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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Hydrofarm, Inc.

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Serial No. 75/844,098

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Craig M. Stainbrook of Johnson & Stainbrook, L.L.P. for  
Hydrofarm, Inc.

Sean W. Dwyer, Trademark Examining Attorney, Law Office 114  
(K. Margaret Le, Managing Attorney).<sup>1</sup>

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Before Simms, Seeherman and Hanak, Administrative Trademark  
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Hydrofarm Inc. has appealed from the final refusal of  
the Trademark Examining Attorney to register HYDROGARDEN  
for a "hydroponic gardening system comprised of a gardening  
container which uses a variety of artificial media to grow

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<sup>1</sup> Another Examining Attorney was involved in the examination of  
the application. Mr. Dwyer prepared the appeal brief.

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plants in an aerated solution of water and nutrients."<sup>2</sup>  
Registration has been refused pursuant to Section 2(e)(1)  
of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground  
that applicant's mark is merely descriptive of its  
identified goods.

Applicant and the Examining Attorney have filed  
briefs. An oral hearing was not requested.

A mark is merely descriptive, and therefore  
unregistrable pursuant to the provisions of Section 2(e)(1)  
of the Trademark Act, if it immediately conveys knowledge  
of the ingredients, qualities or characteristics of the  
goods with which it is used. **In re Gyulay**, 820 F.2d 1216,  
3 USPQ2d 1009 (Fed. Cir. 1987). The question of whether a  
particular term is merely descriptive must be determined  
not in the abstract, but in relation to the goods or  
services for which registration is sought, the context in  
which the mark is used, and the significance that the mark  
is likely to have, because of the manner in which it is  
used, to the average purchaser as he encounters goods  
bearing the mark in the marketplace. **In re Abcor  
Development Corp.**, 588 F.2d 811, 200 USPQ 215 (CCPA 1978);  
**In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986).

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<sup>2</sup> Application Serial No. 75/844,098, filed November 9, 1999,  
based on an asserted bona fide intention to use the mark.

In support of the refusal of registration, the Examining Attorney has submitted excerpts from three articles<sup>3</sup> taken from the NEXIS database, as follows:

Question: ... I want to start hydro-gardening since I would be able to do it without any bending or weeding....

Answer: I know very little about hydro-gardening or hydroponics, but I am not a big fan of that approach because of the lack of soil.  
"The Dallas Morning News," November 17, 2000

Treg Bradley, an avid gardener and owner of Sea of Green, a hydro-gardening supply store....  
"The Arizona Republic," April 12, 2000

... "in a hydro-garden, the nutrients and water are delivered directly to the plant roots, allowing the plants to grow faster and harvest sooner simply because the plants are putting more energy into growing about the ground instead of under it."  
"The Arizona Republic," November 4, 1999

The Examining Attorney also submitted excerpts from various websites, obtained through the Google search engine, including the following:

We have *the* right hydro garden system at the right price for you! Nature Perfect Garden Systems can be customized to suit your growing needs.  
[www.natureperfect.com](http://www.natureperfect.com)

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<sup>3</sup> In the Office action with which the articles were submitted, the Examining Attorney refers to five articles, but a review of the submissions shows that two of the articles were duplicates.

One of my favorite container gardens is a hydro-garden. In this garden, plants grow in a solution of water and fertilizer.

[www.azfamily.com](http://www.azfamily.com)

Dear Ed,

I'm using a wick system in my hydro-garden and I was wondering if the wick can absorb and deliver a sufficient amount of oxygen to the roots?

[www.cannabisculture.com](http://www.cannabisculture.com)

Hydroponics OnLine Store

Hydro Gardens and Parts

[www.hydroponicsonline.com](http://www.hydroponicsonline.com)

hydro garden tools

[www.e-buzz.com](http://www.e-buzz.com)

The Examining Attorney has also made of record dictionary definitions showing that "hydro" means "water" and "garden" is "a fertile, well-cultivated region."<sup>4</sup>

Focusing solely on the dictionary definitions, applicant argues that the meaning of HYDROGARDEN is "water garden", and this term, "taken literally, would be an arrangement or display of water, much like a 'rock garden' is an arrangement of rocks." Brief, p. 3. Applicant argues that because its hydroponic gardening system is not such a water garden, HYDROGARDEN is not merely descriptive of its goods.

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<sup>4</sup> The American Heritage Dictionary of the English Language, 3d ed. © 1992.

This argument is not persuasive, as it ignores the NEXIS and Internet evidence, which show that "hydrogarden" is a recognized term for hydroponic gardens, and that "hydrogardening" is used to describe gardening in a hydroponic system. Thus, in the context in which applicant's mark would be encountered by prospective customers, they would immediately understand, upon seeing the mark HYDROGARDEN used in connection with a hydroponic gardening system, that the gardening system is a hydroponic one.

Applicant's only comment with respect to these articles is that "while these materials shows [sic] various renderings of the word combination used in combination with gardening systems based on water, they are not directed to Applicant's 'hydroponic gardening system comprised of a gardening container which uses a variety of artificial media to grow plants in an aerated solution of water and nutrients.'" Brief, p. 4. Applicant goes on to state that if any of the entities referred to in the articles were to begin to use applicant's mark in a trademark sense, applicant would assert its prior rights against such unauthorized use.

It appears from applicant's statements that because the descriptive uses of "hydrogarden" in the articles and

websites do not refer to applicant's own product,<sup>5</sup> applicant contends that HYDROGARDEN is not a merely descriptive term for its goods. However, it is not necessary, in order to prove that an applied-for term is merely descriptive, that the evidence of descriptive uses in newspapers and websites refer specifically to the applicant's own product. If that were true, no application based on Section 1(b) of the Act (intent-to-use) could ever be refused on the basis of mere descriptiveness. In this case, the evidence of record shows that the term "hydrogarden" is an alternative term for a hydroponic gardening system, and therefore HYDROGARDEN immediately conveys information about a characteristic of applicant's identified goods. Thus, HYDROGARDEN is merely descriptive of such goods.

Decision: The refusal of registration is affirmed.

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<sup>5</sup> Presumably applicant's product is not on the market yet, in view of the fact that the application is based on intent-to-use, rather than actual use.