

**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 Verde Power Supply, Inc.

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Serial No. 77907011

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Evan Anderson of Patel & Alumit, P.C. for Verde Power  
Supply, Inc.

Kristina Morris, Trademark Examining Attorney, Law Office  
116 (Michael W. Baird, Managing Attorney).

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Before Seeherman, Cataldo, and Wolfson, Administrative  
Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

On January 7, 2010, Verde Power Supply, Inc. filed an application to register the mark VERDE (in standard character format) for "electrical and electronic devices for power supply technology, namely, power supply units, uninterruptible power supply units, current-voltage converters, switch mode power supply units, DC converters, and electronic power supply circuitry" in International Class 9, based on applicant's asserted bona fide intent to use the mark in commerce. The record includes a statement

that "the English translation of VERDE in the mark is GREEN."

The trademark examining attorney 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, when used in connection with applicant's goods, is merely descriptive thereof. The examining attorney also made final the requirement that applicant provide additional information about the goods, pursuant to Trademark Rule 2.61(b), 37 CFR 2.61(b).

When the refusal and requirement were made final, applicant appealed. The appeal has been fully briefed.

We affirm the refusals.

## **I. Discussion**

### **A. Trademark Rule 2.61(b) requirement**

In the first Office action, the examining attorney requested additional information regarding the goods, but applicant declined to provide any additional information on the grounds that to do so would reveal its trade secrets.

The request stated:

[A]pplicant must submit additional information about the goods. The requested product information should include fact sheets, instruction manuals, and/or advertisements. If these materials are unavailable, applicant should submit similar documentation for goods of the same type, explaining how its own product will

differ. If the goods feature new technology and no competing goods are available, applicant must provide a detailed description of the goods. The submitted factual information must make clear how the goods operate, their salient features, and their prospective customers and channels of trade. (internal citations omitted).

Applicant's response, contained in the "miscellaneous statement" section of the TEAS form to which applicant's substantive response was attached,<sup>1</sup> stated:

This product is new technology that will function unlike any current existing product on the market. It is a chane [sic] in the way power is transmitted but due to the trade secret nature of the product the Applicant is unable disclose [sic] specifics about the product beyond the goods and services description.

In the subsequent, and final Office action, the examining attorney, noting that applicant said it could not provide information regarding the products due to trade secret concerns, requested instead that applicant answer the following two questions:

(1) Are the goods energy efficient?

(2) Are the goods environmentally friendly?

Applicant did not acknowledge the questions or provide any information regarding the goods. Nor did applicant address the requirement, or its failure to comply with it, in

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<sup>1</sup> Although the entire TEAS form is part of the record, this statement, in direct response to the examining attorney's information requirement, should have been included in the section labeled "Argument(s)" rather than the "Miscellaneous Statement" section.

either its appeal brief or its reply brief, even though the examining attorney discussed the failure to comply with the requirement in her brief.

Under Trademark Rule 2.61(b), 37 CFR 2.61(b), as it read when the requirement was made, the examining attorney "may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application."<sup>2</sup> This Board has previously affirmed refusals of registration on the basis of an applicant's noncompliance with a requirement under Rule 2.61(b). *See, e.g., In Re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008) (requirement for information affirmed where applicant failed to acknowledge repeated requests and reminders to submit information as to geographic origin of applicant's goods); *In re Planalytics Inc.*, 70 USPQ2d 1453, 1457-58 (TTAB 2004) (requirement for information affirmed where applicant's only response was to refer the examining attorney to its website); *In re DTI Partnership LLP*, 67 USPQ2d 1699, 1700 (TTAB 2003) (requirement for information affirmed where applicant "did not specifically address or acknowledge" the requirement

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<sup>2</sup> The text of subsection (b) was amended effective June 21, 2012, to read as follows: "(b) The Office may require the applicant to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the application."

for information); and *In re SPX Corp.*, 63 USPQ2d 1592, 1597 (TTAB 2002) (requirement for information affirmed where applicant "totally ignored" request for information). See also, TMEP § 814 (8th ed. 2011).

