

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
August 13, 2010
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BSH Bosch und Siemens Hausgeraete GmbH

Serial No. 77586001

James E. Howard and Russell W. Warnock for BSH Bosch und
Siemens Hausgeraete GmbH.

Tasneem Hussain, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Bucher, Mermelstein and Bergsman, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

BSH Bosch und Siemens Hausgeraete GmbH seeks
registration on the Principal Register of the mark **Zeolite**
(*in standard character format*) for goods identified as
follows:

household and kitchen machines and equipment,
namely, electric kitchen machines and
equipment, namely, dishwashers; structural
parts of all aforementioned goods in
International Class 7.¹

¹ Application Serial No. 77586001 was filed on October 6, 2008 under Section 44(e) of the Act, claiming priority under Section 44(d) based upon Fed. Rep. Germany, Appl. No. 302008022926, dated 04/08/2008, and containing applicant's allegation of a *bona fide* intention to use the mark in commerce.

The Trademark Examining Attorney refused registration on the ground that the term is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

After the Trademark Examining Attorney made the refusal final, applicant appealed to this Board. The Trademark Examining Attorney and applicant have fully briefed the case. We affirm the refusal to register.

Applicant argues that the term "Zeolite" is not merely descriptive of its goods inasmuch as the dictionary definition of "zeolite" makes no reference to dishwashers; that the applied-for term does not convey to consumers an immediate idea of the features or characteristics of its dishwashers; that the term has not been used so frequently that consumers would perceive the term as naming a feature of the goods; and that this registration will not deprive applicant's competitors of an apt description of their goods.

By contrast, the Trademark Examining Attorney contends that zeolite is the name given to a specific type of silicate mineral, and that applicant's own website touts the use of zeolite in its dishwashers, while explaining to prospective purchasers the energy-saving functionalities of its dishwasher precisely because it

has zeolite granules in a confined area of the dishwasher.

A mark is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it immediately conveys "knowledge of a quality, feature, function, or characteristic of the goods or services." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) [ASPIRINA is merely descriptive of analgesic product]. See also *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) [MONTANA SERIES and PHILADELPHIA CARD are merely descriptive of applicant's "affinity" credit card services; a "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service"]; *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) [THE ULTIMATE BIKE RACK is merely descriptive of bicycle racks]; *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987) [APPLE PIE is merely descriptive of a potpourri mixture]; and *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). To be "merely descriptive," a term need only describe a single significant quality or property of the

goods or services. *Gyulay*, 3 USPQ2d at 1009.

Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. That is, when we analyze the evidence of record, we must keep in mind that the test is not whether prospective purchasers can guess what applicant's goods [or services] are after seeing only applicant's mark. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) [*GASBADGE* merely descriptive of a "gas monitoring badge"; "Appellant's abstract test is deficient - not only in denying consideration of evidence of the advertising materials directed to its goods, but in failing to require consideration of its mark 'when applied to the goods' as required by statute."]. 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, 1316-1317 (TTAB 2002); and *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998).

In addition to considering the applied-for mark in relation to the goods or services for which registration is sought, the proper test for descriptiveness also considers the context in which the mark is used and the significance

that the mark is likely to have on the average purchaser encountering the goods or services in the marketplace. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991); and *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986).

A mark is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. "Whether a given mark is suggestive or merely descriptive depends on whether the mark 'immediately conveys ... knowledge of the ingredients, qualities, or characteristics of the goods ... with which it is used,' or whether 'imagination, thought, or perception is required to reach a conclusion on the nature of the goods.'" (citation omitted) *In re Gyulay*, 3 USPQ2d at 1009; *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

Hence, the ultimate question before us is whether the term **Zeolite** conveys information about a significant function, feature or characteristic of applicant's goods with the immediacy and particularity required by the Trademark Act.

The Trademark Examining Attorney contends that the word "Zeolite" is defined as a "silicate mineral," and that using this term in the context of applicant's specialized electric dishwashers that utilize zeolite immediately conveys information about an important feature of the goods.

