

ESTTA Tracking number: **ESTTA1120485**

Filing date: **03/15/2021**

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

Proceeding	88600227
Applicant	Applied Landscape Materials, Inc.
Applied for Mark	FIRE SMART BARK
Correspondence Address	BRADLEY P. HEISLER HEISLER & ASSOCIATES 3017 DOUGLAS BLVD., SUITE 300 ROSEVILLE, CA 95661 UNITED STATES Primary Email: bheisler@heislerlaw.com Secondary Email(s): cmccarty@heislerlaw.com 916-781-6634
Submission	Appeal Brief
Attachments	19207_AppealBrief.pdf(110597 bytes) 19207_Exhibits.pdf(2045539 bytes)
Appealed class	Class 031. First Use: 0 First Use In Commerce: 0 All goods and services in the class are appealed, namely: Landscaping raw bark
Filer's Name	Bradley P. Heisler
Filer's email	bheisler@heislerlaw.com, cmccarty@heislerlaw.com
Signature	/Bradley P. Heisler/
Date	03/15/2021

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

Serial No.: 88/600,227
Filing Date: August 30, 2019
Mark: FIRE SMART BARK
Applicant/Appellant: Applied Landscape Materials, Inc.
Examining Attorney: Rebecca D. Coughlan
Law Office 113

APPEAL BRIEF

This brief is submitted following a Notice of Appeal filed on January 13, 2021.

INDEX OF CITATIONS

Statutes and other Authorities:

1. Trademark Act §2(e)(1)
2. TMEP §1209.01(b)
3. TMEP §710.01 (paragraphs 11 and 12)

DESCRIPTION OF THE RECORD

This application was filed on August 30, 2019. A first Office action issued on December 11, 2019. Applicant filed a response to the first Office action on June 11, 2020. A final Office action issued on July 15, 2020. Applicant filed a request for reconsideration on October 12, 2020. A denial of request for reconsideration issued on November 2, 2020.

Applicant had previously submitted evidence in support of registration including Exhibits A-F in a previous response filed on June 11, 2020. For completeness of these remarks, these same exhibits are included herein, with the same designations. Furthermore, while the final Office action included evidence from five Internet websites, the final Office action also made reference to four previously identified websites which were attached as evidence to the first Office action. For completeness, these remarks address both the relevance of the four previously identified websites, in addition to the five new websites included as additional evidence in the final Office action.

ISSUE ON APPEAL

Applicant appeals the final refusal to register the mark “FIRE SMART PARK” (with “FIRE” disclaimed and with “BARK” disclaimed), for goods identified as “landscaping raw bark,” based on the finding that this mark is merely descriptive under Trademark Act §2(e)(1). Registerability of this mark under §2(e)(1) is the sole issue on appeal.

ANALYSIS

The mark “FIRE SMART BARK” is a composite mark made up of three separate words, each of which have common dictionary definitions which have been made of record by the Office and/or applicant. While “BARK” is certainly descriptive of “landscaping raw bark,” the word “SMART” cannot fairly be considered to be descriptive of “bark,” as bark is not capable of intelligence (see Exhibit F-1). Nine separate items of Internet evidence are asserted to establish that the mark “FIRE SMART BARK” is merely descriptive of “landscaping raw bark.” At best, this evidence only shows that a portion of the mark “FIRE SMART” is used on rare occasions to describe individuals exhibiting wise fire safety practices, or activities such as landscaping activities that are considered to be fire safe. In no instance of record is the composite mark “FIRE SMART BARK” used to describe bark goods or similar materials. Furthermore, in no instance is the “FIRE SMART” portion of this mark used to describe bark goods. Thus, this composite mark is respectfully submitted to not be merely descriptive of the goods to which this application is directed.

What must the mark be descriptive of?

Careful consideration of the actual goods identification is critical to the distinctiveness analysis of Trademark Act §2(e)(1). TMEP 1209.01(b) (paragraph 3) specifies that “[t]he determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract.”

Thus, the mark being descriptive of some things is not sufficient, rather the mark must be descriptive of bark goods or similar goods. The mark (or portions thereof) being occasionally used to describe some characteristic of individuals (e.g. “be fire smart”) or activities (e.g. “fire-smart landscaping” activities) does not establish that the mark is descriptive of bark goods.

