

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 79/016730

APPLICANT: Obschestvo s ogranichennoj; otvetstvenno ETC.

79016730

CORRESPONDENT ADDRESS:

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RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: CLEARWAYS

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 79/016730

INTERNATIONAL REGISTRATION NO. 0865888

This is a **PROVISIONAL FULL REFUSAL** of the trademark and/or service mark in the above-referenced U.S. application. 15 U.S.C. §1141h(c).

APPLICANT OR ATTORNEY CAN RESPOND TO PROVISIONAL REFUSAL:

Applicant may respond directly to this provisional refusal Office action, or applicant's attorney may respond on applicant's behalf.

NOTE: Attorneys hired to represent an applicant in a trademark matter before the Office must be eligible under 37 C.F.R. §10.14:

- (1) *Attorneys who are in good standing with the bar of any United States court or the highest court of any state, may practice before the Office in trademark matters.*
- (2) *A foreign attorney not residing in the United States who is in good standing before the patent or trademark office of the country in which he or she resides, may practice before the Office in trademark matters only in cases where the patent and trademark office of that foreign country allows substantially reciprocal privileges to those permitted to practice before the Office. Currently, Canadian attorneys are the only foreign attorneys recognized as meeting this criterion. A foreign attorney who meets the requirements of 37 C.F.R. §10.14(c) can only represent parties located in the country in which the foreign attorney resides and practices. TMEP §602.*

The Office cannot aid in the selection of an attorney. 37 C.F.R. §2.11.

If applicant is not represented by an attorney, applicant may appoint a domestic representative who would receive correspondence from the Office and be served process or notice of proceedings affecting the application. 15 U.S.C. §1141h(d); 37 C.F.R. §2.24.

THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS FOLLOWS:

The assigned trademark examining attorney has reviewed the referenced application, and has determined the following.

I. LIKELIHOOD OF CONFUSION

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on the identified goods, so resembles the marks in U.S. Registration Nos. 2442538 and 2093455, as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registrations.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

A. SIMILARITY OF THE MARKS

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977). "

The *applicant's* proposed mark is **CLEARWAYS**.

The *registrant's* mark in cited U.S. Registration Number 2442538 is **CLEARWAY**.

The *registrant's* mark in cited U.S. Registration Number is 2093455 is **KLEARWAY**.

The respective marks are either virtually or nearly identical in every element, sound, appearance and meaning rendering confusion particularly likely.

B. SIMILARITY OF THE GOODS AND SERVICES

The goods and services of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods and services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

The *applicant's* goods include balms for medical purposes, medicinal herbs, medicinal infusions, and medicinal oils and roots.

The *registrant's* goods in cited U.S. Registration Number 2442538 are steam inhalers for medical use.

The *registrant's* goods in cited U.S. Registration Number 2093455 are oral dental appliances to prevent snoring and sleep apnea.

The applicant's balms, herbs, infusions, oils and roots for medicinal purposes, and the registrant's steam inhalers in cited U.S. Registration Number 2442538, are subject to confusion in trade in that they are likely to be used together. See the attached evidence from the world wide web in this regard indicating that the respective goods, such as medicinal herbs and inhalers, may be used together. When goods offered under virtually identical marks in trade are used "conjointly", confusion is likely.

Furthermore, the applicant's balms, herbs, infusions, oils, roots, serums and tonics for medicinal purposes, presumably for the treatment of sleep apnea, and the registrant's dental appliances for the treatment of the same, are related in that they are also likely to be used together. Again, when goods offered under names identical in sound and meaning in trade are used "conjointly", confusion is likely.

Please note that the Section 2(d) refusal is limited to the specific goods referenced above.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

II. ENTITY TYPE AND CITIZENSHIP REQUIRED

Applicant must indicate the United States equivalent of its entity type or provide a description of the nature of the entity. TMEP §803.03(i). Moreover, the applicant must specify its country of organization or incorporation. 37 C.F.R. §2.32(a)(3)(ii); TMEP §§803.03(c) and 803.04.

III. AMENDMENT TO THE IDENTIFICATION OF GOODS REQUIRED

The identification of goods is unacceptable as indefinite because it does not indicate the common commercial names for all of the goods. The applicant may adopt the following identification, if accurate:

