

### Disclaimer Requirement

The examining attorney has required a disclaimer of "FLORA" based on a determination that it merely describes the goods. For the following reasons, applicant respectfully submits that the disclaimer requirement is not warranted.

A term is merely descriptive only if it immediately conveys to consumers an idea of the specific qualities, characteristics or functions of the claimed goods. See, e.g., *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984). Moreover, the term must immediately convey information about the goods "with a degree of particularity." *In re TMS Corporation of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Entemann's Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd, unpublished, Fed. Cir. February 13, 1991. By contrast, a term is suggestive and therefore registrable on the Principal Register if a degree of imagination, thought or perception is required to reach a conclusion as to the nature of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Dictionary evidence cited by the examining attorney sheds light on the way customers will perceive and process the meaning of "FLORA" in the context of applicant's mark. According to the office action attachments, "FLORA" could relate to plants, vegetation, or bacteria, fungi and other microorganisms. In these circumstances, a multi-stage reasoning process is necessary to determine whether the mark has a particular meaning in relation to applicant's goods, making "FLORA" inherently distinctive rather than descriptive. See *In re Sundown Technology, Inc.*, 1 USPQ2d 1927 (TTAB 1986).

Although some of the cited definitions might be construed as having descriptive meaning, other applicable definitions are at worst suggestive in relation to the claimed goods. For example, "plants of particular place and time" could refer to a characteristic of the goods, but further information, thought and analysis would be required to make such a connection. Likewise, one purpose of the goods may be to supplement or sustain "the bacteria and microorganisms that normally inhabit a bodily organ or part," but that would refer to a product benefit that the customer hopes to obtain by using the goods, rather than a feature of the goods themselves.

Accordingly, customers who evaluate the meaning of applicant's mark would have to apply a multi-stage reasoning process to determine whether the claimed goods have necessary qualities or are suited for the customer's certain purpose or function. They would assess both their own needs and then the product features to determine whether the goods provide the desired benefit. This is akin to a double entendre or incongruity which renders the term non-descriptive.

Based on the foregoing, applicant respectfully requests that the disclaimer requirement be withdrawn.