

**To:** Pollie Gautsch([pollie@gandalegal.com](mailto:pollie@gandalegal.com))  
**Subject:** U.S. Trademark Application Serial No. 90599433 - MYCRODOSE THERAPEUTICS  
**Sent:** April 15, 2022 12:24:58 PM EDT  
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**Attachments**

**United States Patent and Trademark Office (USPTO)  
Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 90599433

**Mark:** MYCRODOSE THERAPEUTICS

**Correspondence Address:**

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**Applicant:** Mycrodose Therapeutics

**Reference/Docket No.** N/A

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**SUSPENSION NOTICE  
No Response Required**

**Issue date:** April 15, 2022

**INTRODUCTION**

Pursuant to TMEP §716.01, applicant is advised of the following status of the application. **Prior to issuance of this examiner's amendment, the following issues were outstanding with this application:**

1. Section 2(d) Refusal - Likelihood of Confusion
2. Prior-filed Pending Applications Advisory

3. Section 2(e)(1) Refusal - Mark Is Merely Descriptive
4. Supplemental Register Advisory
5. Disclaimer Advisory
6. Request for Additional Information Requirement
7. Identification of Goods and Services Requirement
8. Clarification of Number of Classes for which Registration Is Sought Requirement
9. Specimen Requirement

**In light of applicant's communication dated March 26, 2022 and the amendments detailed below, the examining attorney has determined the following:**

1. Applicant's arguments against the Section 2(d) refusal are unpersuasive, and the refusal is **maintained and continued**;
2. One of the pending applications remains live and pending, and the application will be **suspended** pending registration or abandonment of the pending application;
3. Applicant's arguments against the Section 2(e)(1) refusal are unpersuasive, and the refusal is **maintained and continued**;
4. Applicant has provided a disclaimer of THERAPEUTICS, and the disclaimer advisory is **satisfied**
5. Applicant's response to the Request for Information Requirement is acceptable and made of record, and the requirement is **satisfied**
6. Applicant's amended identification misclassifies the services "Research and development in the field of pharmaceutical and dietary supplements," and, while the wording in the identification is acceptable, the requirements to provide a properly classified identification and to clarify the number of classes for which registration is sought is **maintained and continued**
7. Applicant did not respond to the specimen requirement, and the requirement is **maintained and continued**

#### Preliminary Response to Applicant's Arguments

##### Section 2(d) Refusal

Applicant asserts that the marks are different based on factors such as the number of syllables in the marks, the spelling differences, the tenses of the marks, and the additional term in applicant's mark. However, when comparing marks, "[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties." *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014); *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007, 169 USPQ 39, 40 (C.C.P.A. 1971)), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b). Here, the overall commercial impression--that the goods provide micro doses of pharmaceuticals or supplements--is the same.

Applicant also asserts that its supplements are pharmaceutical grade supplements, while registrant's supplements are not. However, the compared goods and services need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d

1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i). Moreover, determining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)). Applicant's identification merely states that the supplements are "Dietary, nutritional, and herbal supplements for treatment of mental health conditions and cognitive degenerative diseases," which overlaps with registrant's nutritional supplements.

### Section 2(e)(1) Refusal

Applicant primarily argues that the meaning of THERAPEUTICS is ambiguous with respect to applicant's goods and services. However, per its own identification, applicant provides "Pharmaceutical preparations for treatment of mental health conditions and cognitive degenerative diseases," which falls within applicant's preferred definition. Moreover, applicant has disclaimed THERAPEUTICS, thereby conceding its descriptiveness.

Applicant also does not address the descriptiveness of MYCRODOSE in its arguments. Applicant admits in the Request for Information Requirement, though, that applicant's products "deliver a small, sustained and controlled dose of medication slowly into the body over time."

### Supplemental Register Advisory

Applicant notes its willingness to amend the Supplemental Register if the arguments against the Section 2(e)(1) Refusal are unpersuasive. If applicant confirms that it is amending the application to the Supplemental Register, the Section 2(e)(1) Refusal will be **obviated**.

