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N. CAUSSEAU

**COVER LETTER**

**TO:** Registration Section  
Division of Corporations

**SUBJECT:** SARASOTA PATHOLOGY

(Mark to be registered)

The enclosed Trademark/Service Mark Application, specimens and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Douglas A. Cherry

(Name of Person)

Shumaker, Loop & Kendrick, LLP

(Firm/Company)

240 S. Pineapple Avenue, 10th FL

(Address)

Sarasota, FL 34236

(City/State and Zip Code)

For further information concerning this matter, please call:

Douglas A. Cherry

(Name of Person)

at ( 941 ) 364-2738

(Area Code & Daytime Telephone Number)

**MAILING ADDRESS:**

Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**STREET/COURIER ADDRESS:**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**(NOTE:** The information contained in this cover letter will be included in the permanent record and will be available to the general public.)



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

March 30, 2016

DOUGLAS A. CHERRY, ESQUIRE  
SHUMAKER, LOOP & KENDRICK, LLP  
240 S. PINEAPPLE AVENUE, 10TH FLOOR  
SARASOTA, FL 34236

SUBJECT: SARASOTA PATHOLOGY  
Ref. Number: W16000023261

We have received your document for SARASOTA PATHOLOGY and your check(s) totaling \$87.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

In Part I(2)(c) you must state how the mark is being used. If the mark is a trademark, you can cite labels, decals, tags, imprints on goods, etc. If the mark is a service mark, you can cite business cards, newspaper advertisements, TV and radio advertisements, etc.

The specimens provided this office are not acceptable; we need three permanent specimens, **which may be the same or different**. We do not accept camera ready copies. We do not accept specimens which have been altered or defaced in any manner. In order to register your service mark, we need specimens from which we can determine the services being rendered. We will accept brochures, newspaper, or magazine advertisements, or business cards. If business cards are used, we must be able to determine from the business card the services offered. The mere mark, address, city, etc., on the business card, brochure, or advertisement is not acceptable -- we must be able to look at the specimens provided and be able to determine the services being rendered. We need specimens for each class of registration. We DO NOT accept letterhead, stationery, envelopes, invoices or mailing labels.

Please attach your specimens to a copy of this letter or to your corrected application, if it was returned to you for correction(s), and return it/them to this office for processing.

Pursuant to s. 495.035(5), F.S., this application will be considered abandoned if the applicant fails to reply or resubmit the corrected/amended application within three months from date of this letter.

If you have any questions concerning the filing of your document, please call (850) 245-6051.

Nanette Causseaux

Regulatory Specialist II Supervisor

Letter Number: 016A00006447

DOUGLAS A. CHERRY  
Board Certified Intellectual Property Attorney  
941.364.2738  
[dcherry@slk-law.com](mailto:dcherry@slk-law.com)  
SLK File No. D00001-123237

April 21, 2016

**Sent via First Class Mail and Facsimile: 850-245-6030**

Nanette Causseaux, Regulatory Specialist  
Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

16 APR 28 PM 2:55  
STATE OF FLORIDA

Re: Ref No. W16000023257 - SARASOTA PATHOLOGY AND CIRCULAR  
DESIGN CONTAINING AN IMAGE OF MICROSCOPE; and

Ref No. W16000023261- SARASOTA PATHOLOGY

Dear Nanette:

I write in response to your letters (#616A00006446 and 616A00006447) in connection with the above-referenced trademark applications you returned to me as unfiled and more specifically, your request for alternate specimens of use of these marks.

Attached, please find the original applications along with the original specimens. I am resubmitting them as originally filed and respectfully request your office reconsider the specimens submitted and accept them as suitable indicators of the services being rendered for the following reasons.

The services described in the applications relate to the provision of "Medical diagnostic testing and reporting services; and medical laboratory services." As specimens of such services, we have attached a sample patient pathology report showing the mark (with patient information redacted). The report prominently shows the mark at issue. The report is the primary work product provided to the patient as part of the services, and clearly reflects the services being rendered. The specimen is not merely a letterhead, stationery, envelope, invoice or mailing label, but presents actual information regarding the services rendered.