What does the evidence show?

Nine separate items of Internet webpage evidence have now been asserted to establish at the mark “FIRE SMART BARK” is merely descriptive of bark goods. In fact, none of the evidence shows use of the entire mark. While this is not a requirement to establish descriptiveness, it is worth noting that in the vastness that is the Internet, that no instances were identified where the entire composite mark was found to be in use, describing the goods. Thus, the evidence is limited to only a portion of the mark of this application, namely “FIRE SMART.”

Applicant acknowledges that if evidence were present that consumers with some regularity encounter the phrase “FIRE SMART” in a manner descriptive of bark or bark-like goods, that probative evidence supportive of a conclusion of descriptiveness would be present. However, applicant respectfully submits that this evidence, considered as a whole, and keeping in mind the vast size of the Internet, shows only a small number of instances where the phrase “FIRE SMART” has been used. Most importantly, in each of these instances, either an individual is being described as being “FIRE SMART” or practices are being described as “FIRE SMART” practices. When practices such as landscaping practices are being described as “FIRE SMART” it is really the individual that is being described as wise/intelligent by engaging in such practices. Otherwise, there would be at least some instances where the phrase “FIRE SMART” would precede the term “bark” or some bark like substitute.

Better Homes and Gardens Website

Attachments 1-11 of the first Office action are from the Better Homes and Gardens website (www.bhg.com) in an article headlined as “Fire-Smart Landscaping Tips.” This article never uses the term “fire-smart” other than in the title. This article does reference mulch being “fire-safe” (Attachment 4) and plantings considered to be “fire-resistant” (Attachment 5). Thus, these attachments would tend to support a finding that the phrase “fire-safe mulch” would be descriptive, and phrases such as “fire-resistant plants” would be descriptive of some item which has a fire resistant character. However, the phrase “FIRE SMART” is not ever used other than in front of the term “Landscaping Tips” in the title.

Harkening back to the dictionary definition of “SMART” and considering how this article is focusing on making smart choices and designing a fire resistant landscape, the phrase “fire-smart” being used by Better Homes and Gardens in Attachments 1-11 is respectfully submitted to be referencing the choices made by individuals, so that the individuals are intelligent, wise, clever in selecting fire resistant materials and fire-safe materials for use within the landscape. Neither bark nor any other particular similar items are ever described in Attachments 1-11 as being “FIRE SMART.”

Fire Smart Gardening

Attachments 12-21 of the first Office action are a selection from the www.drought-smart-plants.com website in a selection entitled “Fire Smart Gardening.” Applicant notes that Attachment 12 uses the phrase “Fire Smart Gardening” in one place in a way which is in many ways akin to that of a trademark with stylization, and not descriptively. Furthermore, with the phrase “FIRE SMART” preceding the term “GARDENING,” and with gardening being an activity participated in by individuals, it is logical to presume that this phrase is referencing the individual as gardening in an intelligent way, and especially intelligent with regard to fire or fire safety.

Another pertinent example in this evidence item is in Attachment 20 where reference is explicitly made to “be a fire smart gardener.” Overall, applicant respectfully submits that this website is using the phrase “FIRE SMART GARDENING” to refer to individuals who are implementing intelligent practices from a fire safety standpoint when gardening. Goods akin to those to which this application is directed, such as bark or other ground covering materials, are not defined with the phrase “FIRE SMART” in this evidence of Attachments 12-21.

Firesmart Tips

Attachments 22-26 of the first Office action are taken from the website www.livefiresmart.ca. Review of this website makes reference to the “Lesser Slave Region” and the top level domain of the website (“.ca”) is indicative of the website originating from Canada. The “Lesser Slave Region” is a region (around Lesser Slave Lake and/or the Lesser Slave River applicant presumes) which is in Canada as well. Applicant respectfully submits that only evidence of potential descriptiveness within the United States is pertinent when considering the degree to which a trademark is descriptive under Trademark Act §2(e)(1). Accordingly, applicant respectfully submits Attachments 22-26 are not probative as to the question at issue in this case. Furthermore, reference is made to “tips” being firesmart and their community being firesmart. As with other evidence herein, it is people being described and not bark or ground cover type goods.