### Classification of Goods and Services Requirement

Applicant has classified “Research and development in the field of pharmaceuticals and dietary supplements” in International Class 5; however, the proper classification is International Class 42. Therefore, applicant may respond by (1) adding International Class 42 to the application and reclassifying these goods and/or services in the proper international class, (2) deleting “Research and development in the field of pharmaceuticals and dietary supplements” from the application, or (3) deleting the remainder of the items in the identification and reclassifying the specified goods and/or services in the proper international class. *See* 37 C.F.R. §§2.86(a), 6.1; TMEP §§1403.02 *et seq.* If applicant adds one or more international classes to the application, applicant must comply with the multiple-class requirements specified in this Office action.

### CLARIFICATION OF NUMBER OF CLASSES FOR WHICH REGISTRATION IS SOUGHT REQUIREMENT

The application references goods and/or services based on use in commerce in more than one international class; therefore, applicant must satisfy all the requirements below for each international

class:

(1) **List the goods and/or services by their international class number** in consecutive numerical order, starting with the lowest numbered class (for example, International Class 3: perfume; International Class 18: cosmetic bags sold empty).

(2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the [USPTO's current fee schedule](#)). Specifically, the application identifies goods and/or services based on use in commerce that are classified in at least 2 classes; however, applicant submitted a fee(s) sufficient for only 1 class(es). Applicant must either (a) submit the filing fees for the classes not covered by the submitted fees or (b) restrict the application to the number of classes covered by the fees already paid.

(3) **Submit verified dates of first use of the mark** anywhere and in commerce for each international class. [See more information about verified dates of use.](#)

(4) **Submit a specimen for each international class.** The current specimen is not acceptable for any international class. [See more information about specimens.](#)

**Examples of specimens.** Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. *See* 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); *see* 37 C.F.R. §2.56(b)(1), (c).

Specimens for services must show a direct association between the mark and the services and include: (1) copies of advertising and marketing material, (2) a photograph of business signage or billboards, or (3) materials showing the mark in the sale, rendering, or advertising of the services. *See* 37 C.F.R. §2.56(b)(2), (c); TMEP §1301.04(a), (h)(iv)(C).

Any webpage printout or screenshot submitted as a specimen must include the webpage's URL and the date it was accessed or printed on the specimen itself, within the TEAS form that submits the specimen, or in a verified statement under 37 C.F.R. §2.20 or 28 U.S.C. §1746 in a later-filed response. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

(5) **Submit a verified statement** that **“The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.”** [See more information about verification.](#)

*See* 37 C.F.R. §2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 1(a) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, see the [Multiple-class Application webpage](#).

The fee for adding classes to a TEAS Standard application is \$350 per class. *See* 37 C.F.R. §2.6(a)(1)(iii). For more information about adding classes to an application, see the [Multiple-class](#)

[Application webpage.](#)

Specimen Requirement

Applicant did not respond to the specimen requirement, and the requirement is **maintained and continued**.

ACTION IS SUSPENDED

**The application is suspended** for the reason(s) specified below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

The pending application(s) below has an earlier filing date or effective filing date than applicant's application. If the mark in the application(s) below registers, the USPTO may refuse registration of applicant's mark under Section 2(d) because of a likelihood of confusion with the registered mark(s). 15 U.S.C. §1052(d); *see* 37 C.F.R. §2.83; TMEP §1208.02(c). Action on this application is suspended until the prior-filed application(s) below either registers or abandons. 37 C.F.R. §2.83(c). Information relevant to the application(s) below was sent previously.

- U.S. Application Serial No(s). 88960002

**Suspension process.** The USPTO will periodically check this application to determine if it should remain suspended. *See* TMEP §716.04. As needed, the trademark examining attorney will issue a letter to applicant to inquire about the status of the reason for the suspension. TMEP §716.05.

**No response required.** Applicant may [file a response](#), but is not required to do so.

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