As stated in F.S. 495.031(6), "[e]very application under this section shall be accompanied by three specimens or facsimiles showing the mark as actually used." These specimens show how the mark is actually used in commerce in connection with the relevant services, and complies with Florida Statute.

The Trademark Manual of Examining Procedure (T.M.E.P.) may be used as guidance for interpreting certain requirements of the Florida Statute that are similar to the Lanham Act. It is important to note that advertisements (such as brochures, newspapers or business cards) are not the only acceptable specimens, but specimens which show the *rendering* of services are also acceptable. T.M.E.P. Section 1301.04 ("Specimens of Use for Service Marks") discusses what qualifies for proper specimens, and states in part, "Whatever type of specimen is submitted, it must show proper use in commerce of the mark, which may be established by (1) showing the mark used or displayed as a service mark in the sale of the services, which includes use in the course of rendering or performing the services, or (2) showing the mark used or displayed in advertising the services, which encompasses marketing and promotional materials." T.M.E.P. Section 1301.04(f)(ii) further goes on to state:

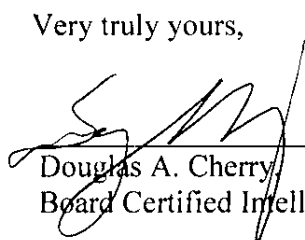
*Mark Used in Rendering: For specimens showing the mark used in rendering the identified services, the services need not be explicitly referenced to establish the requisite direct association. See In re Metriplex, Inc., 23 USPQ2d 1315, 1316-17 (TTAB 1992) (noting that "the requirements specific to specimens which are advertising are not applicable" and finding the submitted specimens acceptable to show use of applicant's mark in connection with data transmission services because the specimens showed "the mark as it appears on a computer terminal in the course of applicant's rendering of the service" and noting that "purchasers and users of the service would recognize [applicant's mark], as it appears on the computer screen specimens, as a mark identifying the data transmission services which are accessed via the computer terminal"). Rather, direct association may be indicated by the context or environment in which the services are rendered, or may be inferred based on the consumer's general knowledge of how certain services are provided or from the consumer's prior experience in receiving the services. Id. In other words, the context in which the services are provided and consumer knowledge and experience create an inference of the services without an explicit textual reference to the services*

In the present matter, a consumer (patient) would directly associate the Applicant's marks in association with the diagnostic testing and reporting services, as the patient would receive the results of the testing as part of the specimen report.

For the foregoing reasons, we would respectfully request that our specimen be approved and that you proceed with the applications.

Thank you for your consideration. Please feel free to call me to discuss.

Very truly yours,



Douglas A. Cherry  
Board Certified Intellectual Property Attorney

APPLICATION FOR THE REGISTRATION OF A TRADEMARK OR SERVICE MARK  
PURSUANT TO CHAPTER 495, FLORIDA STATUTES

TO: Division of Corporations  
Post Office Box 6327  
Tallahassee, FL 32314

16 APR 28 PM 2:55  
OFFICE OF THE SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

PART I

1. OWNER/APPLICANT: Enter the name and address of the individual or the business entity to be listed as the owner of the Trademark and/or Service Mark on the records of the Florida Department of State.

(a) Owner's/Applicant's name: Drs. Clack, Spencer, White & McCormack, P.A.

(b) Owner's/Applicant's business address: 2001 Webber Street  
Sarasota, FL 34239  
City/State/Zip

If different, Owner's/Applicant's mailing address: \_\_\_\_\_  
City/State/Zip

(c) Owner's/Applicant's telephone number: (941) 362-8900

Check the appropriate box to indicate the Owner/Applicant is a(n):

☐ Individual ☒ Corporation ☐ Joint Venture ☐ Limited Liability Company  
☐ General Partnership ☐ Limited Partnership ☐ Union ☐ Other: \_\_\_\_\_

If the Owner/Applicant is a business entity, the business entity must have an active filing or registration on file with the Florida Department of State. If the Owner/Applicant is not an individual, enter the business entity's Florida registration/document number in #1, the state or country under the laws of which the business entity is currently formed, organized or incorporated under in #2, and the entity's federal employer identification number (EIN) in #3.

