

THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B

Oral Hearing:  
July 24, 2008

Mailed:  
September 24, 2008

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re SteamFast Europe Limited

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Serial No. 76636092

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Donald L. Dennison of Dennison, Schultz, & Macdonald for  
SteamFast Europe Limited.

Andrea D. Saunders, Trademark Examining Attorney, Law  
Office 109 (Dan Vavonese, Managing Attorney).

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Before Hairston, Zervas and Kuhlke, Administrative  
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

SteamFast Europe Limited, applicant, has filed an  
application to register the mark ZIP AND STEAM (in standard  
character form) on the Principal Register for "cooking  
containers, namely, plastic cooking bags and pouches" in  
International Class 16.<sup>1</sup>

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<sup>1</sup> Application Serial No. 76636092, filed on April 14, 2005, under  
Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), alleging a  
bona fide intention to use the mark in commerce.

The examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

§1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods. Both applicant and the examining attorney have filed briefs and an oral hearing was held on July 24, 2008. We affirm the refusal to register.

We first address an evidentiary issue raised by applicant. Applicant objects that the material attached to the December 4, 2006 Office Action (issued after a request for remand was granted by the Board on the same date): 1) consists of Internet materials otherwise unidentified; 2) many of the pages are virtually unreadable; 3) their pertinence has not been specifically noted in the Office Action; 4) several pages are from foreign-based websites; and 5) they are not self-authenticating and should not be admissible absent an affidavit or some other attestation. Supp. Br. pp. 2-3.

The materials relied upon by the examining attorney are clearly not from foreign websites. Most of them have the URL displayed at the top of the page. A few do not have the URL displayed but there is contact information on the web page for the company. While some of the material is not legible when printed out, the electronic file available to applicant online in the Trademark Document

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Retrieval (TDR) system provides a process whereby the document may be opened as an Adobe Acrobat document and resized to be legible. The examining attorney noted their pertinence in the Office Action by stating at page 1, "See the attached excerpts from the Internet, demonstrating that bags such as applicant's zip and are often described as having a zipper enclosure, and that food can be cooked by steaming it." Finally, in an ex parte context, documents retrieved from the Internet are acceptable as evidence. See TBMP §1208.03 (2d ed. rev. 2004). In view thereof, we have considered the materials attached to the December 4, 2006 Office Action.

"A mark is merely descriptive if it 'consist[s] merely of words descriptive of the qualities, ingredients or characteristics of' the goods or services related to the mark." In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, Estate of P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 543 (1920). See also In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which

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it is used, or intended to be used. In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

Finally, while a combination of descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, In re Colonial Stores, Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968), the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. In re Associated Theatre Clubs Co., 9 USPQ2d 1660, 1662 (TTAB 1988). If

each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. In re Oppedahl & Larson LLP, supra.

Looking at the separate elements, applicant concedes that closure of its cooking bags and pouches is achieved by "'zipping' the bag." February 14, 2006 Response p. 2. Applicant also concedes that the evidence submitted by the examining attorney shows that "bags may be 'zipped'." Id. p. 2. Clearly, then, the term ZIP describes a method of closing applicant's cooking bags or pouches.

In traversing the refusal, applicant argues that the term ZIP has several meanings, including designating something that is rapid or quick. However, as noted by the examining attorney, the fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. In re Chopper Industries, 222 USPQ 258 (TTAB 1984). Here, in the context of the goods and the entire phrase, ZIP AND STEAM, the word ZIP connotes the method of closure. Perhaps if the word AND were not there it could possibly also connote rapid or quick, but the presence of AND makes it one step in a process. Applicant cites to Security Center Ltd. v. First National Security Centers, 222 USPQ 329 (E.D.La. 1984), reversed,

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225 USPQ 373 (5<sup>th</sup> Cir. 1985) but this case does not support applicant's position. In that case, in finding the alleged mark SECURITY CENTER to be descriptive, the Fifth Circuit reversed the lower court. In its reversal, the Court analyzed the meanings of the terms and stated that it "is less ambiguous, however, when one adds into the equation the context and environment in which the mark is used - the natural environment in which the consumer would meet with the phrase." Security, 225 USPQ at 376. The Court noted that it "was therefore beside the point for the trial court to note that most of the dictionary meanings of 'center' pertain to 'nucleus, middle, cluster, or gathering point,' or that 'security' may mean 'safety, confidence, dependable [sic], stability, guaranty and protection.'" Id. n. 6

With regard to the word STEAM, applicant argues that the bag or pouch is not steamed, "rather steam is generated within the bag which cooks the contents by steam." Br. p. 5. Thus, the user places food in the bag, zips it closed and steams the food. In applicant's words, its "goods are microwave steam cooking bags that can be filled with food to be cooked by the home user and then closed and placed in a microwave oven." Br. p. 4.

We agree with the examining attorney that STEAM describes a key feature or characteristic of applicant's

cooking bags and pouches, "namely, that the steam is in fact created when using the applicant's goods" and that it also "describes the purpose and function of the goods, namely, to generate steam for cooking the contents of the container." Br. pp. 4-5. In support of her position, the examining attorney submitted excerpts of articles retrieved from the Internet that "illustrate the wide use of steam cooking and the fact that advertisers promote the health benefits of 'steam-cooked' foods." Br. p. 5. See, e.g., Foodprocessing.com ("Birds Eye Foods, Rochester, N.Y., rolls out another revolution in frozen food with the nationwide launch of Steamfresh, frozen vegetables that steam perfectly right in the bag...Steamfresh heralds steam-in-the-bag cooking, a new concept for U.S. consumers, but it should catch on as steamed vegetables lock in nutritional benefits of vitamins and minerals.")

Clearly, these terms separately have a descriptive significance in relation to applicant's goods. The question remains whether combined they present a unique or incongruous combination.

It is the examining attorney's position that the evidence of record "establishes that ZIP AND STEM conveys the immediate characteristic of the goods; the terms have been individually used so frequently by other makers of re-

sealable bags and steam cooking bags that consumers are unlikely to perceive the term as a trademark; and the use of the term deprives competitors of a description for their goods needed for them to compete, and therefore must be refused registration." Br. p. 7.

We find that when combined the terms ZIP AND STEAM do not lose their descriptive significance and, in fact, make clear that applicant's goods close by zipping and steam food. The presence of AND does not create an incongruous meaning. To the extent it adds anything, it makes the phrase an instruction. Thus, we are persuaded by the evidence of record that the words ZIP AND STEAM are merely descriptive of applicant's identified goods and that when combined do not present a unique or incongruous meaning. In re Tower Tech, Inc., 64 USPQ2d 1314 (TTAB 2002).

Viewing ZIP AND STEAM as a whole, we find the evidence of record sets forth a prima facie case that such phrase is merely descriptive. Thus, we are persuaded that when applied to applicant's goods, ZIP AND STEAM immediately describes, without need for conjecture or speculation, a significant feature or function of applicant's goods. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective consumers of applicant's goods to



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perceive readily the merely descriptive significance of ZIP AND STEAM as it pertains to applicant's goods.

**Decision:** The refusal to register under Section 2(e)(1) is affirmed.