

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 26, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Kitaru Innovations Inc.

—
Serial No. 85211019

—
Joseph A. Sebolt of Sand & Sebolt,
for Kitaru Innovations Inc.

Michael Webster, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

—
Before Bucher, Cataldo and Adlin,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Kitaru Innovations Inc. (“applicant”), a Bajan corporation, seeks registration on the Principal Register of the mark **GREEN SEAL** (*in standard character format*) for “adhesive tape and adhesive packaging tape and tape dispensers for home and office use,” in International Class 16.¹

¹ Application Serial No. 85211019 was filed on January 5, 2011, based upon applicant’s claim of use anywhere and use in commerce since at least as early as November 30, 2004.

The examining attorney has refused registration of applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that, when used on or in connection with applicant's goods, the term **GREEN SEAL** is deceptively misdescriptive of them.

Registration also has been finally refused under Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a), on the basis that such term comprises deceptive matter in that it falsely and materially indicates that applicant's goods are environmentally friendly when, in fact, they are not.

When the refusals were made final, applicant appealed and requested reconsideration. After the examining attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusals to register.

I. Arguments

The examining attorney contends that the record shows overwhelmingly that the word "green" is used frequently to refer to environmentally-friendly tape products. Applicant makes no claim that its products are environmentally friendly.

However, applicant does point out that it uses the term "Green Seal" to color code a line of adhesive tape products that also includes "Black Seal," "Blue Seal" and "Double Blue Seal." Moreover, applicant points out that it uses this term in connection with the imagery of a sea mammal.



II. Evidence of Record

The examining attorney supported his refusal with the following evidence from dictionary entries, the Internet and third-party registrations:

green - *adjective*

12. environmentally sound or beneficial: *green computers*. ²

green – *adjective*

13. (*sometimes capital*) concerned with or relating to conservation of the world's natural resources and improvement of the environment: *green policies* ; *the green consumer* ³

green *adjective*

12. a. Beneficial to the environment: *green recycling policies*.
b. Favoring or supporting environmentalism: *green legislators who strengthened pollution controls*. ⁴

green *adjective*

2. ecological, conservationist, environment-friendly, ecologically sound, eco-friendly, ozone-friendly, non-polluting *trying to persuade governments to adopt greener policies* ⁵

green *adjective*

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) ⁶

² <http://dictionary.reference.com/browse/green> known as Dictionary.com Unabridged; based on the RANDOM HOUSE DICTIONARY, 2011.

³ <http://dictionary.reference.com/browse/green> known as Dictionary.com Unabridged; based on the COLLINS ENGLISH DICTIONARY - Complete & Unabridged 10th Edition, 2009.

⁴ <http://www.thefreedictionary.com/green> based on THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, Fourth Edition, 2000.

⁵ <http://www.thefreedictionary.com/green> based on COLLINS THESAURUS OF THE ENGLISH LANGUAGE, 2nd Ed., 2002.

⁶ <http://www.merriam-webster.com/dictionary/green> MERRIAM-WEBSTER,

seal *noun*

6. anything that tightly or completely closes or secures a thing, as closures or fastenings for doors and railroad cars, adhesive stamps and tapes used to secure the flap of an envelope, etc.

seal *noun, plural seals*

1. any of numerous marine carnivores of the suborder Pinnipedia, including the eared or fur seals, as the sea lion, and the earless or hair seals, as the harbor seal.



Green Way
packaging with purpose

Nashville Wraps®
Gift Bags, Gift Boxes, Shopping Bags, Gift Wrap, Tissue Paper, Candy Boxes, Food Packaging Basket Supplies
Eco-Friendly Retail Packaging 1-800-547-9727

View Nashville Wraps Online Catalog of Eco-Friendly Gift and Food Packaging, including Green Way® recycled products or have a catalog mailed to you today.



3M Products & Services Brands Technologies Our Company Partners & Suppliers

United States > Products & Services > Manufacturing & Industry > 3M Green Adhesives & Tapes >

4 Ways Greener Product Selector

View the environmental advantages of 3M™ Industrial Adhesives and Tapes by market and application.