As the Board explained in *In re SPX*:

In response to a request for information such as the Examining Attorney made in this case, an applicant has several options. It may comply with the request by submitting the required advertising or promotional material. Or it may explain that it has no such material, but may submit material of its competitors for similar goods or provide information regarding the goods on which it uses or intends to use the mark. Or it may even dispute the legitimacy of the request, for example, if the goods identified in the application are such ordinary consumer items that a request for information concerning them would be considered unnecessary and burdensome.

*In re SPX*, 63 USPQ2d at 1597.

In this case, as noted, applicant initially responded to the request for information by stating that this would require it to reveal trade secrets, and the examining attorney accordingly revised her request to merely require answers to the questions of whether applicant's goods were energy efficient or environmentally friendly. Applicant did not contest the revised request on the ground that it would require applicant to divulge trade secrets, or that it was not legitimate; applicant did not make any response to this request whatsoever. As we stated in *SPX*, an

applicant cannot ignore a proper request made pursuant to Trademark Rule 2.61. *Id.*

We find that it was proper for the examining attorney to ask for information regarding whether applicant's goods are environmentally friendly or energy efficient, facts that pertain to the descriptiveness refusal. The examining attorney acknowledged applicant's concern about having to divulge trade secrets, and reduced the information requirement under Rule 2.61(b) in the final Office action; the two specific questions do not deal with any of the details of applicant's products or the specific way they operate, so the answers thereto cannot be considered trade secrets. Moreover, the responses to the questions directly pertained to the examining attorney's analysis of whether the descriptiveness refusal was appropriate. *Compare, DTI Partnership*, 67 USPQ2d at 1702, where the examining attorney asked for advertising and promotional materials "to permit proper consideration of the application." The Board affirmed the refusal of registration in that case solely on the basis of applicant's failure to comply with the requirement for information, explaining that its ability "to fully and accurately assess the substantive merits of the mere descriptiveness issue has been hindered by applicant's failure to submit the information and

materials which were properly requested by the Trademark Examining Attorney under Trademark Rule 2.61(b)." Because of this, the Board in *DTI* declined to reach the merits of the mere descriptiveness issue. As *DTI* illustrates, non-compliance with a legitimate requirement for information or materials can, in and of itself, be a valid basis for denying registration.

Accordingly, we affirm the refusal to register based on applicant's failure to comply with Trademark Rule 2.61(b).

**B. Section 2(e)(1) Refusal**

Because applicant failed to provide information in response to, or even acknowledge, the examining attorney's questions as to whether its goods are environmentally friendly or energy efficient, in considering the refusal under Section 2(e)(1), we make the presumption that the answers to the examining attorneys questions would be unfavorable to applicant, and that applicant's goods are both environmentally friendly and energy efficient. *In Re Cheezwhse.com*, 85 USPQ2d at 1919 (appropriate to presume inference unfavorable to applicant based on applicant's failure to provide required information).

A mark 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. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark 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; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a mark 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 the goods or services, and the possible significance that the mark would have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). 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).

Pursuant to the doctrine of foreign equivalents, when it is likely that the ordinary American purchaser would “stop and translate” a mark consisting of a foreign word taken from a common, modern language into its English equivalent, the English translation is used to determine whether the mark is merely descriptive of the involved goods or services; if the word has a merely descriptive meaning in the foreign language, the mark will be found to be merely descriptive when used as a mark in the United States. *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976). *See also, In re Accelearte s.a.l.*, 101 USPQ2d 2047 (TTAB 2012) (COLOMBIANO means “Colombian” in English and is merely descriptive for services described as providing food and drink); *In re Tokutake Indus. Co.*, 87 USPQ2d 1697 (TTAB 2008) (AYUMI and its Japanese-character equivalent held merely descriptive for footwear where the evidence indicated that the primary meaning of applicant's mark is “walking”); *In re Geo. A. Hormel & Co.*, 227 USPQ 813 (TTAB 1985) (SAPORITO, an Italian word meaning “tasty,” held merely descriptive when used in connection with dry sausage). “The ‘ordinary American purchaser’ in this context refers to the ordinary American purchaser who is

knowledgeable in the foreign language." *In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006). There is no dispute that many purchasers of applicant's goods would be aware of the meaning of "verde," since it is a Spanish word and "there is no question that Spanish is a common, modern language." *In re Peregrina Limited*, 86 USPQ2d 1645, 1648 (TTAB 2008).