“albumen-based meal replacement powders for medical purposes; albumen-based preparations in the nature of salves for medical purposes; antiseptics; bacterial preparations for medical and veterinary use; analgesic balms for medical purposes; biocides; biological preparations for medical purposes; bread for diabetics; dietetic beverages adapted for medical purposes; dietetic foods adapted for medical purposes; dietetic substances in the nature of [please indicate common commercial name, e.g. sugar] adapted for medical use; digestive aid in the nature of [please indicate common commercial name] for pharmaceutical purposes; disinfectants for hygiene purposes; ferments for pharmaceutical purposes; baby food; fumigants in stick form; germicides; herbs teas for medicinal purposes; baby food in the nature of lacteal flour; liniments; pharmaceutical skin lotions; medicinal herb extracts; medicinal infusions comprised of medicinal herbs; herbal mud packs for medicinal purposes; medicinal oils for use in the treatment of [please indicate condition or disease to be treated]; medicinal roots in the nature of herbal teas for medicinal purposes; mineral food-supplements; medicated mouthwashes for medical purposes; medicinal herbs in the nature of nervines for treating the nervous system; medicinal nutritional additives for use in foods and dietary supplements for human consumption; organotherapy preparations for medicinal purposes for use in the treatment of [please indicate]; pharmaceutical preparations for treating skin disorders; pharmaceutical preparations for treating dandruff; preparations of trace elements, namely, food supplements for human use; preparations of trace elements, namely, animal feed supplements; medicinal preparations for use in treating chronic or excessive perspiration; medicated pre-moistened sanitary towels; medicated bath preparations in the nature of sea water for medicinal bathing; pharmaceutical preparations, namely, serums for the treatment of [please indicate disease or disorder to be treated]; pharmaceutical astringents in the nature of styptic preparations; therapeutic preparations for the bath, namely, bath salts for medicinal purposes; medicated pre-moistened tissues impregnated with pharmaceutical lotions; medicinal tonics for use in the treatment of [please indicate disease or disorder to be treated, e.g. gastrointestinal diseases, etc.]; vitamin preparations” **in International Class 5.**

TMEP section 804. Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification. Moreover, the international classification of goods in applications filed under Trademark Act Section 66(a) cannot be changed from the classification given to the goods by the International Bureau of the World Intellectual Property Organization in the corresponding international registration. TMEP §§1401.03(d), 1401.04 and 1904.02(b).

IV. CONCLUSION

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

/Zhaleh Delaney/
Trademark Attorney
Law Office 116
(571) 272-9153

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office’s Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney’s name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office’s Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Nov 18, 2005

75933925

TYPED DRAWING

Serial Number
75933925

Status
REGISTERED

Word Mark
CLEARWAY

Standard Character Mark
No

Registration Number
2442538

Date Registered
2001/04/10

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
U.S. Nordic Import & Export Co., Inc. CORPORATION MARYLAND 3027
Beckleysville Road Parkton MARYLAND 21120

Goods/Services
Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: Steam
inhaler for medical use. First Use: 1998/08/00. First Use In
Commerce: 1998/08/00.

Filing Date
2000/02/18

Examining Attorney
CHISOLM, KEVON

Respiratory System

(c)1995 Kathi Keville and Mindy Green Excepted from Aromatherapy: A Complete Guide to the Healing Art, Crossing Press)

Afflictions of the respiratory system include irritation and infection of the ears, nose and throat. Respiratory problems also may involve congestion, which can be decreased by inhaling rosemary (especially the verbenone type), hyssop (use var. decumbens only), tea tree, eucalyptus, lavender or peppermint. Cypress helps dry up a persistent runny nose, and peppermint, tea tree and eucalyptus reduce sinus infection. Anise and cypress help reduce coughing.

Many asthma sufferers wage a constant battle with low-level congestion. Don't use essential oils during an asthma attack, but between attacks try a chest rub of German chamomile, frankincense or lavender. The chamazulene in chamomile releases cortisone from the adrenals. During an asthma attack, give a bath or treat the feet with these oils. (Hyssop can also be used, but be careful to only use var. decumbens.)

Ninety percent of respiratory ailments are caused by viruses.

Oils of thyme, rosemary, peppermint, ravensare, tea tree, eucalyptus, bergamot, black pepper, melissa and hyssop inhibit most flu viruses.

Lemon and eucalyptus oils are effective against bacteria that cause staph, strep and pneumonia infections. A 2-percent dilution makes an effective antiseptic gargle or vapor steam.

Steam treatment carries essential oils directly to sinuses and lungs, and provides warm, moist air to help open nasal and bronchial passages. To do a steam, boil a pan of water, turn off the heat, cool 1 minute, add 3-6 drops of essential oils to the water, and use a towel to corral the steam around your head as you breathe deeply.

Essential oils can also be used in many humidifiers, or as an ingredient in steamy hot bath water.

If steaming is impractical-at the office, say, or while traveling-inhale a tissue scented with the oils, or use a natural-products nasal inhaler. These are sold in natural food stores, or you can make your own:

Homemade Nasal Inhaler

2 drops eucalyptus
2 drops rosemary

2 drops rosemary
1 drop peppermint
1 tablespoon rock salt

Place a few pieces of rock salt in a vial and add the oils. The salt will quickly absorb the oil. Inhale.