GLOBE GUARD PRODUCTS.COM
Eco Friendly Packaging You Can Trust

⁷ <http://dictionary.reference.com/browse/seal> known as Dictionary.com Unabridged; based on the RANDOM HOUSE DICTIONARY, 2011.

⁸ <http://www.nashvillewraps.com/shipping-supplies/mc-014.html>

⁹ http://solutions.3m.com/wps/portal/3M/en_US/3M-GREEN/Green-Products/Product-Information/Product-Selector/

¹⁰ http://www.globeguardproducts.com/Eco_Friendly_Box_Sealing_Tapes_s/42.htm



Back to School or Work: **Eco-Friendly** Choices

Thursday, August 25th, 2011 |

You don't have to be a little first-grader to get psyched about freshening up your backpack, lunchbox, and writing supplies! It's a great time of year for to get great deals and see what's new on the eco-front. We asked Erin Schrode to help us get organized. She knows her **green and she knows her stuff!**



Erin Schrode

Back to School in Eco Style

By Erin Schrode

The end of summer is around the corner and school is, once again, upon us. Early morning wake-ups, packing lunches, and after school activities will all soon become routine, but first... back-to-school shopping. In the US alone, families spend an average of up to \$800 on these school supplies. That is a *lot* of money and a *lot* of products, yet it need not produce excessive waste. This is the perfect time to incorporate eco into your daily life and become a conscious consumer. It is super simple for parents, teachers, kids, and all the rest of us that love school and **office supply** shopping (and sales!) can start turning **green** this back-to-school season!

First things first: let's talk classroom essentials like pencils, pens, paper.

When purchasing **eco-friendly back-to-school basics, it's critical to look for items made from recycled content.** Many pencils and pens are refillable and made using post-consumer waste, as are some rulers and scissors. This reduces resource consumption and the need to manufacture using our limited natural resources.

If buying new, choose FSC-certified pencils to ensure that wood is sustainably harvested. A far better choice! I am a

fan of **New Leaf notebooks** and paper, **ReBinder folders and binders**, **Ecojot notebooks**, **PaperMate ReThink pens**, and **EarthWrite pencils**, **Zebra Pen Eco**, **Forest Choice pencils**, **Pilot BeGreen**, **BIC Ecolutions**, **Kleanearth Scissors**, and **3M **eco-friendly** tape** and recycled Post-Its, to name but a few of the many eco brands on the market today.

11



12

11 <http://blog.practicallygreen.com/2011/08/>

Home

About

3M To Offer Eco-Friendly Scotch Tape



If ever there was a trend we welcomed with open arms, it's eco-friendliness and boy, is it taking the world and companies by storm.

And not even 3M is left out in the cold with the announcement of a new product, **Scotch Magic Eco-Friendly Tape**. Made from more than 75% renewable or recycled materials, this new tape is just what you've been wanting to switch to.

13

¹² <http://carpet-rug.org/residential-customers/selecting-the-right-carpet-or-rug/green-label-plus-adhesive-list.cfm>

¹³ <http://www.greenlifestyle.com/3m-to-offer-eco-friendly-scotch-tape> as accessed by the examining attorney on October 18, 2011.

Blue Frog Creations

This blog is aimed to share tips to Go **Green**, Save **Green**, and Give **Green**: buying organic and locally grown, conserving energy, recycling, and consuming less. By pairing coupons with sales, I share details for how to Save **Green**. My weekly Couponing for Charity posts share how I'm giving to others more creatively.

Eco-friendly scotch **tape**: get it FREE!

When I can score a deal that's a **green** product and I get it for free, I wear a smile all day. Yes, I'm that nerdy. I just stopped by Staples to get all the extreme deals on the front of the flyer for myself and my church. They still had plenty of everything, and the notebooks rang up \$.09, not \$.19--even better.



My favorite deal was for Scotch magic **eco-friendly** **tape**, made from 75% renewable or recycled materials. The dispenser is made from 100% recycled plastic, the back-card is from 100% renewable materials, and the tape is made from over 53% renewable plant-based materials. I'm not sure how they do that, but that's cool. You can also reuse the dispenser and buy refills separately or **recycle it through Terracycle**. Since our school has just started collecting for Terracycle, I'm jazzed about this idea, which pays the school \$.02 for each item. Love it!