Fire-Smart Landscaping

Attachments 27-29 of the first Office action are taken from the website www.sbcounty.gov. Reference is made to “Fire-Smart Landscaping.” Applicant notes that the term “landscaping” can refer to an activity engaged in by individuals in creating a landscape, or can refer to the designed and constructed outdoor space including various plantings, hardscape elements, and perhaps also elements such as lighting, irrigation,

water features and other elements within the outdoor space. Nowhere in Attachments 27-29 is reference made to bark or individual landscaping materials such as mulch/bark being “FIRE SMART.”

An introductory sentence at Attachment 27 appears to reference both “healthy vegetation” and “re-vegetation planning” and plant choice considerations. These are activities of individuals being described and not ground cover or bark type goods. The phrase “FIRE SMART” is not again used after the title. Rather, the descriptive phrases “fire resistant” and “fireproof” are used to describe plants. When considering the dictionary definitions for “SMART” being characteristics of an individual, and without any clear reference to the bark or other landscape material being “FIRE SMART,” it is clear that this website is referencing the smart/intelligent individual who is doing/crafting the landscape. Attachment 28 also makes reference to “fire-smart landscaping in the mountains” but reference is then made to “tips on planning, installing and maintaining your landscape.” This shows that the individual is the one who is being described as “FIRE SMART.” Reference is also made to “concepts to keep in mind” which again points to the landscaper individual being smart/intelligent in devising the fire resistant landscape. Hence, being “fire-smart” in the landscaping is referring to the smart individual, rather than bark or similar material being smart. Attachment 29 does not use the phrase “FIRE SMART” does make reference to re-planting trees in a way that keeps their spacing great enough “to create a defensible space for fire fighting.” Again, reference is made to planting practices which might be engaged in by individuals who are smart/intelligent, so that the phrase “FIRE SMART” would be referencing the individual following intelligent landscaping practices, rather than referencing particular landscaping materials.

Leominster Champ

Attachments 1-7 of the final Office action are taken from a local newspaper apparently named the “Leominster Champ.” An article in this newspaper is identified as “Controlling the burn: Dry weather means brush fire dangers.” In one instance, deep within this article, a relevant sentence specifies “fire prevention specialists from DCR have recommended the following Fire Smart/Fire Wise tips so that property owners can protect their homes from wildfire loss: chip or compost vegetive debris piles, clean your roof and gutters and remove leaves, branches and other debris from your yard to prevent burning embers from a wildfire igniting your home, move the remainder of your wood pile, lumber, or other burnable debris to at least 30 feet from any buildings and check the spark arrestors on your combustible engines in equipment such as lawnmowers, ATVs, dirt bikes and chainsaws.”

This quote, taken in context is clearly using the phrase “Fire Smart” to describe individuals who are wise about fire prevention and or the steps that such wise individuals take to avoid wildfire loss. Nowhere does the phrase “FIRE SMART” describe materials themselves. Reference is made to “chip or compost vegetive debris piles” which uses the words “chip” and “compost” as verbs, not as nouns, and so are distinct from the bark goods to which this application is directed. While one can infer that when vegetive debris is chipped, that bark and bark-like wood chips would result. However, this article is not using “FIRE SMART” to describe such goods, as it’s clear from the context.

Cal Fire/Kamps Propane

Attachments 8-12 of the final Office action show a defensible space inspection form available at the Kamps propane website which includes information in the form of a checklist to determine if a proper defensible space is being provided around structures or along property lines. The form also includes information about defensible space and includes the phrase “KNOW THE LAW BE FIRE SMART.” The context of this

document shows that this phrase “FIRE SMART” is identifying individuals who “know the law” about requirements to maintain a defensible space and put that knowledge into practice, and so are wise, intelligent about fire safety. Again, the phrase “FIRE SMART” is not being used to describe materials themselves, such as bark or bark-like goods. Rather, individuals and/or practices of individuals are being described as “FIRE SMART.”

Anchor Air Conditioning

Attachments 13-15 are taken from an Anchor Heating and Air Co. website and includes a page with the heading “7 TIPS TO KEEP YOUR LANDSCAPING FIRE-SMART.” This website disclosure includes “tips to consider when landscaping,” and goes on to describe seven tips. One of these tips is “5) FIRE RESISTANT PLANTS- Some plants are more resistant to fire due to a higher level of moisture in their leaves.” This document ends with the admonition to “taking the time to landscape your yard with these guidelines in mind.” Thus, the emphasis of this entry is upon the action of landscaping and maintenance. In this context, it is the individual who follows the “tips” who is “FIRE SMART.” Otherwise, this entry would not have referred to “fire-resistant plants,” but rather would have referred to “fire smart plants.” Neither this website nor any other evidence of record in this case, shows any instance where “FIRE SMART” is used preceding items such as bark or bark-like materials.