An aromatic diffuser-a glass piece (often hand-blown) connected to a small electrical compressor- disinfects the atmosphere by releasing droplets of essential oil as a cool, fine mist. One advantage to using a diffuser is that the essential oil vapor can be directed into the nose, throat or even ear passages. It can be turned on in a sickroom for 10 to 15 minutes every hour to clear airborne bacteria.

Do not use thick oils such as vetiver, sandalwood, vanilla, myrrh and benzoin in a diffuser unless they are diluted with a thin oil-such as the citruses, eucalyptus or rosemary-or mixed with alcohol. If oils sit too long in a diffuser, they oxidize and thicken. Also, expressed citrus oils often contain sediment that may clog a diffuser. To clean or unclog it, soak the glass unit in alcohol and unplug the opening with a pin or toothpick. Rinse and air dry.

Diluted essential oils can also be used as a throat spray through "nebulization." A nebulizer sprayer, with its long spout that reaches to the back of the throat, used to be a standard item in the home medicine cabinet. A perfume atomizer or spray bottle will work just as well.

If you don't have a diffuser, simply combine water and essential oils in a spray bottle. Studies show that a two-percent dilution of eucalyptus oil kills 70 percent of airborne staph bacteria.

Disinfectant Room Spray

3 drops eucalyptus
1 drop peppermint
2 drops pine
1 drop tea tree
2 drops bergamot
1 ounce of water

Combine ingredients. Shake well before using. The combination is also suitable as a chest rub. (Replace the water in this recipe with a carrier oil.)

Generations of Europeans, especially singers, have gargled sage, thyme or marjoram tea sweetened with honey to relieve laryngitis and tonsillitis. A few drops of essential oils diluted in two ounces of water may also do the trick. In case of sore throat, gargle frequently, at least every half-hour.

Throat Spray/Gargle

1/2 cup thyme or sage herb tea

1/2 cup thyme or sage herb tea
3 drops each
cypress
lemon
tea tree

Shake well to disperse the oils before each use. For a gargle, half a teaspoon of salt may be dissolved into the solution.

For lung congestion a salve or a massage oil containing essential oils can be rubbed over the chest, back and throat. The oils will be absorbed through the skin and lungs as the vapor is inhaled. Place a flannel fabric on the chest after rubbing in the oil to increase warmth.

Commercial "vapor balms" still use derivatives of essential oils (or their synthetic-oil counterparts), such as thymol from thyme and menthol from mint, in a petroleum ointment base. Natural alternatives are also sold in natural-food stores.

Vapor Balm

2 teaspoons peppermint oil
3 teaspoons eucalyptus oil
1 teaspoon thyme oil (chemotype linalol is best)
1 cup olive oil 3/4 ounce beeswax

Melt beeswax into olive oil over very low heat. Cool a bit, add essential oils and stir. (Be sure to keep your face away from the oils as you stir them in.) Allow to harden. Store at room temperature.

Poultices are an age-old remedy for chest congestion. A ginger or onion compress on the chest breaks up lung congestion and makes breathing easier. Onions also help curb asthma and allergic reactions.

Poultice

1 onion, chopped
1/4 cup ginger, grated
Water

Lightly cook together in a little water until soft. Cool slightly, mash and apply to the chest while still warm. Cover with a soft cloth.

Herbal Adjuncts-Herbs that loosen mucus from the lungs include elecampane, horehound and mullein. Respiratory relaxants, such as wild cherry bark and wild lettuce, are used in cases of extreme spasmodic coughing. Demulcent herbs, which soothe inflamed mucous membranes, include flaxseed, marshmallow root and licorice. Use these herbs in a tea, tincture, pills or syrup.

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HEALING GARDEN



The Healing Garden

These days it's common to see drugstore shelves stocked with all kinds of herbal remedies as more and more people search out alternatives to 'modern' medicine. But why purchase expensive, pre-packaged, processed remedies when it's extremely easy to grow your own?

Don't worry if you don't have a big backyard - a few square yards or even several large pots is enough to grow an ample supply of your favorite herbs. A quick tip for buying herbs: shop with reputable suppliers and make sure the seeds/starter plants are labeled by both genus and species, not just with a common name.

Here are some of common medicinal plants you may want to consider...

Echinacea

Echinacea has been given a lot of attention in the last few years as a natural remedy for treating colds and flu. Taken internally in a tea form, it also appears useful in reducing symptoms of a sore throat, stomachache, and urinary tract infections. Externally, Echinacea can be made into an ointment to treat insect bites, burns, and cold sores.

The Echinacea plant has pretty, daisy-like purple flowers; however, it's the creeping roots that hold the medicinal properties. To grow, sow seeds in the fall in deep, well-worked soil in a sunny location.

