

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re David Michael & Co., Inc.

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Serial No. 77296898

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Stephen J. Meyers of Woodcock Washburn LLP, for David Michael & Co., Inc.

Russ Herman, Trademark Examining Attorney, Law Office 101 (Ronald R. Sussman, Managing Attorney).

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Before Walsh, Mermelstein, and Ritchie, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

David Michael & Co., Inc., applicant herein, seeks registration on the Principal Register of the mark "SLICEABLE SALSA," in standard character format, for "individually wrapped portions of salsa," in International Class 30.<sup>1</sup> The trademark examining attorney

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<sup>1</sup> Serial No. 77296898, filed on October 5, 2007, under Trademark Act Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), alleging a bona fide intent to use in commerce, and disclaiming

refused registration on the ground that applicant's mark is merely descriptive of the identified goods under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). Both applicant and the examining attorney filed briefs. After careful consideration of all of the arguments and evidence of record, we affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593

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the exclusive right to use the term "SALSA" apart from the mark as shown.

(TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *See also In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

We consider a composite mark in its entirety. A composite of descriptive terms is registrable only if as a unitary mark it has a separate, non-descriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (holding SUGAR & SPICE not merely descriptive of bakery products). Accordingly, we look to the plain meaning of the words.

Applicant submitted dictionary definitions of the separate words "sliceable," and "salsa," which we set forth in relevant part below:

**"Sliceable":** *adjective*; Etymology: from Anglo-French "to splinter." *From transitive verb "slice":* 1) to cut with or as if with a knife; 2) to stir or spread with a slice.  
*Merriam-Webster Online Dictionary (2007-2008).*

**"Salsa":** noun; Etymology: Spanish, literally, sauce.  
1) a spicy sauce of tomatoes, onions, and hot peppers.  
*Merriam-Webster Online Dictionary (2007-2008).*

We view dictionary definitions to show the relevant public's understanding of the term "SLICEABLE SALSA" as applied to applicant's identified goods, "individually wrapped portions of salsa." *In re Tower Tech Inc.*, 64 USPQ2d at 1316-17 (SMARTTOWER merely descriptive of commercial and industrial cooling towers). Applicant argues that the two words together are "incongruous" and "inapposite." However, it would not take any leap of logic for consumers looking at the mark and the identification to conclude that that the "individually wrapped portions of salsa" are probably sliceable in some form. Accordingly, "someone who knows what the goods or services are will understand the mark to convey information about them." *Id.*

Applicant also submitted evidence of third-party registrations that contain the word "SLICE" without an accompanying disclaimer or a claim of acquired distinctiveness. Applicant's evidence is intended to show that "SLICE" is not generally considered to be "merely descriptive." The evidence is not really on point however. Several of the marks are suggestive, such as SLICE, and design, for soft drinks. Furthermore, it is axiomatic that every case must be decided on its own merits. *In re Nett*

*Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

With the final office action, the examining attorney submitted a website printout from a company called SOREAL, advertising its "sliceable sauces." In its appeal brief, applicant objected to the SOREAL printout on the basis that it is from a foreign website, located at [www.soreal.fr/technical\\_sauces.html](http://www.soreal.fr/technical_sauces.html). Although it is true that a foreign website may not be very probative of the exposure of a typical American consumer, we may accord the evidence such value as we deem it to add to the record. In this case, that is not much. The point of the SOREAL evidence is apparently to show that "sauces" can be "sliceable." This goes to applicant's overriding argument that as the alleged creator of technology that allows "salsa" to be "sliceable," applicant is entitled to register the resulting term "SLICEABLE SALSA." The mere fact that applicant may be the first to use a descriptive term in connection with its goods does not somehow confer source-identifying significance to the term however. As the Board held in a similar case: "We agree with the Examining Attorney that this highly descriptive designation is not registrable under Section 2(e)(1) of the Act even though the record reflects no use of this combination of

words by competitors." *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983).

Accordingly, we reach the same conclusion with or without the SOREAL website.

The primary purposes for refusing registration of a merely descriptive mark are "(1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products." *In re Abcor*, 200 USPQ at 217. It would be difficult for competitors or the public to otherwise describe a form of salsa that can be sliced if applicant were allowed to register "SLICEABLE SALSA."

In sum, although any doubt on a 2(e)(1) refusal must be resolved in favor of the applicant, it is clear that a consumer would understand "SLICEABLE SALSA," used in connection with applicant's goods, as conveying information about them. See *In re Tower Tech Inc.*, 64 USPQ2d at 1316-17; see also *In re Conductive Services, Inc.*, 220 USPQ 84, 86 (TTAB 1983). Therefore we find that the mark is merely descriptive of the identified goods. Accordingly, we affirm the refusal to register.

Ser. No. 77296898

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