

To: Terra Tech Corp. (efiling@knobbe.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86400760 - IVXX ELEVATE UNLIMITED - TTCRP.013T
Sent: 2/23/2016 9:18:31 AM
Sent As: ECOM108@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86400760

MARK: IVXX ELEVATE UNLIMITED

86400760

CORRESPONDENT ADDRESS:

JONATHAN A. HYMAN
KNOBBE MARTENS OLSON & BEAR, LLP
2040 MAIN ST FL 14
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APPLICANT: Terra Tech Corp.

CORRESPONDENT'S REFERENCE/DOCKET NO :

TTCRP.013T

CORRESPONDENT E-MAIL ADDRESS:

efiling@knobbe.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 2/23/2016

This Office action is in response to applicant's communication filed on February 4, 2016.

The following requirement is continued and maintained:

- Request for Information – Marijuana-Related Goods
 - o The applicant **MUST** respond to the questions posed in the Office Action of August 4, 2015, regardless of other marks that have been registered by this office. The fact that a number of states have legalized marijuana does not obviate the fact that it is still unlawful under Federal Law, which governs whether or not trademarks can be registered.

The following issues are now raised:

MARK AMENDMENT UNACCEPTABLE

Applicant has requested that the drawing of the mark be amended. The original drawing shows the mark as “IVXX ELEVATE;” the proposed amended drawing shows the mark as “IVXX ELEVATE UNLIMITED.”

An amendment to a mark will not be accepted if the change would materially alter the mark in the initial application. 37 C.F.R. §2.72; TMEP §807.14. Determining whether a proposed amendment materially alters a mark involves comparing the proposed amended mark with the mark in the drawing filed with the original application. 37 C.F.R. §2.72; TMEP §807.14(d).

The test for material alteration is whether the modified mark retains what is the essence of the original mark; that is, whether the new and old forms create the impression of being essentially the same mark. *In re Hacot-Columbier*, 105 F.3d 616, 620, 41 USPQ2d 1523, 1526 (Fed. Cir. 1997) (quoting *Visa Int’l Serv. Ass’n v. Life Code Sys., Inc.*, 220 USPQ 740, 743 (TTAB 1983)); *see In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1885 (TTAB 1988); TMEP §807.14. For example, if republication of the amended mark would be necessary to provide proper notice of the mark to third parties for opposition purposes, then the mark has been materially altered and the amendment is not permitted. *In re Hacot-Columbier*, 105 F.3d at 620, 41 USPQ2d at 1526 (quoting *Visa Int’l Serv. Ass’n v. Life Code Sys., Inc.*, 220 USPQ at 743-44). Also, the addition of an element that would require a further search may be a factor in determining material alteration. *In re Guitar Straps Online, LLC*, 103 USPQ2d 1745, 1747 (TTAB 2012); *In re Who? Vision Sys. Inc.*, 57 USPQ2d 1211, 1218 (TTAB 2000).

In the present case, the proposed amendment to the mark is refused because it would result in a material alteration of the mark depicted in the original application. TMEP §807.17; *see* 37 C.F.R. §2.72; *In re Who? Vision Sys., Inc.*, 57 USPQ2d 1211 (holding proposed amendment from “TACILESENSE” to “TACTILESENSE” to be material alteration due to the difference in meaning or connotation between the marks); *In re CTB Inc.*, 52 USPQ2d 1471 (TTAB 1999) (holding proposed amendment of TURBO and design to the typed word TURBO to be a material alteration due to the design being distinctive matter).

Specifically, the proposed amendment would materially alter the mark in the initial application because the term “UNLIMITED” has a completely separate and unique commercial impression from the original mark “IVXX ELEVATE.”

Accordingly, the proposed amendment will not be entered; the previous drawing of the mark will remain operative. TMEP §807.17.

AMENDMENT TO IDENTIFICATION OF GOODS UNACCEPTABLE – BEYOND THE SCOPE OF ORIGINAL IDENTIFICATION OF GOODS

Particular wording in the proposed amendment to the identification is not acceptable because it exceeds the scope of the identification in the application. *See* 37 C.F.R. §2.71(a); TMEP §§1402.06 *et seq.*, 1402.07. The original identification in the application, and any previously accepted amendments, remain operative for purposes of future amendment. *See* 37 C.F.R. §2.71(a); TMEP §1402.07(d).

An acceptable identification of goods is required in an application. *See* 37 C.F.R. §§2.32(a)(6), 2.71(a); TMEP §§805, 1402.01. An applicant may only amend an identification to clarify or limit the goods, but not to add to or broaden the scope of the goods. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07. Scope is generally determined by the ordinary meaning of the wording in the identification. TMEP §1402.07(a).

The application originally identified the goods as follows:

International Class 5: Medicated candy; Medicated chewing gum; Medicated confectionery; Medicinal drinks; Medicinal herb extracts; Medicinal herbal preparations; Medicinal herbs in dried or preserved form; Medicinal preparations for the mouth to be applied in the form of drops, capsules, tablets and compressed tablets; Sweets for medicinal purposes; Balms for medical purposes; Herbal topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain

International Class 30: Brownies, Chocolate and chocolates, Chocolate confections, cookies, candy

However, the proposed amendment identifies the goods as follows:

International Class 5: Medicines; Medicated beverages; Medicated sodas; Medicated candy; Medicated chewing gum; Medicated confectionery; Medicinal drinks; Medicinal herb extracts; Medicinal herbal preparations; Medicinal herbs in dried or preserved form; Medicinal preparations for the mouth to be applied in the form of drops, capsules, tablets and compressed tablets; Sweets for medicinal purposes; Balms for medical purposes; Herbal topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain

International Class 30: Brownies, Chocolate and chocolates, Chocolate confections, cookies, candy; sodas, pepsi, beverages; snack foods; snickers

The following portions of the proposed amendments is beyond the scope of the original identification:

International Class 5: Medicines

International Class 30: Sodas, pepsi, beverages; snack foods; snickers

Thus, the identification, incorporating this amendment, is not acceptable. *See* 37 C.F.R. §§2.32(a)(6), 2.71(a); TMEP §§805, 1402.01.

RESPONSE GUIDELINES

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Lindsey H. Ben/
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For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **2/23/2016** FOR U.S. APPLICATION SERIAL NO. 86400760

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **2/23/2016** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay

“fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.