

## Response to Office Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86397544
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 103
<b>MARK SECTION</b>	
<b>MARK</b>	<a href="http://tsdr.uspto.gov/img/86397544/large">http://tsdr.uspto.gov/img/86397544/large</a>
<b>LITERAL ELEMENT</b>	NESHOBA
<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>ARGUMENT(S)</b>	
Refusal: Applied-For Mark is a Varietal Name:	
Responses: (1) Applicant respectfully asserts that 'Neshoba' is not, and has not been used as, a varietal name. (2) Applicant further respectfully asserts that a plant patent, utility patent, or certificate for plant variety protection does not exist under such name. Plant patent PP24980 does not use the name 'Neshoba' for this plant, but instead uses the experimental name CREC-0060 only.	
Refusal: Section 2(e)(2) - Geographic Refusal:	
Responses:	
The applied-for mark is not primarily geographically descriptive of the Applicant's goods and/or services. The crapemyrtle plant is not associated with a Mississippi county named Neshoba.	
The inventor/breeder of the plant, Dr. Patricia Knight, explains that the plant name basis was predicated on the desire to use a Native American name for the plant to honor National Arboretum researcher Donald Egolf, who pioneered crapemyrtle plant asexual reproductions, and to have some relevance also to Mississippi. The intent was never to indicate any geographical reference, place, or source or to indicate any plant origination in any way whatsoever. An affidavit to this effect can be provided, if necessary, from Dr. Knight. Additionally, the name 'Neshoba' is not a federally-recognized Native American tribe.	
For a mark to be primarily geographically descriptive under Section 2(e)(2), it must be shown that:	
(1) the mark's primary significance is a generally-known geographic place or location known to the public, and	
(2) the relevant public would be likely to make a goods or services place association and the public would be likely to believe that the goods/services originate in the place named in the mark.	
Addressing nos. (1) and (2) above:	
(1) Neshoba is a county in central MS of population of approx. 30K that an Internet search may identify, but that evidence is insufficient to show or establish that Neshoba is a geographic location that is generally known to the public, specifically to prospective crapemyrtle plant or plant purchasers. Neshoba is relatively unknown and remote to the relevant American or public consumer and, at most, would be known only	

to those few individuals living there or nearby or who may have traveled in the area. The primary significance of the name 'Neshoba' to crapemyrtle or plant purchasers, or to purchasers in general, would not be that of the name of a geographical place or a county in MS.

The Applicant respectfully asserts that it cannot be reasonably established that relevant plant purchasers would have exposure, if any, to the name 'Neshoba' or any basis for recognizing its geographical significance when presented with the mark itself.

Neshoba is not typically known or considered a well-known destination for travelers or tourists and not necessarily commercially significant, and evidence concerning trade, business, or cultural prospects in Neshoba is small when compared to other popular destinations. Neshoba is a relatively remote place that is not generally known to the typical American crapemyrtle or plant purchaser.

Such average consumers could not likely be exposed to the geographical significance of Neshoba such that they would readily recognize Neshoba to be a place name instead of viewing it as an arbitrary name for a crapemyrtle plant.

(2) The public generally would not likely make a goods/place association, i.e., a Neshoba crapemyrtle plant/Neshoba county association, or believe that the plant originates in Neshoba county. Although it may ultimately be sold there and in other MS counties, as well as regionally and nationally, the Neshoba plant does not and will not come from or originate in Neshoba county and it will not be produced there. Affidavits(s) can be provided to attest to this, if necessary. No evidence exists that the public would believe that the Applicant's plants originate from or in Neshoba county. It would only be speculation that the plants originate in Neshoba county or that the public would believe or understand there exists or would exist any goods/place relationship.

The crapemyrtle plants do not come from Neshoba county and a goods/place relationship cannot be presumed since Neshoba is generally unknown. No evidence exists to establish that American consumers, or crapemyrtle or plant purchasers specifically, would make such an association.

Moreover, Neshoba would have to be associated with crapemyrtle plants such that the consuming or purchasing public would be likely to assume that Neshoba is the place where the plants originate or are connected. This is simple not the case and only speculative at best. Finally, the fact that the Applicant is from MS is not enough to establish that the origin of the crapemyrtle plants is Neshoba such that there is any goods/place relationship or association between Neshoba and crapemyrtles.