Marin Master Gardeners

Attachments 16-18 of the final Office action are taken from an informational website with various different categories of information being provided under tabs provided in a column at a left-hand side of Attachment 16. One of these tabs is identified as “Fire-smart Landscaping.” Apparently one subcategory of such fire-smart landscaping is related to “mulch” and includes information such as a mulch quick checklist and other information about mulches. “FIRE SMART” is not used within this mulch information.

In one place the phrase “ideally use non-flammable mulch” is used. Multiple pages are provided related to mulch flammability. Numerous opportunities were presented within this selection of information for mulches such as “non-flammable mulches” to be described as fire smart mulch, however, no such descriptive use of the phrase “fire smart” was ever chosen to describe mulch. Instead, the phrase “FIRE SMART” was only used preceding the term landscaping, of which action such as selecting the right kind of mulch and placement of the mulch, was part of the “Fire-smart Landscaping” process. Prime opportunities were presented for the phrase “FIRE SMART” to be used to describe goods such as non-flammable materials, and no such descriptive phrase was ever used to describe goods.

Smoky Bear

The final website provided at Attachments 19-26 of the final Office action is entitled “Backyard Debris Burning.” At Attachment 23 within this Internet document, one heading identifies “Other ways to be fire-smart at home and on the go.” Such a use of the phrase “fire-smart” is clearly referencing a person and the activities of a person, rather than bark or a bark-like object. One of the ways to be fire smart within this document identifies “consider using fire-resistant plants and landscaping” (see Attachment 24). This website had the opportunity to refer to these plants as “FIRE SMART,” but instead chose to use the descriptive phrase “fire-resistant.” Hence, a still further example is presented where a writer, while already using the phrase “FIRE SMART” to reference an individual and activities of an individual, chose not to use the phrase “FIRE SMART” to describe bark or bark-like materials or fire-resistant materials.

Considering all of this evidence together, applicant respectfully submits that the conclusion that “the mark FIRE SMART BARK is descriptive of applicant’s goods,” is not supported by the attached evidence. “BARK” is not something that is described as being “SMART.” At best, an individual might be “SMART” to use a fire resistant bark

when gardening or landscaping. As such, the mark “FIRE SMART BARK” is suggestive of being a smart choice for an individual to make when landscaping for fire safety.

With regard to the one item of evidence in the first Office action taken from a Canadian website, the final Office action had asserted that “English language material obtained from foreign websites or foreign news publications has been accepted as competent evidence in trademark examination when it is likely that US consumers have been exposed to the website or news publication” (final Office action, page 4, lines 11 and 12, emphasis added). Multiple cases were cited where foreign website information was admitted and considered to have some probative value. In each case, a rationale was included for why it was likely the US consumers would have been exposed to the website or news publication.

Applicant respectfully submits that no such rationale has been provided in this case for why consumers of bark or bark-like materials would visit a website provided by a homeowners association in the Lesser Slave Region of Canada. This is not a website which sells landscaping materials or a retail store website for any goods, as was the case in *In re Kong Koil Licensing Co.* (citations omitted) which is described in the TMEP as being considered by the Board to have “limited probative value.” Contents of websites of commercial entities outside of the United States showing use of the term “breathable” in relation to mattresses and bedding, might be viewed by US consumers, as they may visit such foreign websites for informational purposes.” (TMEP §710.01 paragraphs 11 and 12). When consumers are looking for information, they might visit informational websites, they might visit websites which sell goods, even if the goods are mattresses and the website is for mattress stores located far away from the individual or overseas. However, a US consumer would have no reason to visit a homeowners association website in Canada when seeking information about bark and bark-like materials.

At a minimum, some rationale must be set forth as to why this Canadian homeowners association website might be visited by US consumers of bark and bark-like goods, so that any information on that website bearing upon the descriptiveness of the mark “FIRE SMART BARK” for bark could be understood in the minds of relevant US consumers. Absent some plausible rationale, applicant respectfully submits that such foreign country websites, especially websites of a local community nature are not probative of the question at issue in this case.