The Trademark Examining Attorney has placed into the record the following dictionary entry:

zeolite
ze·o·lite [zéé ə lít]
noun
Definition:
silicate mineral: one of a large group of amorphous hydrated aluminum silicate minerals containing various other elements. Source: weathered igneous rocks, hydrothermal veins. Use: water purification.
[Late 18th century. < Greek *zein* "to boil"]

2

From a review of applicant's dishwasher in the following articles, we learn that several pounds of the mineral zeolite is held in a special interior compartment of the dishwasher to be accessed during the dishwasher's drying phase. In fact, it is hard not to conclude from the totality of the articles about BSH Bosch und Siemens (applicant) that the Trademark Examining Attorney has placed into the record, that "zeolite" is a significant feature of applicant's dishwashers:

² <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?lextype=3&search=zeolite>

Appliance Magazine.com

SERVING THE APPLIANCE INDUSTRY WORLDWIDE

issue: October 2008 APPLIANCE Magazine

Dishwashers

Engineering: Dish Drying with Zeolite

European appliance maker BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany; www.bsh-group.com) and The Bavarian Center for Applied Energy Research (ZAE Bayern) have jointly developed an innovative dishwasher drying system that is said to improve drying results and save energy.

The system is based on a silicate mineral called zeolite. According to Michael Rosenbauer, director of research and development, BSH Dishwasher, the mineral's characteristic of absorbing water molecules and then releasing them as the temperature rises makes it very useful for industrial purposes, especially in dishwasher drying.



Rosenbauer explains: “The zeolite is held in a container under the dishwasher’s interior compartment — a filling and venting pipe connects the two together. The system is activated during the dishwasher’s drying phase. At the end of the last rinse, steam rises from the heated dishware and utensils. The warm, humid air is conducted from the interior compartment downward into the zeolite container. The mineral absorbs the moisture and, in doing so, releases heat energy. The now hot, dry air is redirected into the interior compartment and dries the dishes, glassware, and utensils much faster than our current drying systems.”

The system is also said to improve the drying of plastic dishware, keeps dishes from getting too hot upon completion of the wash cycle, and eliminates the steam that typically releases after the dishwasher door is opened.

While zeolite is available naturally, the BSH system uses a synthetic form which is common in industrial applications. Rosenbauer says that working with ZAE Bayern helped the appliance company understand the physical/chemical characterization of the mineral. The two organizations also worked together on the design of the absorption process.

Building on the resulting innovation, BSH has also discovered a way to use the energy necessary to regenerate the zeolite to also heat the water in the next run of the dishwasher. “With each new washing cycle, the zeolite

regenerates during the normal dishwasher operation,” Rosenbauer says. “Air is thereby conducted from the interior compartment to a heating element, heated, and then directed further through the **zeolite** granules, releasing the previously absorbed moisture. The hot, moist air flows back into the **dishwasher** interior, where it helps quickly heat the dishware. A prime example of renewable energy.”³



[AROUND THE HOME](#)

Siemens showcases new fast drying dishwashers at IFA

By [Emily Clark](#)

10:24 August 28, 2008



At this year's [IFA](#) (the world's largest Consumer Electronics trade fair) in Berlin, [Siemens](#) unveiled its new speedMatic **dishwasher** featuring Zeolite drying technology for speedier drying times. The triple-A energy efficiency rated dishwasher can complete a standard 50C program in just 125 minutes or use its varioSpeed function to reduce program time by a further 50%.

The new speedMatic utilizes the special properties of the zeolite mineral to absorb moisture and convert it into energy in order to dry dishes faster and more efficiently. Taking their name from the Greek zein – to boil and lithos – stone, **Zeolites** are a very species-rich family of silicate minerals that appear in nature in numerous forms. They can serve as catalysts, water softeners or drying agents, and are used in heat storage devices or in “self-cooling beer barrels.” **Zeolites** have provided people with benefits for many years. Now, the developers at Siemens have discovered the mineral for their **dishwashers**.

Within each **dishwasher's** interior compartment resides 1.15 kilograms (around 2.5pounds) of zeolite. The new system is deployed during the **dishwasher's** drying phase and warm, humid air is conducted from the interior compartment downward into the **zeolite** container. The mineral absorbs the moisture and thereby releases heat energy. The now hot, dry air is redirected into the interior compartment and dries the dishware, glassware and utensils much faster than the condensation of standard **dishwashers**. The standard

³ <http://www.appliancemagazine.com/editorial.php?article=2090> as attached to Office action of January 7, 2009.

program uses only 0.97kWh of electricity and by activating the energySave button, the speedMatic dishwashers can reduce energy consumption by an additional 15% to 0.83kWh with a 140 minute cycle. The new intensivZone function dissolves stubborn residue on pots and pans with 20% more spray pressure and a higher temperature in the bottom rack. The wash program for the upper rack remains unaffected and works as gently as desired for delicacies such as glassware.

