

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BSH Home Appliances Corporation

Serial No. 77298376

Russell W. Warnock of BSH Home Appliances Corporation for
BSH Home Appliances Corporation.

David S. Miller, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Quinn, Grendel and Zervas, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark **SENSOR DOME** (in standard character form) for
goods identified in the application as "household and
kitchen machines and equipment, namely, heating, steam
producing, and cooking devices, namely, cooking, baking,
frying, grilling, toasting, thawing, and hot-keeping
apparatus, namely, domestic cooking ovens, electric and gas

ranges, cooktops; structural parts of all aforementioned goods.”¹

The Trademark Examining Attorney has issued a final refusal to register applicant’s mark on the ground that it is merely descriptive of the goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Applicant has appealed the final refusal. Applicant and the Trademark Examining Attorney have filed briefs on appeal.

After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

Initially, we sustain the Trademark Examining Attorney’s objection (made in his brief on appeal) to the evidence submitted for the first time with applicant’s appeal brief. This evidence is untimely and will not be considered. See Trademark Rule 2.142(d), 37 C.F.R. §2.142(d).

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function,

¹ Serial No. 77298376, filed on October 8, 2007. The application is based on applicant’s asserted bona fide intent to use the mark

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). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

"On the other hand, a mark is suggestive if, when the goods or services are encountered under the mark, a multistage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates." *In re On Technology Corp.*, 41 USPQ2d 1475, 1477 (TTAB 1996) (internal citations omitted).

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

in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

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 (TTAB 1979).

Finally, 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).

Applying these principles in the present case, we find as follows.

The Trademark Examining Attorney has submitted dictionary evidence establishing that "sensor" is defined, in pertinent part, as "a device, such as a photoelectric cell, that receives and responds to a signal or stimulus." (American Heritage® Dictionary of the English Language (4th ed. 2000.) The same dictionary defines "dome" as "a vaulted roof having a circular, polygonal, or elliptical base and a generally hemispherical or semispherical shape," or a "domelike structure, object, or natural formation."

The Trademark Examining Attorney also has submitted evidence from third-party websites showing that ovens, ranges and cooktops typically, if not always, have one or more temperature sensors, and that such sensors may take a variety of shapes, including a domelike shape. See, e.g., www.fixitnow.com, which includes an article entitled "Oven Temperature Sensors Demystified," and www.fornobravo.com, which discusses one oven's "dome sensor."

In his first Office action, the Trademark Examining Attorney required applicant, under Trademark Rule 2.61(b), 37 C.F.R. §2.61(b), to provide information about the nature of applicant's goods. In response to the Trademark Examining Attorney's queries, applicant stated that "[a]pplicant's identified goods may incorporate a sensor"; "[a]pplicant's identified goods may be domelike in shape"; "[a]pplicant's identified goods may include a sensor or a related part that is domelike in shape"; and "...neither the term SENSOR nor the term DOME have any other meaning or significance as applied to Applicant's identified goods."

The Trademark Examining Attorney also required applicant to provide advertising and promotional materials related to applicant's goods. In response, applicant submitted an advertisement (from a retailer's website,

www.kbbonline.com) which describes the goods to potential purchasers as follows (emphasis added):

Take the guesswork out of the kitchen with Thermador's new electric cooktops, which feature Sensor Dome, an infrared **sensor** technology. Part of the Masterpiece Deluxe Series, the 30-in. model offers four burners and one **sensor**, while the 37-in. model has five burners and one or two **sensors**. The **retractable dome** continuously measures the heat from the cookware and automatically cycles the burner on and off to maintain the precise temperature needed.

We find that applicant's admissions in response to the Trademark Examining Attorney's inquiries, especially the admission that "[a]pplicant's identified goods may include a sensor or a related part that is domelike in shape," clearly establish that SENSOR and DOME each are merely descriptive of applicant's goods. SENSOR immediately describes (and indeed names) a component of the goods, and DOME immediately describes the shape of the sensor. Applicant has admitted that "...neither the term SENSOR nor the term DOME have any other meaning or significance as applied to Applicant's identified goods." The mere descriptiveness of these words as applied to the goods is made even more apparent by applicant's own merely descriptive use of the words in its advertisement, quoted above. *Cf. In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (in genericness context,

applicant's own generic usage in marketing materials is strong evidence of genericness).

We further find that the composite SENSOR DOME is merely descriptive of applicant's goods. The combination of the two words does not result in an incongruous, clever or otherwise inherently distinctive composite. The mark as a whole immediately informs purchasers that applicant's ovens, ranges and cooktops feature and use a dome-shaped temperature sensor. SENSOR DOME would have no other meaning or significance to purchasers who encounter the mark in connection with the goods. Certainly, applicant has not identified any such alternative meaning that the mark might have as applied to the goods.

For these reasons, and based on the legal principles regarding mere descriptiveness discussed above, we find that the evidence of record clearly establishes that SENSOR DOME is merely descriptive of the goods identified in the application. We have considered all of applicant's arguments to the contrary, but we find them to be wholly unpersuasive.

Decision: The refusal to register is affirmed.