The examining attorney submitted a translation of "verde" taken from [www.langtolang.com](http://www.langtolang.com) that translates "verde" as "green, verdant, color green, greens, bawdy, crude, foliage, ribald, unripe, youngish, jade, sage, unripened."<sup>3</sup> Of these various definitions, the examining attorney focuses on the meaning of "verde" as "green," which is the meaning acknowledged by applicant in its translation statement: "The English translation of VERDE in the mark is GREEN." As can be seen, "verde" has other meanings. The record includes an excerpt from [www.merriam-webster.com](http://www.merriam-webster.com) that shows there are also multiple meanings for the English equivalent "green."<sup>4</sup> None of these meanings, other than "green," has been shown to have any relevancy to the identified goods at issue in this case.

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<sup>3</sup> See excerpt at [www.langtolang.com](http://www.langtolang.com), attached to April 6, 2010 Office action.

<sup>4</sup> For example, "green" is defined as, *inter alia*, "of the color green," "covered by green growth or foliage," "pleasantly alluring," "youthful," "fresh," "not fully processed or treated," and "deficient in training, knowledge, or experience." See April 6, 2010 Office action.

The examining attorney further argues that "the term 'verde' would be perceived by consumers of the identified goods in the same manner that 'green' is in English, i.e., to identify environmentally friendly products and services in the electrical supply industry."<sup>5</sup> To support the argument, the examining attorney relies upon the following definition of the word "green" in English:

**10 a** *often capitalized* : relating to or being an environmentalist political movement  
**b** : concerned with or supporting environmentalism **c** : tending to preserve environmental quality (as by being recyclable, biodegradable, or nonpolluting).<sup>6</sup>

In addition, the examining attorney submitted an online reference to show that "verde" has the same idiomatic connotation as "green" does in English. This was an article in English, published on the website zimbio.com, which appears to be a website about Carbon Trading. The website is captioned: "Learn about carbon trading and share your opinion about the carbon trading market and how it can be used to reduce pollution." The article indicates that it was "Written by ioman01 on Oct-2-07 2:32 am" (we assume this was the time it was posted) and that it is taken from the website "temasactuales.com"; copyright "2007 The Temas Blog." The article describes a Costa Rican

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<sup>5</sup> Examiner's Brief, p. 5 (unnumbered).

<sup>6</sup> At [www.merriam-webster.com/dictionary/green](http://www.merriam-webster.com/dictionary/green), submitted with the April 6, 2010 Office action.

project designed to convert polluting wood residues into a profitable energy source.<sup>7</sup> The word "verde" is used in the title of the article: *Wood Pellets, "Green" Energy and Carbon Credits/Pellets de madera, energia "verde" y credits de carbon.*

Applicant argues that because "verde" has other, non-descriptive meanings, it is not descriptive in connection with applicant's goods. However, it is well settled that so long as any one of the meanings of a term is descriptive when considered in connection with the identified goods, the term may be considered to be merely descriptive. See, e.g., *In re Polo Int'l Inc.*, 51 USPQ2d 1061, 1062-63 (TTAB 1999) (finding that DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984) (CHOPPER is merely descriptive for "axes" despite having other, non-descriptive, meanings).

As may be seen, the *English* word "green" is used idiomatically to describe energy efficient products, environmentally friendly products, and environmentally friendly energy creation, such that "green" in English

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<sup>7</sup> At [www.zimbio.com/carbon+trading/articles](http://www.zimbio.com/carbon+trading/articles), attached to Office action dated April 6, 2010.

would be merely descriptive of applicant's goods, based on the presumptions we have made about them because of applicant's failure to respond to the examining attorney's questions. However, the evidence of record fails to show that the Spanish word "verde" has this same idiomatic meaning. The single article submitted by the examining attorney is insufficient, by itself, for us to conclude that the ordinary American Spanish-speaking purchaser would view the Spanish word "verde" as having the meaning of energy efficient or environmentally friendly. As for the Spanish-English dictionary definitions provided by both applicant and the examining attorney, none include "environmentally friendly," "energy efficient," or the like as a definition or translation of "verde."