So here's the deal: You pay \$3.99 and get \$3.99 back in Staples rewards to use on a future purchase. Voila: FREE. Limit 1 per customer. Go **green**, save **green**, give **green**!

14

¹⁴ <http://bluefrogcreations.blogspot.com/>

CALL (877) 599-7447 OR [EMAIL US](#) FOR LARGE VOLUME DISCOUNTS OR CUSTOM QUOTES.

bubbleFAST!
WHOLESALE SHIPPING SUPPLIES TO THE PUBLIC

Home | Register / Login

Shopping Cart
0 Item(s) | \$0.00 Subtotal
View | Checkout
Check out with **PayPal**

HOME PRODUCTS BUBBLE BUCKS SHIPPING ABOUT US CONTACT US **GREEN** SHIPPING TIPS BLOG

Shop By Category

- Book Mailers
- BookFolds
- Boxes
- Bubble Cushioning Wrap
- Bubble Mailers - Kraft
- Bubble Mailers - Poly
- Bubble Pouches - Bubbl...
- Catalog Envelopes
- Closeouts
- Corrugated Layer Pads
- Corrugated Mailers

Eco-Tape

Our Products: [Earth Friendly](#) > [Eco-Tape](#)



Eco-tape brand earth-friendly clear or tan carton sealing tape is made with 25% recycled resin. Core is 100% recycled. 2.5 mil thick provides for excellent quality. Our 2" wide acrylic tape come in 110 yard rolls.

If you previously purchased this product and would like to leave a review, please click on the picture of the product you purchased and scroll to the bottom of the page. All reviews would be greatly appreciated.

Thank you.

Eco-Tape® Brand Clear Carton Sealing Tape 2" Wide / 110 yards per roll (2.5 mil)

15

 My Account | My Wishlist | My Cart | Checkout | Log In

Follow us On:   Visit our Blog: 

Home Company Products Shop Industrial News Contact Order by Phone Toll Free: 888.618.0189



Bag it Green!

Reusable bags for everyday use...

Don't leave home without them!

Packing Products You Can Feel Good About! ECO NEWS

16

15 <http://www.bubblefast.com/store/pc/Eco-Tape-c129.htm>

16 <http://www.ecopackstore.com/>

tapebrothers.com View Cart | My Account / Order Status | Help

Tape Search **You are here: Home > Duct Tape > Earth Friendly ECO Duct Tape**

Navigation Menu
DEALS OF THE DAY
3M / Scotch / Command
Adhesives/Removers
Aerospace Tapes
Artist Tapes
Awning Repair Tape
Bag the Bugs
Barricade Tapes
Books
Camouflage /
Outdoorsman Tapes
Carpet Tapes
Carton Sealing
Cohesive Bonding Non-
Adhesive Tapes
Craft Tape
Directional Arrows
Double Coated Tapes
Duck® Brand Products
Duct Tape
Duct Tape Kits/Crafts
Electrical Tape (colors)
Filament Tapes
Finger Protection
Flagging Tape
Flags / Marking
Flame Retardant Tapes
Foam Tapes
Foil Tapes
Gaffers Tape

ECO Tape
Light Tach Tape that is Perfect for Sealing Trash Bags and Bundling Lawn Waste

Earth Friendly Duct Tape
The FIRST "Earth Friendly" option to conventional Duct Tape. This duct tape is made from Regresa Oxo-Biodegradable Film that actually degrades 100% back into organic material within approximately fifteen years from completed life cycle. This tape is also made with cloth that possesses 38% polyester fibers made from recycled material, such as discarded plastic bottles. The total core the tape is wound on is made from 100% recycled paper, ensuring no trees are destroyed in order to produce this product. It has the same appearance, construction and durability of the non "green" products and will not begin to degrade until the one year from application. This is similar to most duct tapes on the market today and is, like all duct tape, designed for temporary repairs. The service life of this product is similar to any other conventional tape. ECO-Tape will work for one year before starting to break down into organic material. This is similar to any duct tape that is exposed to the elements. This duct tape is intended to be an "Earth Friendly" option to the standard duct tapes used today. Tape Brothers participates in the "Plant a Tree" program by contributing 5% of the cost of ECO-Tape toward planting trees in the U.S. in order to help reduce the "carbon footprint" that every human generates. The feedback to date has been very positive and we think this is a big winner in the current "go green" economy.