4

Press Information

Into the future with energy-efficient home appliances: BSH leads the industry as a pioneering innovator

Munich, June 16, 2009 (bsh). Environmental and economic action can be profitably combined. BSH Bosch und Siemens Hausgeräte GmbH shows this in its 17th Sustainability Report, published today in the run-up to the International Conference on Energy Efficiency (EEDAL) in Berlin. With innovative, highly energy-efficient products, the home appliance manufacturer is securing its competitiveness and long-term success. As the leading innovator for developing and marketing energy-efficient appliances, BSH is a pioneer in its industry.

Under the motto "Environmental and Corporate Responsibility" the report documents the corporate strategy, aligned to sustainability, the benefits for employees, as well as the social commitment and social responsibility of the company. Indicators tracking financial, environmental and social performance show BSH's development in recent years, what progress has been made in resource and energy efficiency, and where there is still room for improvement.

"At BSH we view sustainability as an integral and essential component of our business," says Dr. Kurt-Ludwig Gutberlet, Chairman and CEO of BSH. This applies to energy efficiency, environmental protection and occupational health and safety just as much as it does to training, leadership and cooperation with suppliers.

The annual report focuses, among other things, on the group-wide initiative for global marketing of highly energy-efficient appliances and on it being the first winner of the German Sustainability Award. BSH was honored as "Germany's most sustainable company 2008" since it manages to combine economic success with social responsibility and protection of the environment in an exemplary manner. Following an involved procedure in several stages to check the sustainability factors along the entire value chain, the jury confirmed that: "One of the major strengths of BSH lies in the way it continuously improves its products' environmental attributes." With the heat pump dryer and the Zeolite dishwasher, BSH has brought two products onto the market that are leaders worldwide in terms of energy efficiency and conservation of resources. The new tumble dryer is 40 percent more efficient than the minimum requirements for the current top energy efficiency class A; with the mineral zeolite, the dishwasher incorporates a completely new drying technology, making it more than 20 percent more efficient than a conventional A-rated dishwasher.

5

The Trademark Examining Attorney also included articles showing another use for zeolite in connection with

⁴ <http://www.gizmag.com/siemens-showcases-new-fast-drying-dishwashers-at-ifa/9871/> dated August 28, 2008, as shown in attachment to the August 5, 2009 Office action.

⁵ <http://www.bsh-group.com/laender/pt/index.php?showPI&y=2009&pm=115656>

dishwashers (e.g., as detergent, cleanser, corrosion inhibitor, etc.), whether for households or for industrial purposes.⁶ While this usage points to a secondary reason that the term may be merely descriptive for the listed goods, we do not need to rely upon these uses in reaching our conclusion of mere descriptiveness herein.

Based on this evidence, we have no doubt but that the term "Zeolite" immediately describes a significant feature or characteristic of the named goods. *See In re Abcor Development Corporation*, 200 USPQ at 219 [J. Rich concurring that "the present name of the [gas monitoring badge] is GASBADGE"].

Yet throughout the prosecution of this application, applicant has argued that its mark should be found non-descriptive as were marks such as SHEER ELEGANCE, registered for pantyhose. *See No Nonsense Fashions, Inc. v. Consolidated Foods Corp.*, 226 USPQ 502, 507 (TTAB 1985) [designation is not merely descriptive inasmuch as " ... the composite term has an unmistakable "double entendre ... "].

⁶ <http://www.silicates.com/industrial-detergentsMORE.asp?bhjs=1&bhsw=2400&bhsh=1600&bhswi=1167&bhshi=1278&bhflver=0&bhdir=0&bhje=1&bhcold=16&bhrl=-1&bhqt=-1&bhmp=-1&bhab=-1&bhmpex=&bhflex=&bhdirex=&bhcont=lan>; <http://www.neopiper.com/automobile-automotive/article7620.htm> and <http://www.dishwasherdetergentphosphate.com/recipe-for-automatic-dishwasher-detergent/>; <http://www.encyclopedia.com/doc/1G1-14281221.html>.