#### **SIGNATURE SECTION**

<b>RESPONSE SIGNATURE</b>	/Larry A. Schemmel/
<b>SIGNATORY'S NAME</b>	Larry A. Schemmel
<b>SIGNATORY'S POSITION</b>	Attorney of Record, MS Bar member
<b>SIGNATORY'S PHONE NUMBER</b>	601-359-7600
<b>DATE SIGNED</b>	04/08/2015
<b>AUTHORIZED SIGNATORY</b>	YES

#### **FILING INFORMATION SECTION**

<b>SUBMIT DATE</b>	Wed Apr 08 14:10:56 EDT 2015
<b>TEAS STAMP</b>	USPTO/ROA-XX.XX.XX.XXX-20 150408141056204586-863975 44-530e8d03490525aacd8881 7ede51e85d5e24257f5289493

## Response to Office Action

### To the Commissioner for Trademarks:

Application serial no. **86397544** NESHOPA(Standard Characters, see <http://tsdr.uspto.gov/img/86397544/large>) has been amended as follows:

#### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

Refusal: Applied-For Mark is a Varietal Name:

Responses: (1) Applicant respectfully asserts that 'Neshoba' is not, and has not been used as, a varietal name. (2) Applicant further respectfully asserts that a plant patent, utility patent, or certificate for plant variety protection does not exist under such name. Plant patent PP24980 does not use the name 'Neshoba' for this plant, but instead uses the experimental name CREC-0060 only.

Refusal: Section 2(e)(2) - Geographic Refusal:

Responses:

The applied-for mark is not primarily geographically descriptive of the Applicant's goods and/or services. The crapemyrtle plant is not associated with a Mississippi county named Neshoba.

The inventor/breeder of the plant, Dr. Patricia Knight, explains that the plant name basis was predicated on the desire to use a Native American name for the plant to honor National Arboretum researcher Donald Egolf, who pioneered crapemyrtle plant asexual reproductions, and to have some relevance also to Mississippi. The intent was never to indicate any geographical reference, place, or source or to indicate any plant origination in any way whatsoever. An affidavit to this effect can be provided, if necessary, from Dr. Knight. Additionally, the name 'Neshoba' is not a federally-recognized Native American tribe.

For a mark to be primarily geographically descriptive under Section 2(e)(2), it must be shown that:

(1) the mark's primary significance is a generally-known geographic place or location known to the public, and

(2) the relevant public would be likely to make a goods or services place association and the public would be likely to believe that the goods/services originate in the place named in the mark.

Addressing nos. (1) and (2) above:

(1) Neshoba is a county in central MS of population of approx. 30K that an Internet search may identify, but that evidence is insufficient to show or establish that Neshoba is a geographic location that is generally known to the public, specifically to prospective crapemyrtle plant or plant purchasers. Neshoba is relatively unknown and remote to the relevant American or public consumer and, at most, would be known only to those few individuals living there or nearby or who may have traveled in the area. The primary significance of the name 'Neshoba' to crapemyrtle or plant purchasers, or to purchasers in general, would not be that of the name of a geographical place or a county in MS.

The Applicant respectfully asserts that it cannot be reasonably established that relevant plant purchasers would have exposure, if any, to the name 'Neshoba' or any basis for recognizing its geographical significance when presented with the mark itself.

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evidence concerning trade, business, or cultural prospects in Neshoba is small when compared to other popular destinations. Neshoba is a relatively remote place that is not generally known to the typical American crapemyrtle or plant purchaser.

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The crapemyrtle plants do not come from Neshoba county and a goods/place relationship cannot be presumed since Neshoba is generally unknown. No evidence exists to establish that American consumers, or crapemyrtle or plant purchasers specifically, would make such an association.

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**SIGNATURE(S)**

**Response Signature**

Signature: /Larry A. Schemmel/ Date: 04/08/2015

Signatory's Name: Larry A. Schemmel

Signatory's Position: Attorney of Record, MS Bar member

Signatory's Phone Number: 601-359-7600

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: 86397544

Internet Transmission Date: Wed Apr 08 14:10:56 EDT 2015

TEAS Stamp: USPTO/ROA-XX.XX.XX.XXX-20150408141056204

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