Although the dictionaries on which applicant relies were published in 2006 and 2007, and the examining attorney accessed the webpage from [www.langtolang.com](http://www.langtolang.com) on April 6, 2010, it appears to us that the ecological or environmental meaning of the word "green" or "verde" has been evolving over the years and is therefore not necessarily reflected in all available reference sources. The Board has taken judicial notice of some additional dictionary definitions. *See Tokutake Industry*, 87 USPQ2d at 1700 n.1; *In re Isabella Fiore LLC*, 75 USPQ2d 1564, 1566 n.5 (TTAB 2005)

(The Board may take judicial notice of standard reference works and commonly known facts). In particular, we take judicial notice of the following definition of "verde" from *Webster's New World Concise Spanish Dictionary*, p. 443 (2004) (emphasis supplied):

**Verde** adj (a) (en general) green, v. botella bottle green; v. olive olive (green); Fam poner v. alguien to run sb down (b) (poco maduro) (fruta) unripe, green; Fam Fig (persona) green, wet behind the ears; (proyecto plan) in its early stages (c) (**ecologista**) **Green, green** (d) Fig (obscene) blue, dirty (e) Fam (billete) = 1,000 peseta note

and of the following definition of "ecologista" found in *Collins Spanish Dictionary*, p. 342 (2009):

**Ecologista** [ADJ] conservation (antes de s), environmental - **el partido** - the Green party [SMF] ecologist, environmentalist - **los -s** the Greens.

These dictionary definitions establish that "green" and "verde" are direct idiomatic equivalents. The usage of "verde" in the article submitted by the examining attorney corroborates this meaning. Thus, we find that ordinary American Spanish-speaking purchasers would view "verde" as the equivalent of "environmentally friendly" or "energy efficient." Therefore, VERDE would directly and immediately convey to the purchasers of electrical and electronic devices that this equipment is ecologically or environmentally friendly.

**Decision:** The refusals to register are affirmed.

Seeherman, Administrative Trademark Judge, dissenting:

I must respectfully dissent from the decision of my colleagues affirming the refusals of registration. First, with regard to the refusal on the ground of mere descriptiveness under Section 2(e)(1), the majority acknowledges that the evidence of record fails to show that the Spanish word "verde" has the meaning of "environmentally friendly" or "energy efficient" that the word "green" has in English. The only evidence purportedly showing such a meaning is an English language article in which "verde" appears as part of the title of the article, "Wood Pellets, 'Green' Energy and Carbon Credits/Pellets de madera, energia 'verde' y creditos de carbon." As the majority states, this article is an insufficient basis for concluding that "verde" has the idiomatic meaning that "green" has in English. Instead, the majority has taken judicial notice of a definition in a Spanish-English translation dictionary published in 2004, and relies on this definition for its finding that Spanish-speaking purchasers of applicant's goods would view "verde" as meaning "energy efficient" or "environmentally friendly."

The majority believes that "the ecological or environmental meaning of the word 'green' or 'verde' has been evolving over the years," p. 12. Based on the evidence of record, that may certainly be true of the English word "green." However, the question is whether the meaning of "verde" has evolved to include an environmental or energy meaning, and in my view a single definition from a 2004 dictionary is not an adequate basis to draw such a conclusion. Particularly since definitions of "verde" from two later dictionaries, published in 2006 and 2007 that were submitted by applicant, and a definition that was printed in 2010 from an online dictionary that was submitted by the examining attorney,<sup>8</sup> do not include any such definition for "verde."