Hence, the question remains whether the applied-for term has a unique, incongruous, or otherwise non-descriptive meaning in relation to the goods. For example, if the term has a readily understood, alternative meaning, the mark would be considered to have a double entendre and will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods. See also *The Institut National des Appellations D'Origine v. Vintners International Co. Inc.*, 958 F.2d 1574, 22 USPQ2d 1190 (Fed. Cir. 1992)

[CHABLIS WITH A TWIST may well project a double meaning, e.g., the unusual approach of adding a citrus flavoring to wine]; *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 384 (CCPA 1968) [the term SUGAR & SPICE held not to be merely descriptive of bakery products]⁷ and *In re National Tea Co.*, 144 USPQ 286 (TTAB 1965) [NO BONES ABOUT IT for fresh pre-cooked ham]. In addition to the straightforward and merely descriptive meaning, the combined term in each of these cases creates a second meaning or interpretation that

⁷ In this oft-cited decision of the predecessor to our principal reviewing court, the Court found this matter clearly functioned as a trademark because "sugar and spice" is a well-known phrase taken from a nursery rhyme. The composite mark is inherently distinctive as applied to bakery products - even ones containing these two ingredients - precisely because this combination from the nursery rhyme is familiar to anyone seeing or hearing this mark.

members of the public would make quite readily, thereby rendering the combination registrable as a mark.

Applicant has not explained exactly what the readily understood but non-descriptive interpretation of consumers would be, and hence the term "Zeolite" stands in sharp contrast to the very clear secondary interpretations that were present in double entendre marks such as SHEER ELEGANCE, CHABLIS WITH A TWIST, SUGAR & SPICE or NO BONES ABOUT IT.

As to the third-party registrations that the Trademark Examining Attorney placed into the record showing a disclaimer of the word "zeolite," applicant argues that these are registrations for goods such as crystals formed of the silicate mineral zeolite. Arguably the word "zeolite" would be generic for such goods, but for an appliance that relies on zeolite as part of its drying cycle, it is merely descriptive.

Hence, in the context of applicant's identified goods, we are persuaded by the evidence of record that the term **Zeolite** will immediately convey information to potential consumers about a significant feature of applicant's goods. Specifically, we find that applicant itself emphasizes the energy-saving benefits that its customers will enjoy as a result of purchasing or using a dishwasher

incorporating zeolite into a container created as an internal component of the appliance. We see no reason the average person purchasing a new dishwasher would perceive any novel, incongruous or non-descriptive meaning to this term.

As noted by the Trademark Examining Attorney, applicant's own website touts the use of zeolite in its dishwashers and clearly explains to consumers that it is a feature of the goods.

Applicant also argues that there is no evidence that its competitors are using this term. However, even if applicant is the first and/or only user of the term "Zeolite" in connection with dishwashers, it is well established that being the initial and/or sole user of a term does not justify the registration thereof where, as here, the term projects only a merely descriptive significance. *See, e.g., In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 n. 8 (CCPA 1980); and *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983).

Applicant argues that even if its mark is registered, in the future, its competitors would still be free to use the term "zeolite" in its dictionary sense, in connection with the sales of their competing products. On the other hand,

in the event that applicant is the first to discover this application of a drying agent for dishwashers, it is not the province of trademark law to protect applicant's descriptive use of the term as a trademark. To recognize this as an inherently distinctive source-indicator for dishwashers would be to create potential disruption in the marketplace where competitors would be leery of using the term in its ordinary, descriptive sense for fear of infringing applicant's registered mark.

Finally, applicant argues that inasmuch as the dictionary definition of the term "zeolite" could be used with a broad range of goods or service, it follows that such a broad term would not convey an immediate idea of the nature or characteristics of applicant's dishwashers. For example, applicant argues that the prospective consumer could easily imagine that this term "is associated with goods or services relating to cars, software, phones, etc."

However, as noted by the Trademark Examining Attorney, appellant's abstract test is deficient. *In re Abcor*, 200 USPQ at 218. The question is whether someone who knows what applicant's goods comprise will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d at 1316-1317; *In re Patent & Trademark Services Inc.*, 49 USPQ2d at 1539. The proto-typical consumer of our

legal test for mere descriptiveness is not blindfolded, but knows full well that applicant is not using the mark in connection with cars, software, phones, etc. Rather, the relevant consumer knows that applicant is manufacturing and marketing dishwashers having a special drying feature that saves energy. We also presume that this prospective purchaser understands the relevant connotation of the word "Zeolite." We find that such a consumer, upon first encountering applicant's *Zeolite* goods in the marketplace will immediately, without conjecture or multi-stage reasoning, reach a conclusion as to one significant feature, function or characteristic of applicant's dishwashers.

Decision: The refusal to register under Section 2(e)(1) of the Lanham Act is hereby affirmed.