Lavender

Taken internally, Lavender is said to be beneficial in helping everything from headaches, insomnia, depression, flatulence, nervousness, colds, and upset stomachs. Externally, Lavender oil can be applied full strength on cuts, burns, insect stings, rashes, canker sores, and bruises.

Lavender is a shrubby evergreen with slender leaves and spikes of small mauve to purple flowers. For medicinal purposes, the flowers are used to make tea, essential oils and ointments. To grow Lavender, sow seeds or starter plants in a sunny location with neutral to alkaline soil.

St. John's Wort

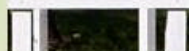
Recently St. John's Wort has been giving attention as a medicinal herb thanks to its reputed anti-depressant effects. In fact, this remedy is prescribed for millions of patients each year in Germany in place of Prozac or other anti-depressants. In addition to treating mild depression, St. John's Wort taken internally is believed to help treat symptoms of cough, digestion, diarrhea, menstrual problems, flu, and ulcers. The plant can also be used as an ointment for treating bruises, burns, sunburn, and varicose veins. St. John's Wort is a tufted perennial that has small, bright yellow summer flowers. The leaves and/or flowers are used to make into a tea or ointment. To grow, sow seeds or starter plants in the Fall, allowing 2 feet between the plants. St. John's Wort is an extremely adaptable in almost any pH or soil type and performs especially well in dry, rocky sites.

Chamomile

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**DEER CREEK
CAMPGROUND**



Chamomile

You're probably familiar with Chamomile, as it's a very popular herbal tea. When taken internally (either as a tea or capsule), Chamomile flowers are used to relieve many common ailments including indigestion, diarrhea, headaches, menstrual cramps, nausea, nervousness, fever and poor digestion. A paste made from the flowers can be used externally to treat rashes, burns and skin ulcers. Chamomile flowers can also be used in a steam inhaler to treat asthma, sinusitis, and hay fever. The Chamomile plant has sweet smelling, daisy like flowers that sit atop thin stalks and leaves. The plants grow from 12 to 30 inches, depending upon variety. To grow, plant seeds in spring and keep the soil moist. Harvest the flowers when they reach peak bloom and use them either fresh or dried.

Dandelion

Most people consider Dandelions a nuisance but did you know that this so-called 'enemy' is very high in vitamins A and C and contains more beta carotene than carrots? In addition to having strong nutritional value, Dandelions are also regarded as having medicine properties and are considered effective in helping strengthen the liver, gallbladder, stomach and intestines. It is also believed to help dissipate gallstones and improve kidney function, thereby improving overall health.

Taken internally, tea made from the roots or flowers will aid the above problems, as well as constipation, digestive disorders, indigestion and general fatigue. Externally, the white sap from the stems or roots is applied directly to bee stings, warts, acne and calluses.

Basil

Basil is commonly used in cooking but did you know it also possesses medicinal properties? Externally, the juice from basil leaves can be used as an insect repellent, as well as to soothe insect bites. Taken internally (e.g. added to salads), fresh basil leaves provide a powerful antioxidant boost, as well as a digestive aid.

Basil is an annual and must be planted each year. It can be grown from seed, though purchasing growing plants will yield an earlier harvest. It requires full sun and ample room (e.g. a foot between plants) in order to have abundant foliage.

Anise

Drinking a tea made from Anise seeds has been used for centuries to bring relief from colds and coughs, to aid digestion and to prevent flatulence. Chewing the seeds works as a mouth freshener and a hiccup cure. Anise is an erect annual herb that has dainty yellowish-white flowers in July and August followed by oval, hairy brown seeds. Sow the seeds in late spring in a sunny and sheltered location with well drained soil. For seeds, cut the plant at ground level when the seeds begin to turn grayish brown and then store the seeds in a tightly sealed opaque container.

If you're looking for a natural remedy for what ails you, what better place to look than right in your own yard! Bring healing into your own hands by growing a medicine garden.

(NOTE: Be sure to check with your doctor before using any herbal remedies - especially if you're taking prescription drugs, are pregnant or have an existing medical condition.)

• Healthy Eating

Print: Nov 20, 2005

74658576

TYPED DRAWING

Serial Number
74658576

Status
SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark
KLEARKAY

Standard Character Mark
No

Registration Number
2093455

Date Registered
1997/09/02

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
Great Lakes Orthodontice Ltd. CORPORATION NEW YORK 200 Cooper Avenue
Tonawanda NEW YORK 141505111

Goods/Services
Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: oral dental
appliance to prevent snoring and sleep apnea. First Use: 1995/06/00.
First Use In Commerce: 1995/06/00.

Filing Date
1995/04/05

Examining Attorney
LEVINE, HOWARD B.

Attorney of Record
Jeffrey H. LaBarge