With regard to evidence submitted previously by the applicant (and resubmitted herein) related to prior registrations of “FIRE SMART” related marks, applicant fully acknowledges that each case must be decided on its own facts and that the Board is not bound by prior decisions involving different records. Nevertheless, this evidence does provide useful context to inform the decision of the Board. Certainly, it is beneficial for the Board to understand that, within the last few decades, numerous other “FIRE SMART” type marks have been registered on the Principal Register for various different goods without requiring disclaimer of “FIRE SMART.” If each of those prior records are instances where Office personnel were in error to grant such registrations on the Principal Register without appropriate disclaimers, or if the facts of this case can be distinguished from those other cases, then desirable consistency can be maintained.

Furthermore, applicant acknowledges that it is not the duty of the Board to reconcile its decisions with prior decisions of examiners. Still, applicant respectfully submits that such a context is at least useful guidance as to how inferior officials at the Trademark Office have been handling similar marks to the mark “FIRE SMART BARK” in the past. It is only with a spirit of helpfulness, that this evidence is submitted.

CONCLUSION

Returning to the original question: Is “FIRE SMART BARK” merely descriptive of particularly identified bark goods, or has it only been shown to be descriptive in the abstract, or descriptive of other things such as people or prudent actions taken by people? The critical analysis rests upon the evidence included with the final Office action and the first Office action. This evidence does not establish that “FIRE SMART” has ever been used to describe bark or bark-like goods, or other fire-resistant items. Numerous websites had clear opportunities to so use “FIRE SMART” to describe fire resistant plants or other landscaping materials such as mulches. This opportunity was never taken. Thus, applicant respectfully submits that the evidence has failed to show that the mark “FIRE SMART BARK” is merely descriptive of bark goods.

If the attachment evidence fails to show such a descriptive use of the mark “FIRE SMART BARK” or “FIRE SMART” for the relevant goods, dictionary definitions also fail to establish such descriptiveness. The phrase “FIRE SMART” does not appear in the dictionary. When the individual terms such as “smart” are analyzed, they do include dictionary definitions. However, bark goods cannot fairly ever be considered to be wise, intelligent or “SMART.” Hence, at least this term “SMART” is sufficiently distinctive for bark goods that it causes the composite mark “FIRE SMART BARK” to be suggestive of bark goods, and not really descriptive.

Respectfully Submitted:

/Bradley P. Heisler/

03/15/2021

Bradley P. Heisler
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Date



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FIRESMART

Word Mark FIRESMART

Goods and Services (CANCELLED) IC 037. US 100 103 106. G & S: building construction contracting services, namely installing passive fireproof and firestop substances and materials in structural building components, and consulting services related thereto. FIRST USE: 19970000. FIRST USE IN COMMERCE: 19970000

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 76630639

Filing Date February 8, 2005

Current Basis 1A

Original Filing Basis 1A

Published for Opposition May 16, 2006

Registration 3125461

Number

Registration Date August 8, 2006

Owner (REGISTRANT) FireSmart Building Technology, Inc. CORPORATION MASSACHUSETTS 133 Beach Street Quincy MASSACHUSETTS 02170

Attorney of Record Barbara A. Friedman

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date March 15, 2013

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Typed Drawing

Word Mark FIRE SMART

Goods and Services (CANCELLED) IC 009. US 021 023 026 036 038. G & S: electronic instrument for detection of carbon dioxide resulting from fire. FIRST USE: 19940915. FIRST USE IN COMMERCE: 19941010

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74341292

Filing Date December 21, 1992

Current Basis 1A

Original Filing Basis 1B

Published for Opposition May 25, 1993

Registration Number 1906335

Registration Date July 18, 1995

Owner (REGISTRANT) Gaztech International Corporation CORPORATION DELAWARE 6489A Calle Real Goleta CALIFORNIA 93117

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Daniel C. McKown

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIRE" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD
Cancellation Date July 20, 2002

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Typed Drawing

Word Mark FIRESMART

Goods and Services (ABANDONED) IC 017. US 001 005 012 013 035 050. G & S: Insulating materials, thermal insulating materials; protecting coverings; fibres; insulating board and insulating boards; fabrics and felts for insulating purposes; packing, stopping, sealing, jointing, caulking and filling materials; adhesive tapes, bands and strips; sealant compounds for joints; filler and filling agents; jointing compounds

