatives of the Cannabis sativa plant that are used to ease symptoms caused by certain medical conditions. Medical marijuana is also known as medical cannabis. Cannabis sativa contains many active compounds. The best known are delta-9 tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the primary ingredient in marijuana that makes people "high."' An advertisement for Xfinity Internet is visible on the right side of the page. The bottom of the browser window shows the time as 8:51 AM on 8/9/2022.

Medical marijuana - Mayo Clinic

Find out about COVID-19, COVID-19 vaccines, and Mayo Clinic patient and visitor updates.

MAYO CLINIC

Search Mayo Clinic

Request an Appointment
Find a Doctor
Find a Job
Give Now

Log in to Patient Account
English

CARE AT MAYO CLINIC HEALTH INFORMATION FOR MEDICAL PROFESSIONALS RESEARCH COLLEGE OF MEDICINE AND SCIENCE GIVING TO MAYO CLINIC

Appointments at Mayo Clinic
Mayo Clinic offers appointments in Arizona, Florida and Minnesota and at Mayo Clinic Health System locations.

[Request Appointment](#)

Healthy Lifestyle

Consumer health

Basics In-Depth Expert Answers Multimedia Resources News From Mayo Clinic What's New

Products and services

The Mayo Clinic Diet
What is your weight-loss goal?
5-10 lbs »
11-25 lbs »
25+ lbs »

Medical marijuana

U.S. federal law prohibits the use of marijuana. However, many states allow medical use to treat pain, nausea and other symptoms.

By Mayo Clinic Staff

Medical marijuana is a term for derivatives of the Cannabis sativa plant that are used to ease symptoms caused by certain medical conditions. Medical marijuana is also known as medical cannabis.

Cannabis sativa contains many active compounds. The best known are delta-9 tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the primary ingredient in marijuana that makes people "high."

Advertisement

Fast speeds. Smooth streaming.
Get Xfinity Internet and add a FREE Flex 4K streaming box.
[Learn More](#)

xfinity Feedback

8:51 AM
8/9/2022

Medical marijuana - Mayo Clinic

mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/ar...

people "high."

Is medical marijuana legal in the U.S.?

U.S. federal law prohibits the use of whole plant Cannabis sativa or its derivatives for any purpose. In contrast, CBD derived from the hemp plant (less than 0.3% THC) is legal under federal law.

Many states allow THC to be used for medical reasons. Federal law regulating marijuana supersedes state laws. Because of this, people may be arrested and charged with possession even in states where marijuana use is legal.

When is medical marijuana appropriate?

Studies report that medical cannabis has possible benefit for several conditions. State laws vary in which conditions qualify people for treatment with medical marijuana. If you're considering marijuana for medical use, check your state's regulations.

Depending on the state, you may qualify for treatment with medical marijuana if you meet certain requirements and have a qualifying condition, such as:

- Alzheimer's disease
- Amyotrophic lateral sclerosis (ALS)
- HIV/AIDS
- Crohn's disease
- Epilepsy and seizures
- Glaucoma
- Multiple sclerosis and muscle spasms
- Severe and chronic pain
- Severe nausea or vomiting caused by cancer treatment

Is medical marijuana safe?

Further study is needed to answer this question, but possible side effects of medical marijuana may include:

- Increased heart rate
- Dizziness
- Impaired concentration and memory
- Slower reaction times
- Negative drug-to-drug interactions
- Increased risk of heart attack and stroke

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Medical marijuana - Mayo Clinic x +

mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/ar... ☆ ⓘ 🔍 📄 📱

Google

- Potential for addiction
- Hallucinations or mental illness
- Withdrawal symptoms

Some medical marijuana is formulated to provide symptom relief without the intoxicating, mood-altering effects associated with recreational use of marijuana.

Is medical marijuana available as a prescription medicine?

The U.S. Food and Drug Administration (FDA) has not approved the use of cannabis as a treatment for any medical condition. However, the FDA has approved the cannabinoids cannabidiol (Epidiolex) and dronabinol (Marinol, Syndros).

Cannabidiol can be used for certain forms of severe epilepsy. Dronabinol can be used for nausea and vomiting caused by cancer chemotherapy and for anorexia associated with weight loss in people with AIDS.

What you can expect

Medical marijuana comes in a variety of forms, including:

- Pill
- Liquid
- Oil
- Powder
- Dried leaves


How and where you purchase medical marijuana varies by state. Once you have the product, you administer it yourself. How often you use it depends on its form and your symptoms.

Your symptom relief and side effects will vary based on which type you are using. The quickest effects occur with inhalation of the vaporized form. The slowest onset occurs with the pill form.