(1) Florida registration/document number: 483104 ✓

(2) Domicile State or Country: Florida

(3) Federal Employer Identification Number: 59-1614252

2. (a) **SERVICE MARK:** If the owner/applicant is using the name, logo, design and/or slogan being registered in connection with a type of service, the mark is a service mark. If the mark is a service mark, the applicant/owner must list the specific service(s) the mark is being used in connection with. For example: furniture moving services, diaper services, house painting services, wholesale and retail sales of tractor equipment, etc. If the owner/applicant is using the mark to identify services available in the market place, enter the specific service(s) being rendered here:

(Note: List only those services currently being rendered by the owner/applicant. Do not include future services.)

Medical diagnostic testing and reporting services; Medical laboratory services.

2. (b) TRADEMARK: If the owner/applicant is using the name, logo, design and/or slogan being registered in connection with an actual product manufactured by the owner/applicant or on the owner/applicant's behalf, the mark is a trademark. If the mark is a trademark, the applicant/owner must list the specific product(s) the name, logo, design and/or slogan is being used to identify. For example: ladies sportswear, cat food, barbecue grills, shoe laces, etc. If the owner/applicant is using the name, logo, design and/or slogan to identify goods available in the market place, enter the specific product(s) the name, logo, design and/or slogan is being used to identify:

(Note: List only those product(s) currently available. Do not include future products.)

2. (c) HOW IS THE NAME, LOGO, DESIGN AND/OR SLOGAN CURRENTLY USED:

SERVICE MARKS: If the name, logo, design and/or slogan are/is being used in connection with a type of service, you must specify the form(s)/mean(s) of advertisement the applicant/owner is using to advertise the services to the general public. For example: newspaper advertisements, business cards, brochures, flyers, pamphlets, menus, etc. If the mark is being used in connection with a type of service, state how the name, logo, design and/or slogan are/is being used in advertising here:

Patient Reports

TRADEMARKS: If the name, logo, design and/or slogan are/is being used to identify a product manufactured by or for the applicant/owner, you must specify how the mark is applied or affixed to the actual product or its packaging. For example: a tag, label, imprinted or engraved on the actual product, etc. If the mark is being used in connection with a specific product, state how the name, logo, design and/or slogan is applied or affixed to the actual product(s) or the packaging:

2. (d) FEE(S) AND CLASS(ES): There are a total of 45 classes or categories in which all products or services must be categorized. The fee to register a mark is \$87.50 per class. Make check payable to Florida Department of State.

List the class(es) which apply to the product(s) and/or service(s) listed in 2(a) and/or 2(b) above:

44

## PART II

1. You must state the date the name, logo, design and/or slogan was first used in the state of Florida, and, if it was used in another state or country, the date you first used the name, logo, design and/or slogan in the other state or country. Enter the month, day, and year the name, logo, design and/or slogan was first used by the applicant/owner, the predecessor, or a related company in Florida. If the name, logo, design and/or slogan has been used in another state or country, then you must also enter the month, day, and year the name, logo, design and/or slogan was/were used in another state or country, when applicable.

**Note: The Florida Statutes require a mark to be in use prior to registration.**

(a) Date first used in other state or country, if applicable: n/a

(b) Date first used in Florida: 12/31/1978

## PART III

### **ENTER NAME, LOGO, DESIGN AND/OR SLOGAN BEING REGISTERED:**

1. Enter the name, a brief description of the logo or design, and/or the slogan you are registering. The description of the logo and/or design must be 25 words or less. List the exact name, slogan, and/or description of the logo/design here: (NOTE: The name, logo, design and/or slogan listed in this section must match the exact name, logo, design and/or slogan listed on your specimens or examples.)

SARASOTA PATHOLOGY

Provide the English translation of any and all terms listed #1 above, when applicable: \_\_\_\_\_

### 2. DISCLAIMER STATEMENT (if applicable):

Your mark may include a word or design that is commonly used by others. Commonly used terms or designs must be disclaimed. When you disclaim a specific term or design, you are acknowledging this term is commonly used by others and that you do not claim the exclusive right to use the disclaimed term or design. All geographical terms and representations of cities, states or countries must be disclaimed (i.e., Miami, Orlando, Florida, the design of the state of Florida, the design of the United States of America, etc.). Corporate suffixes and terms readily associated with the specific product(s) and/or(s) service being provided must also be disclaimed.