17

EcoPackStore
Eco-Friendly Products For a Greener Tomorrow

Home | Company | Products | Custom | Shop | News | Contact

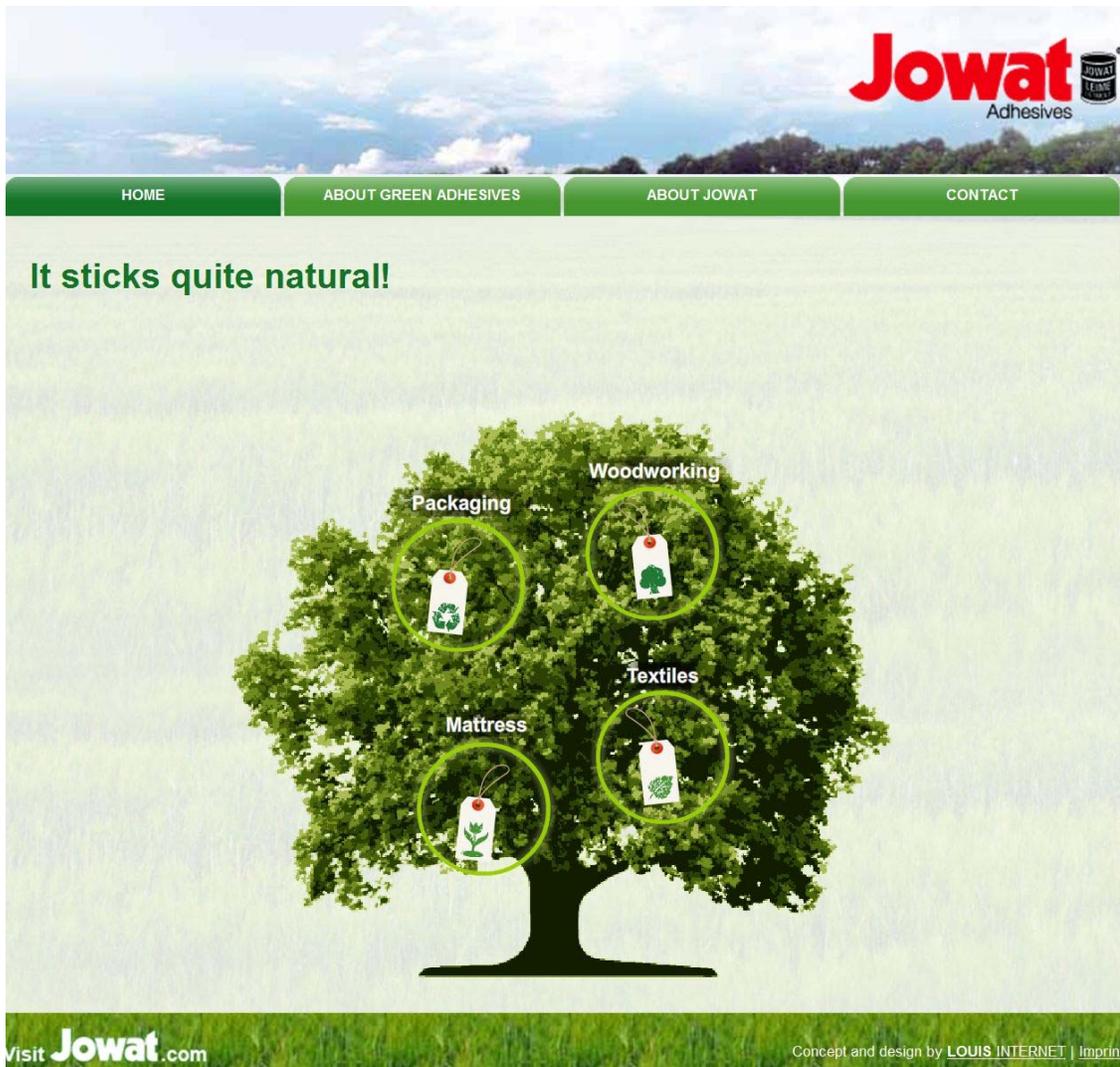
Eco-Friendly Packing Tape

Our Eco-Friendly Packing Tapes perform even under the most extreme temperature and environmental conditions. They feature a water-based adhesive, which is friendly to the environment. They do not contain solvents and hydrocarbon which can be harmful to both users and the environment.

