

**SERIAL NO:** 77/326565

**MARK:** URBAN HOMESTEADING

**\*77326565\***

**CORRESPONDENT ADDRESS:**

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**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Dervaes Institute

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

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**OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE: 10/16/2008**

**THIS IS A FINAL ACTION.**

This action is in response to the applicant's letter dated August 27, 2008, in which the applicant amended the identification of goods, amended the filing basis of the application to Section 1(b) and presented arguments regarding the descriptiveness refusal. The refusal under Trademark Act Section 2(e)(1) is now made FINAL for the reasons set forth below. *See* 15 U.S.C. §1052(e)(1); 37 C.F.R. §2.64(a).

**SECTION 2(e)(1) REFUSAL – MERELY DESCRIPTIVE**

Registration is refused because the applied-for mark merely describes the subject matter of applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Moreover, a mark that identifies a group of users to whom an applicant directs its goods and/or services is also merely descriptive. TMEP §1209.03(i); *see In re Planalytics, Inc.*, 70 USPQ2d 1453, 1454 (TTAB 2004).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the “documents” managed by applicant’s software, not “doctor” as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of “computer programs recorded on disk” where relevant trade used the denomination “concurrent” as a descriptor of a particular type of operating system). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In the instant case, applicant seeks registration of “URBAN HOMESTEADING” for educational services, namely, conducting informal programs in the fields of sustainable living, organic foods and gardening, the environment, and conservation, using on-line activities and interactive exhibits; entertainment services, namely, providing a web site featuring photographic, audio and video featuring sustainable living, organic foods and gardening, the environment, and conservation; on-line journals, namely, blogs featuring sustainable living, organic foods and gardening, the environment and conservation.

The term “urban homesteading” typically refers to sustainable living practiced in a city environment. Please see the attached Internet evidence.

It should be noted that a mark that describes the subject matter of a workshop is merely descriptive for such educational services. *See In re The Am. Acad. of Facial Plastic & Reconstructive Surgery*, 64 USPQ2d 1748 (TTAB 2002) (holding FACIAL PLASTIC SURGERY generic for training, association and collective membership services); *In re Inst. Investor, Inc.*, 229 USPQ 614 (TTAB 1986) (holding INTERNATIONAL BANKING INSTITUTE for organizing seminars for bank leaders of major countries incapable); *In re Indus. Relations Counselors, Inc.*, 224 USPQ 309 (TTAB 1984) (holding INDUSTRIAL RELATIONS COUNSELORS, INC. an apt name or so highly descriptive of educational services in the industrial relations field that it is incapable of exclusive appropriation and registration); *In re Harcourt Brace Jovanovich, Inc.*, 222 USPQ 820 (TTAB 1984) (holding LAW & BUSINESS incapable of distinguishing the services of arranging and conducting seminars in the field of business law); *In re Nat'l Shooting Sports Found., Inc.*, 219 USPQ 1018 (TTAB 1983) (holding SHOOTING, HUNTING, OUTDOOR TRADE SHOW & CONFERENCE incapable for trade show); *see also* TMEP §1209.01(b).

As evidenced by the identification of record, it appears that the applicant is providing educational services centered on urban homesteading. Therefore, the proposed mark appears to merely describe the subject matter of the applicant’s educational services and registration on the Principal Register must be refused and made FINAL under Trademark Act Section 2(e)(1).

#### **Applicant’s Response**

If applicant does not respond within six months of the mailing date of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or

(2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney.

/Jessica A. Powers/  
Trademark Examining Attorney  
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Phone Number (571) 272-7183  
Fax Number (571) 273-7183

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.