Enter all terms listed in #1 above which require a disclaimer in the space provided below:

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM(S) PATHOLOGY

"APART FROM THE MARK AS SHOWN.

3. ATTACH OR INCLUDE THREE SPECIMENS OR EXAMPLES OF THE TRADEMARK OR SERVICE MARK BEING REGISTERED

Chapter 495, F.S., requires you to submit three specimens (samples or examples) of the mark in use. You must submit three specimens FOR EACH CLASS listed in Part I #2(d). The name, logo, design and/or slogan on the specimens must be identical to the name, logo, design and/or slogan being registered. You may provide three identical specimens or three different specimens. For each service mark class (classes 35-45), you may provide three newspaper advertisements, business cards, brochures, flyers, or any combination thereof. For each trademark class (classes 1-34), you may provide three tags, labels, boxes, etc. or any combination thereof. Photographs of bulky specimens are acceptable if the mark being registered and the good(s) or product(s) are clearly legible.

SIGNATURE OF APPLICANT/OWNER AND NOTARIZATION:

I, DOUGLAS A. CHERRY, being sworn, depose and say that I am the owner and the applicant herein, or that I am authorized to sign on behalf of the owner and applicant herein, and to the best of my knowledge no other person except a related company has registered this mark in this state or has the right to use such mark in Florida either in the identical form thereof or in such near resemblance as to be likely, when applied to the goods or services of such other person to cause confusion, to cause mistake or to deceive. I make this affidavit and verification on my/the applicant's behalf. I further acknowledge that I have read the application and know the contents thereof and that the facts stated herein are true and correct.

DOUGLAS A. CHERRY

Typed or printed name of applicant

[Signature]  
Applicant's signature  
(List name and title)

STATE OF FLORIDA

COUNTY OF SARASOTA

Sworn to and subscribed before me on this 25<sup>th</sup> day of MARCH 2016 DOUGLAS A. CHERRY  
(Name of Individual Signing)

☒ who is personally known to me    ☐ whose identity I proved on the basis of \_\_\_\_\_

(Seal)



[Signature]  
Notary Public Signature  
SUSAN E. JACKSON  
Notary's Printed Name

My Commission Expires: 12/18/2019

FILING FEE: \$87.50 per class



2001 Webber Street, Sarasota, Florida 34239 941.362.8900 Fax: 941.362.8971 www.sarapath.com

## Surgical Pathology Report Desoto Memorial Hospital

Patient: [REDACTED]  
Med Rec #: M000 [REDACTED]  
DOB (Age)/Sex: [REDACTED] (Age: [REDACTED]) M  
SS#: [REDACTED]  
Physician(s): James W. Demler, M.D.  
Rhoniel Perdigon, M.D.  
Location: Outpatient Hospital

Specimen #: S16- [REDACTED]  
Encounter #: D0001 [REDACTED]  
Obtained: 3/3/2016  
Received: 3/4/2016  
Reported: 3/5/2016

Testing performed at Sarasota Pathology, 2001 Webber Street, Sarasota, FL 34239, unless otherwise indicated.

### Diagnosis:

#### "Prostate tissue" 10 g:

- Possible atypical acinar focus.
- Fibromuscular and glandular hyperplasia consistent with benign prostatic hyperplasia.
- See comment.

### Comment:

An immunostain is pending and will be reported in an addendum.

JFZ/3/5/2016

Jeffrey F. Zacks, M.D.  
\*\* Report Electronically Signed \*\*

\* Preliminary \*

### Addendum:

Reason: Immunostain (A3)

An immunostain for K903/p63 was performed and was positive surrounding the glands in question supporting the diagnosis of benign prostatic hyperplasia. No carcinoma is seen. The control shows appropriate reactivity.

jfz/3/7/2016

Jeffrey F. Zacks, M.D.