18

17 <http://www.tapebrothers.com/Earth-Friendly-ECO-Duct-Tape-s/332.htm>

18 <http://www.ecopackstore.com/products/products/eco-friendly-tape.html>



19 <http://www.greenadhesives.com/>

20 <http://celebrategreen.net/blog/crafts/crazy-for-this-eco-friendly-tape>



Best Quality Art Supplies
The Trusted Resource Since 1549

[Sign In](#) | [New Guest](#) | [My Account](#) | [Wish List](#)

[Store Finder](#) | [Request Catalog](#) | [Gift Cards](#)

Paint | Canvas | Brushes | Paper | Drawing | Studio | Drafting | Framing | Printmaking | Sculpture

Enter Item Number or Keyword

SEARCH

[Sign up for emails, get a FREE shipping coupon](#)

Shop By:

Special Values

Sale

Clearance

Best Buys

New Products

Coupon Eligible

Category

Students & Kids Art Supplies

Paint

Canvas

Brushes

Paper

Drawing

Easels

Studio

Drafting

Framing

Graphics - Airbrush - Design

Storage Cases: Photo - Portfolios - Presentation

Chuck Taylor Sneakers, Aprons

Books - DVDs

Cleaners - Safety Supplies

More Ways To Shop

Custom Canvas Program

Popular Classroom Supplies

Green Products

Gift Ideas / Cards

Craft Supplies

Graphics - Airbrush - Design / Artist Tape

Shop Green!

Eco-Friendly Art Materials from Utrecht

Find Environmentally Friendly, aka 'Green' Art Supplies and Craft Supplies

More and more consumers are considering the environment when choosing the items they purchase. Use this section to find art supplies and craft supplies that have been constructed with recycled materials, use renewable energy sources, create less pollution either in their manufacturing process or in their ability to be recycled or use raw materials that are grown in a sustainable way.

Chartpak Design Templates

Arches Watercolor Paper

Richeson Lyptus Easels

Daylight Artists' Lamps

Itoya Profolio Presentation Books

Itoya Profolio Advantage Series

Utrecht Recycled Newsprint

Recycled Artists' Sketchbooks

[« Back to all Graphics - Airbrush - Design in Green Products](#)
[« Back to all Green Products](#)

Artist Tape Green Products

ITEM	LIST PRICE	PRICE	QTY
 <p>Scotch Desktop Tape Dispenser w/ invisible Magic Tape 3/4 in. x 450 in roll (Item No: 66255) 0% savings off list price</p> <p>Buy the Scotch Desktop Dispenser w/ Magic Tape for high volume, easy one hand dispensing. Holds 1/2 or 3/4 in. wide rolls up to 1500 in long. Heavy base, non-skid pad & attached nub that can't get lost.</p> <p>Eco Friendly Coupon Eligible</p>	\$6.59	\$6.59	<input type="checkbox"/>
 <p>Scotch Magic Tape, Invisible Matte Finish, Car. 8-0 Boxed Refill Roll, 1 in x 36 yds (Item No: 7379) 0% savings off list price</p> <p>Scotch Magic Tape 810 is the famous 'matte finish' tape that disappears on paper. Resists cracking, yellowing & can be written on. Ideal for wrapping, sealing, mending. 1 in x 36 yd refill roll for dispensers.</p> <p>Eco Friendly Coupon Eligible</p>	\$5.59	\$5.59	<input type="checkbox"/>
 <p>Scotch Magic Tape, Invisible Matte Finish, Car. 8-0 Boxed Refill Roll, 1/2 in x 72 yds (Item No: 69149) 0% savings off list price</p> <p>Scotch Magic Tape 810 is the famous 'matte finish' tape that disappears on paper. Resists cracking, yellowing & can be written on. Ideal for wrapping, sealing, mending. 1/2 in x 72 yd refill roll for dispensers.</p> <p>Eco Friendly Coupon Eligible</p>	\$4.99	\$4.99	<input type="checkbox"/>