At the very least, the fact that there is only one dictionary definition for "verde" that has the environmental meaning, while three other, subsequently published dictionaries, do not, shows that there is doubt on the issue of whether "verde" has the meaning of "environmentally friendly" or "energy efficient." And this

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<sup>8</sup> The online dictionary is identified as "From Language to Language"; it does not give any other indication as to the source of its information, such as whether it is based on a print dictionary. However, since it was submitted by the examining attorney, it must be assumed that the Office regards the online site as a probative source, and the translations of "verde" as accurate.



in turn raises doubt as to whether consumers would immediately understand the mark VERDE to describe a characteristic of applicant's identified goods. Therefore, in accordance with well-established case law, I would resolve such doubt in favor of applicant, and reverse the refusal of registration on this ground.

As for the requirement for information made pursuant to Trademark Rule 2.61(b), I agree with the majority that the questions the examining attorney asked were legitimate requests for information, and that applicant neither responded to these questions nor provided a reason for its failure to respond. I also acknowledge that in several decisions, cited by the majority, the Board has affirmed refusals of registration on the ground of mere descriptiveness and also affirmed refusals based on the applicant's failure to provide information or promotional literature or other materials. However, because I would reverse the finding that applicant's mark is merely descriptive, I would also reverse the refusal of registration on the basis that applicant failed to comply with the examining attorney's request for information.

I agree with the majority that non-compliance with a legitimate requirement for information or materials can, in and of itself, be a valid basis for denying registration.

However, I am aware of only one precedential decision, *DTI Partnership*, in which such non-compliance formed the sole basis for affirming a refusal of registration, and that was in a situation where the applicant's failure to provide the requested information prevented the Board from fully and accurately assessing the merits of the substantive refusal. I am not aware of any precedential decision in which registration was refused on the basis of the applicant's failure to respond to a request for information when the substantive refusal was reversed.

In the present case, the requirement for information consisted of asking the applicant to respond to two questions, which could be answered "yes" or "no." The purpose of these questions was to provide the examining attorney with information that was relevant to the mere descriptiveness refusal, namely, are the goods energy efficient, and are the goods environmentally friendly. Because of applicant's failure to answer these questions, the majority, in determining the issue of mere descriptiveness, treated the answers as though they would have been adverse to applicant's position.<sup>9</sup> It seems to me that in these particular circumstances--i.e., the

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<sup>9</sup> I, too, have assumed that the responses would have been adverse in my consideration of the issue of mere descriptiveness.

information is relevant to a substantive refusal; the examining attorney is requiring yes-or-no answers to specific questions, such that it is easy to assume the answers that would be adverse to the applicant's position; and the "adverse" answers do not result in an affirmance of the substantive refusal--that it is too harsh a result to deny registration to applicant solely on the basis of its failure to comply with the requirement for information. Instead, my view is that treating the information as adverse to applicant is a sufficient consequence for applicant's failure to answer the questions posed by the examining attorney.

I should add that I by no means endorse an applicant's failure to comply with a requirement for information, or suggest that the only consequence of such a failure should be an adverse inference, rather than an affirmance of a refusal of registration. If an examining attorney were to require promotional or informational materials, such that neither the examining attorney nor the Board would be able to ascertain what information would be contained in such materials, the applicant's refusal to provide such materials could hinder the examination of the application and the determination of any substantive refusal. In such circumstances, it would be appropriate to affirm a refusal

of registration based on the failure to provide the requested materials, regardless of whether the Board reached the substantive ground for refusal, or treated the information that the applicant failed to supply as adverse to applicant as part of its determination of the substantive ground. However, as noted, in the case at hand the examining attorney required only that applicant respond to two yes-or-no questions, and by treating the answers to those questions as adverse to applicant, the Board has not been hampered in its determination of the substantive ground, or prevented from seeing material that would be potentially damaging to applicant. On the contrary, the Board has proceeded with its determination of the substantive refusal as though applicant in fact responded to the questions by stating that its goods are energy efficient and environmentally friendly.

Because I believe that treating these two questions as though applicant had responded in the affirmative to them is a sufficient consequence in the particular circumstances of this case, and because I believe that the Office has failed to prove that VERDE is merely descriptive as it has not shown that Spanish-speaking purchasers of applicant's goods would understand VERDE as having the meaning of energy efficient or environmentally friendly, and therefore

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that such purchasers would immediately understand from the mark that the goods have such qualities, I would reverse the refusals of registration.