(ABANDONED) IC 019. US 001 012 033 050. G & S: Building materials (non-metallic); roofing materials; insulating products, asphalt, pitch and bitumen; roofs; roofing felt and underlays for roofing felts; rooflights parts and fittings; membranous materials for waterproofing purposes; bituminous membranes

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78286820

Filing Date August 13, 2003

Current Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) Icopal Limited CORPORATION UNITED KINGDOM Barton Dock Road, Stretford Manchester M32 0YL UNITED KINGDOM

Attorney of Record H. John Campaign

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Abandonment Date September 24, 2004

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EXHIBIT C-2

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/286820

APPLICANT: Icopal Limited

CORRESPONDENT ADDRESS:

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New York, NY 10036-8178

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MARK: FIRESMART

CORRESPONDENT'S REFERENCE/DOCKET NO : X814-6804

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/286820

The assigned examining attorney has reviewed the referenced application and determined the following.

SEARCH CLAUSE

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

IDENTIFICATION OF GOODS

The identification of goods is unacceptable as indefinite. The applicant may adopt the following recitation, if accurate. TMEP section 1301.05.

Class 11: Roof lights and parts therefore.

Class 17: Insulating materials, namely, _____[state the common commercial names for the goods, e.g., insulating blankets, sleeves, tiles]; thermal insulating materials, namely, _____[state the common commercial names for the goods, e.g., blankets, sleeves, tiles]; protecting coverings, namely, _____[state the common commercial names for the goods {Please note our web site ID Manual at www.uspto.gov}]]; fibers, namely, _____[state the common commercial names for the goods{Please note our web site ID Manual at www.uspto.gov}]]; insulating boards for _____[state purpose]; fabrics and felts for insulating purposes; packing stopping, sealing, jointing, caulking and filling materials; adhesive tapes, bands, and strips for industrial and commercial use; adhesive sealant compounds for joints; joint filler and filing agents; jointing compounds.

Class 19: Non-metallic building materials, namely, _____[state the common commercial names for the goods]; non-metal roofing; non-metal roofing hips, tiles and panels; asphalt, pitch and bitumen; roofing felt and underlays for roofing felts; insulating waterproofing membranes; roofing membranes; bituminous membranes for waterproofing roofs.

Insulating products and roofs are indefinite. Please state the common commercial names for the goods. Also, note that many goods are already

suggested that cover these products. Applicant may wish to consult the the *U. S. Patent and Trademark Office Goods and Services Manual* which can be found on our web site at www.uspto.gov.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(b); TMEP section 804.09. Therefore, the applicant may not amend to include any services that are not within the scope of the services recited in the present identification.

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b); or a foreign registration under Trademark Act Section 44(e)/an intent to use the mark under Trademark Act Section 1(b) and/or a foreign registration under Trademark Act Section 44(e):

- (1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and
- (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.

RESPONSE

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

/Margery A. Tierney/
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email: margery.tierney@uspto.gov

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FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.



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FIRESMART

Word Mark FIRESMART
Goods and Services IC 009. US 021 023 026 036 038. G & S: smoke detectors. FIRST USE: 20031000. FIRST USE IN COMMERCE: 20031200
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 78322970
Filing Date November 4, 2003
Current Basis 1A
Original Filing Basis 1B
Published for Opposition July 20, 2004
Registration Number 2979489
Registration Date July 26, 2005
Owner (REGISTRANT) Siemens Building Technologies, Inc. CORPORATION DELAWARE 1000 Deerfield Parkway Buffalo Grove ILLINOIS 600894513
 (LAST LISTED OWNER) SIEMENS INDUSTRY, INC. CORPORATION DELAWARE 3333 OLD MILTON PARKWAY ALPHARETTA GEORGIA 30005

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Thomas J. Burton
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150623.
Renewal 1ST RENEWAL 20150623
Live/Dead Indicator LIVE

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Word Mark FIRE SMART CAMPUS

Goods and Services IC 041. US 100 101 107. G & S: Educational services, namely, conducting workshops and conferences in the field of fire prevention and fire safety. FIRST USE: 20150100. FIRST USE IN COMMERCE: 20150100