Certification and use at Mayo Clinic

Minnesota

Mayo Clinic health care providers may certify state residents with qualifying conditions in the Minnesota medical cannabis program. However, not all Mayo Clinic providers are registered for the



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Minnesota

Mayo Clinic health care providers may certify state residents with qualifying conditions in the Minnesota medical cannabis program. However, not all Mayo Clinic providers are registered for the certification process in Minnesota.

Minnesota residents with a supply of medical cannabis from a Cannabis Patient Center may continue use during their Mayo Clinic visit or hospital stay.

Arizona and Florida

Mayo Clinic campuses in Arizona and Florida do not certify people for medical marijuana or allow its use on campus or in the hospital.

Websites

[Arizona Department of Health Services: Medical marijuana](#)
[Florida Health: Office of Medical Marijuana Use](#)
[Minnesota Department of Health: Medical cannabis](#)
[National Conference of State Legislatures: State medical marijuana laws](#)

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8/9/2022

EXHIBIT G

SUNMED CBD

Word Mark	SUNMED CBD
Goods and Services	IC 003. US 001 004 006 050 051 052. G & S: Herbal supplements, namely, topical oils and topical creams, all of the foregoing for cosmetic purposes and containing ingredients solely derived from hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. FIRST USE: 20181220. FIRST USE IN COMMERCE: 20181220
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88112131
Filing Date	December 20, 2018
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Sunflora, Inc. CORPORATION FLORIDA Suite 100 8413 Laurel Fair Circle Tampa FLORIDA 33610
Attorney of Record	C. BRANDON BROWNING
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CBD" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

EXHIBIT H

sunmedcbd

Word Mark	SUNMEDCBD
Goods and Services	(ABANDONED) IC 005. US 008 018 044 046 051 052. G & S: nutritional skin care supplements, namely creams, balms, lotions, ointments, salves, sprays, and oils, each containing cannabidiol (CBD) derived from industrial hemp and including a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; nutritional supplements in lotion form sold as a component of nutritional skin care products and containing cannabidiol (CBD) derived from industrial hemp and including a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; nutritional skin care supplements for maintaining homeostasis containing cannabidiol (CBD) derived from industrial hemp and including a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88045764
Filing Date	December 20, 2018
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	March 10, 2020
Owner	(APPLICANT) Stephen Vincent Sanders, II INDIVIDUAL UNITED STATES 2405 Southwest Blvd. 2405 Southwest Blvd. Kansas City MISSOURI 64108
Attorney of Record	RYAN S HINDERLITER
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	December 18, 2020

EXHIBIT I

United States of America
United States Patent and Trademark Office



Reg. No. 6,555,712
Registered Nov. 09, 2021
Int. Cl.: 35
Service Mark
Principal Register

Sunflora, Inc. (FLORIDA CORPORATION)
Suite 100
8413 Laurel Fair Circle
Tampa, FLORIDA 33610

CLASS 35: Retail store services featuring topical oils, topical creams, topical lotions, lip balm and cosmetic skin care preparations, all containing CBD derived from hemp and less than 0.3% THC

FIRST USE 3-19-2019; IN COMMERCE 3-19-2019

The mark consists of the image of a plant showing three leaves on the left connecting with three leaves on the right and one leaf at the top middle all inside a window image. A wavy line runs horizontally from one side of the window through the middle of the plant to the other side of the window. The words "ILLUMINATE WITH" are shown arched above the window image from left to right and the word "SUNMED" is shown below the image.

SER. NO. 88-498,405, FILED 07-02-2019



Dana H. Hilford

Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office



EXHIBIT J

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of)	
SunFlora, Inc.)	Trademark Law Office 123
For: SUNMED)	Attorney: Rebecca T. Caysido
Serial No. 88/498,224)	Attorney Docket No. 14739.0003
Filed: July 2, 2019)	

Maynard, Cooper & Gale, PC
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203-2618
December 6, 2021

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

DECLARATION OF JASON ELLIS

I, Jason Ellis, declare that -

1. I am Jason Ellis of SunFlora, Inc. ("Applicant").
2. I have been employed by Applicant as Chief Operating Office since 2018 and have personal knowledge of the statements made herein.
3. I submit this declaration in support of Applicant's traversal of the refusal to register Applicant's mark SUNMED ("Applicant's Mark") for skin creams, lip balm, body oils, body lotion and cosmetic preparations for skin care, all containing CBD derived from hemp and less than 0.3% THC; all of the foregoing being non-medicated and none of the foregoing being promoted as medicine or as a medical treatment, in Class

003 (“Applicant’s Skincare Products”) on grounds that a likelihood of confusion exists between Applicant’s Mark and U.S. Registration No. 5,913,258 (“the ‘258 Registration”) for SUNMED GROWERS for providing medical information, agricultural information, and news in the field of medical cannabis, in Class 044, and U.S. Registration No. 5,913,315 (“the ‘315 Registration”) for SUNMED GROWERS MEDICINE FROM THE SUN and Design for providing medical information, agricultural information, and news in the field of medical cannabis, in Class 044 (“Registrant’s Medical Cannabis Information Services”).

