

To: Stuart C. Segall (email@nydegger.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77790467 - HYPER-REALISTIC - 11407.5
Sent: 11/4/2009 12:50:48 PM
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/790467

MARK: HYPER-REALISTIC

77790467

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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: Stuart C. Segall

CORRESPONDENT'S REFERENCE/DOCKET NO :
11407.5

CORRESPONDENT E-MAIL ADDRESS:
email@nydegger.com

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: 11/4/2009

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Search Results

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

Section 2(e)(1)-Refusal To Register

Registration is refused because the applied-for mark merely describes features and/or characteristics 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).

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).

“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if the term describes only one significant function, attribute or property. *In re Oppedahl*, 373 F.3d at 1173, 71 USPQ2d at 1371; TMEP §1209.01(b).

Applicant’s proposed mark HYPER-REALISTIC in standard character for “Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training” merely describes as a whole a feature and/or characteristic of these services, namely that they provide a heightened or “hyper” realistic” training and/or training environments. Applicant’s specimen of record refers to these features of its services and dictionary definitions of the terms “hyper” and “realistic” are attached to this office action in support of this refusal. The use of the prefix “hyper” with the term “realistic” provides an overall meaning of the proposed mark that merely describes these features and/or characteristics of Applicant’s training services.

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal(s). TMEP §816.04.

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Applicant must respond to the requirement(s) set forth below.

Description Of Services Unacceptable-Indefinite Wording In Part

The wording “preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training” in the identification of services is indefinite as to the wording “preparation of” and must be amended to further clarify that the preparation is provided for others as a service and not merely incidental and/or ancillary to other services that Applicant provides. *See* TMEP §1402.01. For example, the wording “Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training” is acceptable in Class 41 and may be adopted, if accurate.

Identifications of services can be amended only to clarify or limit the services; adding to or broadening the scope of the services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include services that are not within the scope of the services set forth in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Dominic J. Ferraiuolo/
Attorney US Patent & Trademark Office
Law Office 102
tel: (571)-272-9156
fax: (571) 273-9102

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. 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.

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1. Over; above; beyond: *hypercharge*.
2. Excessive; excessively: *hypercritical*.
3. Existing in more than three dimensions: *hyperspace*.
4. Linked or arranged nonsequentially: *hypertext*.

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ETYMOLOGY:

Greek *huper-*, from *huper*, *over*, *beyond*; see *uper* in Indo-European roots

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re-al-is-tic (rē'ə-lī's'tīk) [KEY](#)

ADJECTIVE:

1. Tending to or expressing an awareness of things as they really are: *She gave us a realistic appraisal of our chances.*
2. Of or relating to the representation of objects, actions, or social conditions as they actually are: *a realistic novel about ghetto life.* See Synonyms at [graphic](#).

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To: Stuart C. Segall (email@nydegger.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77790467 - HYPER-REALISTIC - 11407.5
Sent: 11/4/2009 12:50:52 PM
Sent As: ECOM102@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77790467) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on **11/4/2009** to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. **Read** the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77790467&doc_type=OOA&mail_date=20091104) **OR** go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. **Contact** the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. **Respond** within 6 months, calculated from **11/4/2009** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.