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.15.15 - Fire (flames), emanating from objects, words or numbers
 03.15.07 - Owls
 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved
 27.03.05 - Objects forming letters or numerals

Serial Number 86209308

Filing Date March 3, 2014

Current Basis 1A

Original Filing Basis 1B

Published for July 29, 2014

Opposition**Registration Number** 4736435**Registration Date** May 12, 2015**Owner** (REGISTRANT) The Center for Campus Fire Safety, Inc. CORPORATION MASSACHUSETTS 10 State Street Newburyport MASSACHUSETTS 01950**Attorney of Record** Thomas E. Kenney**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIRE" AND "CAMPUS" APART FROM THE MARK AS SHOWN**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the words "FIRE SMART CAMPUS" with flames over the "I" in "FIRE" and a silhouette of an owl to the right of the words.**Type of Mark** SERVICE MARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE

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GAMES | BROWSE THESAURUS | WORD OF THE DAY | WORDS AT PLAY | LOG IN | REGISTER | SAVED WORDS

smart

DICTIONARY | THESAURUS

smart adjective

Save Word

\ 'smärt -\

smarter; smartest

Definition of *smart* (Entry 1 of 4)

1 : having or showing a high degree of mental ability : INTELLIGENT, BRIGHT
// a *smart* young student
// a *smart* decision/investment/idea
// That wasn't a very *smart* thing to do.
// The pursuit of genius or at least being the *smartest* person in the room continues to tantalize humans.
— Lydia Dishman

2 a : WITTY, CLEVER
// a *smart* comedy/sitcom

b *informal* : rude or impolite in a bold and disrespectful way
// Don't get *smart* with me.

3 a : NEAT entry 1, TRIM entry 2
// soldiers in *smart* uniforms

b : stylish or elegant in dress or appearance
// For this fall, the *smartest* skirts will feature hemlines that are either quite long or quite short ...
— *The New York Times Magazine*
// a member of the *smart* set

c : appealing to sophisticated tastes : characteristic of or patronized by fashionable society
// We dined late at the Oasis, possibly the *smartest* restaurant in town ...
— Geri Trotta

WORD OF THE DAY

vilipend

[See Definitions and Examples +](#)

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smart

LOG IN REGISTER SAVED WORDS

DICTIONARY THESAURUS

4 a *of a weapon* : able to be altered in course during flight : being a guided missile
// a laser-guided smart bomb

b : operating by automation
// a smart machine tool

c : using a built-in microprocessor for automatic operation, for processing of data, or for achieving greater versatility
// a smart card
// By now we're familiar with smart electricity grids, those IT-enhanced networks that generate and distribute power locally ...
— Robert Visscher

5 : marked by often sharp, forceful activity or vigorous strength
// a smart pull of the starter cord

6 : BRISK entry 1, SPIRITED
// walking at a smart pace

7 : causing a sharp stinging
// ... their softest touch as smart as lizard's stings ...
— Shakespeare

smart verb

smarted; smarting; smarts

Definition of smart (Entry 2 of 4)

intransitive verb

1 : to cause or be the cause or seat of a sharp stinging pain
also : to feel or have such a pain

TEST YOUR VOCABULARY

Which Came First? Quiz

Which came first?

deadbeat ("a loafer")

scofflaw ("a contemptuous law violator")

SPELL IT Can you spell these 10 commonly misspelled words?
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smart

DICTIONARY | THESAURUS

1 : to cause or be the cause or seat of a sharp stinging pain
also : to feel or have such a pain

2 a : to feel or endure distress, remorse, or embarrassment
// *smarting* from wounded vanity
— W. L. Shirer

b : to pay a heavy or stinging penalty
// would have to *smart* for this foolishness

smart noun

Definition of smart (Entry 3 of 4)

1 : a smarting pain
especially : a stinging local pain

2 : poignant grief or remorse
// was not the sort to get over *smarts*
— Sir Winston Churchill

3 **smarts** plural, slang : INTELLIGENCE, KNOW-HOW

smart adverb

Definition of smart (Entry 4 of 4)

: in a smart manner : SMARTLY

↓ Other Words from smart

Which came first?
deadbeat ("a loafer") | scofflaw ("a contemptuous law violator")

Can you spell these 10 commonly misspelled words?
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