4. Since at least April of 2018, Applicant has continuously offered for sale and promoted Applicant’s Skincare Products under Applicant’s Mark.

5. Since at least May of 2018, Applicant has provided retail store services under the mark SUNMED, such retail store services featuring non-medicated topical oils, non-medicated topical creams, non-medicated topical lotions, non-medicated lip balm and non-medicated cosmetic skin care preparations, all containing CBD solely derived from hemp with a delta-9 tetrahydrocannabinol THC concentration of not more than 0.3 percent on a dry weight basis.

6. Applicant currently offers for sale and promotes Applicant’s Skincare Products under Applicant’s Mark throughout the United States via a network of over 400 partners and/or franchisees, including locations in Maryland (1 location), Delaware (1 location), Pennsylvania (32 locations) and Virginia (12 locations).

7. Applicant also offers for sale and promotes Applicant’s Skincare Products under Applicant’s Mark online at <https://cbdrx4u.com/>.

8. Upon information and belief, the owner of the ‘258 Registration and the ‘315 Registration, SunMed Growers, LLC (“Registrant”) is a Maryland limited liability company that operates two facilities in the State of Maryland for growing medical

cannabis (“Registrant’s Medical Cannabis Products”), which is promoted by Registrant under the mark SUNMED GROWERS. See Exhibit A.

9. Upon information and belief, Registrant operates a website at <https://www.sunmedgrowers.com> from which Registrant provides to some extent Registrant’s Medical Cannabis Information Services. See Exhibit B.

10. According to the ‘258 Registration, the SUNMED GROWERS mark has been used in commerce with Registrant’s Medical Cannabis Information Service since March of 2018.

11. According to the ‘315 Registration, the SUNMED GROWERS MEDICINE FROM THE SUN mark has been used in commerce with Registrant’s Medical Cannabis Information Service since March of 2018.

12. Upon information and belief, Applicant’s Mark in connection with Applicant’s Skincare Products and Registrant’s Marks in connection with Registrant’s Medical Cannabis Products and Registrant’s Medical Cannabis Information Services have been in simultaneous use simultaneously for at least 3 years and 8 months.

13. I am not aware of any instance of a consumer of Applicant’s Skincare Products or any other goods or services promoted by Applicant’s under the SUNMED mark mistakenly believing that any of Applicant’s goods or services originate from Registrant for any reason including because of the parties’ uses of their respective marks.

14. I am not aware of any instance of a consumer of Registrant’s Medical Cannabis Products mistakenly believing that Registrant’s Medical Cannabis Products originate from Applicant for any reason including because of the parties’ uses of their respective marks.

20. Applicant is not aware of any instances of actual confusion, or any evidence to indicate that actual confusion has ever existed between Applicant's use of the mark SUNMED and either of the marks SUNMED GROWERS or SUNMED GROWERS MEDICINE FROM THE SUN, or any other mark incorporating the term SUNMED.

21. Despite both parties offerings their goods and services over the Internet and in the State of Maryland, Applicant has never received an communication from Registrant, or from any third party contending that Applicant's use of its SUNMED mark has infringed upon Registrant's marks, or has caused confusion with regard to the sources of the parties' respective goods and services.

22. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.



Jason Ellis
Chief Operating Officer
Sunflora Inc.
12/7/21

Date

EXHIBIT A

SunMed Growers Lemon Meringue x +

weedmaps.com/brands/sunmed-growers/products/sunmed-growers-lemon-mer...

Apps Google


Reading list

wm

Products, retailers, brands, and more

Hermitage, TN


Brands > SunMed Growers > Products > Flower > Lemon Meringue



Flower | SunMed Growers

Lemon Meringue

No retailers available in your area



Product description

Lemon Meringue 🍋🔥 Potent Sativa Dom Hybrid - Grown with 🌱 and Natural Sunlight ☀️

Lemon Skunk x Cookies and Creme 🌿

Flower Hybrid Lemon Meringue

About this strain: Lemon Meringue ⓘ

Exotic Genetix created Lemon Meringue by crossing a Lemon Skunk female and Cookies & Cream male.

The resulting sativa-leaning strain reportedly has a sweet, lemon dessert-like flavor profile, just like its name suggests.

Top reported strain effects ⓘ

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Ok

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EXHIBIT B

