

## Response to Office Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	86329569
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 107
<b>MARK SECTION</b>	
<b>MARK</b>	http://tsdr.uspto.gov/img/86329569/large
<b>LITERAL ELEMENT</b>	TOT YEARS
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size or color.
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_701095314-20150423152756169617 . TOT_YEARS_ROA_86329569.pdf</a>
<b>CONVERTED PDF FILE(S) (5 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\295\86329569\xml5\ROA0002.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\295\86329569\xml5\ROA0003.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\295\86329569\xml5\ROA0004.JPG</a>
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	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\295\86329569\xml5\ROA0006.JPG</a>
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>DISCLAIMER</b>	No claim is made to the exclusive right to use TOT apart from the mark as shown.
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/tdunlap/
<b>SIGNATORY'S NAME</b>	TOM DUNLAP
<b>SIGNATORY'S POSITION</b>	ATTORNEY OF RECORD
<b>SIGNATORY'S PHONE NUMBER</b>	703.777.7319
<b>DATE SIGNED</b>	04/23/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Thu Apr 23 15:31:46 EDT 2015
<b>TEAS STAMP</b>	USPTO/ROA-XX.XXX.XX.XX-20 150423153146257112-863295 69-530379c8f1e1c140b1bdbf 2f18f4d67d932dde9bf3bea0b b742cd364d63284357b-N/A-N

## Response to Office Action

### To the Commissioner for Trademarks:

Application serial no. **86329569** TOT YEARS(Standard Characters, see <http://tsdr.uspto.gov/img/86329569/large>) has been amended as follows:

#### EVIDENCE

##### Original PDF file:

[evi\\_701095314-20150423152756169617\\_-\\_TOT\\_YEARS\\_ROA\\_86329569.pdf](#)

##### Converted PDF file(s) ( 5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

#### ADDITIONAL STATEMENTS

##### Disclaimer

No claim is made to the exclusive right to use TOT apart from the mark as shown.

#### SIGNATURE(S)

##### Response Signature

Signature: /tdunlap/ Date: 04/23/2015

Signatory's Name: TOM DUNLAP

Signatory's Position: ATTORNEY OF RECORD

Signatory's Phone Number: 703.777.7319

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86329569

Internet Transmission Date: Thu Apr 23 15:31:46 EDT 2015

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20150423153146257

112-86329569-530379c8f1e1c140b1bdbf2f18f

4d67d932dde9bf3bea0bb742cd364d63284357b-

N/A-N/A-20150423152756169617

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Applicant:** Tot Years  
**Serial No.:** 86329569  
**Filed:** October 24, 2014  
**Trademark Atty:** Julie Thomas Veppumthara  
**TradeMark:** TOT YEARS

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**RESPONSE TO OCTOBER 24, 2014 OFFICE ACTION**

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This Response is filed in reply to the Office Action e-mailed on October 24, 2014. The Applicant respectfully submits the following response. Applicant submits that the above-identified trademark application for TOT YEARS is in condition for allowance to publication.

**DISCLAIMER**

The Applicant submits the following disclaimer:

**No claim is made to the exclusive right to use “TOT” as to Class 028 apart from the mark as shown.**

**POTENTIAL SECTION 2(e)(1) REFUSAL – MARK IS MERELY DESCRIPTIVE**

Applicant submits a preliminary response to the potential section 2(e)(1) refusal; however, Applicant reserves all rights to provide a detailed and more descriptive response if Examining Attorney Julie Thomas Veppumthara raises a Section 2(e)(1) refusal in a subsequent Office Action.

## **APPLICANT’S MARK IS AT MOST SUGGESTIVE**

Applicant respectfully submits that the mark TOT YEARS for cups, plates, and training cups for babies and children is at most suggestive and is not merely descriptive of Applicant’s goods. It is therefore deserving of registration on the Principal Register.

A mark is merely descriptive only if it “immediately describes” the Applicant’s goods or services. In re Econoheat Inc., 218 U.S. P. Q. 381, 383 (TTAB 1983)(emphasis in original).

For a term to be classified as “merely descriptive,” the name must “immediately tell a potential customer what to expect in sum total of these concepts.” Holiday Inns, Inc. v. Monolith Enter., 21 U.S. P.Q. 949, 952 (TTAB 1981). If the term used as a mark provides vague or indirect information about the goods or services, then the term is used in a “suggestive” manner. *See J. McCarthy, McCarthy on Trademarks and Unfair Competition* §11.19, at 11-26 (4th ed. 2002).

To be deemed merely descriptive, a mark must *directly* provide the consumer with reasonably accurate knowledge of the characteristics of the product or service in connection with which it is used. If the information about the product or service is indirect or vague, then the mark is considered suggestive, not descriptive. *Id.* See also Glamorene Products Corp. v. Boyle-Midway, Inc., 188 U.S.P.Q. 145 (S.D.N.Y. 1975) (finding that the mark SPRAY ‘N VAC is not merely descriptive of a no scrub rug cleaner and stating “a mark is not merely descriptive unless descriptiveness is its principle significance. A mark is not descriptive if it merely suggests the nature or class of the product on which it is used”).)

Applicant's mark does not immediately and directly describe the products provided under the mark, thus, Applicant submits that its mark is "suggestive" and capable of registration on the Principal Register. Applicant's mark does not immediately or directly tell the consumer what to expect. The mark does not immediately convey the precise nature of the goods or exactly what is being offered by Applicant. In this case, while Applicant's mark TOT YEARS may be suggestive in that it appeals to toddlers it is not merely descriptive. The term TOT refers to a broad class, toddlers and potential goods and services that could appeal toward this class of individuals. The term TOT does not tell consumers that the goods are cups, plates, and training cups. The terms YEARS denotes a period of time, such as, a lunar year or period of 12 calendar months. The combination of TOT and YEARS does not call to mind any particular product. The terms "tot years" could evoke thoughts of a pre-school, day care, high chairs, play sets or any item catered towards toddlers. Given the various goods or services to which the mark could refer, it is evident the mark is not merely descriptive of Applicant's goods. The term TOT, when juxtaposed with the term YEARS, does not merely describe Applicant's goods, namely, cups, plates, and training cups. The consumer must engage in a multi-stage reasoning process and exercise imagination to associate the mark with the goods it identifies.

#### **EXISTING REGISTERED MARKS INCORPORATING USAGE OF "TOT"**

There are a number of registered and pending registration marks incorporating the term TOT for a variety of goods and services. Examples of registered and pending registration marks incorporating the term TOT include:

Registration No. 4379687: TOTSTUFF for "Playground equipment, namely, crawl tubes,

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