21



22

Finally, the examining attorney included copies of the following third-party registrations for the record – many of which cover related goods in class 16:

BE GREEN PACKAGING	for flexible and rigid packaging products
No claim is made to the exclusive right to use the words " Green Packaging " apart from the mark as shown. ²³	
GREEN WITHOUT COMPROMISE	for all kinds of plastic bags
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown. ²⁴	
GREEN-PAQ 	for plastic materials for packaging
No claim is made to the exclusive right to use the words " Green Pack " apart from the mark as shown. ²⁵	

²² <http://www.lightninglabels.com/>

²³ Registration No. 3864891 issued on October 19, 2010.

²⁴ Registration No. 3764445 issued on March 23, 2010.

²⁵ Registration No. 4074502 issued on December 20, 2011.

 green genius	for all kinds of plastic bags
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown. ²⁶	
TRULY GREEN	for all kinds of paper and tissues ²⁷
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown.	
GREEN QUEST	for non-toxic cleaning preparations
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown. ²⁸	
ISLAND GREEN MOTORS	for electric vehicles and parts therefor
No claim is made to the exclusive right to use the words " Green Motors " apart from the mark as shown. ²⁹	
GROUND GREEN	for plastic bags for packaging
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown. ³⁰	
CHEEKY GREEN	for reusable shopping bags
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown. ³¹	
	for environmentally friendly metal hinges
No claim is made to the exclusive right to use the wording " Green Hinge of America " and the pictorial representation of the recycling symbol apart from the mark as shown. ³²	
 Green Technologies	for artificial growing media for use in agriculture, horticulture and turf, all designed for use with environmentally-sustainable agricultural practices
No claim is made to the exclusive right to use the words " Green Technologies " apart from the mark as shown. ³³	
LIVE GREEN TOGETHER	for grain based foods and processed grains
No claim is made to the exclusive right to use the word " Green " apart from the mark as shown. ³⁴	

²⁶ Registration No. 3857818 issued on October 5, 2010.

²⁷ Registration No. 3892259 issued on December 21, 2010.

²⁸ Registration No. 4136169 issued on May 1, 2012.

²⁹ Registration No. 4127596 issued on April 17, 2012.

³⁰ Registration No. 3965959 issued on May 24, 2011.

³¹ Registration No. 4086438 issued on January 17, 2012.

³² Registration No. 4079202 issued on January 3, 2012.

³³ Registration No. 4129720 issued on April 17, 2012.

³⁴ Registration No. 4114073 issued on March 20, 2012.

GREEN CUPBOARDS	for online retail store services featuring environmentally-friendly products
No claim is made to the exclusive right to use the word “ Green ” apart from the mark as shown. ³⁵	
Green Legacy	for environmentally-friendly plastic garbage bags
No claim is made to the exclusive right to use the word “ Green ” apart from the mark as shown. ³⁶	
GREEN OX	for non-metal pallets and containers made of environmentally-friendly materials
No claim is made to the exclusive right to use the word “ Green ” apart from the mark as shown. ³⁷	

III. Analysis of Deceptively Misdescriptiveness Refusal

The test for deceptive misdescriptiveness has two parts. First it must be determined if the matter sought to be registered misdescribes the goods. If so, then it must be ascertained if anyone is likely to believe the misrepresentation. *In re Quady Winery Inc.*, 221 USPQ 1213, 1214 (TTAB 1984). *See also In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047 (TTAB 2002).

As the starting point for our analysis, we note that for a term to misdescribe goods, the term must be merely descriptive of a significant aspect of the goods which the goods could plausibly possess but in fact do not. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1051 (TTAB 2002). The goods at issue in this case are adhesive tape, adhesive packaging tape and tape dispensers. The record shows overwhelmingly that the word “green” directly conveys information to potential consumers that the tape products are environmentally friendly. Yet applicant makes no such claim about its products. Rather, applicant points out that it uses the term “Green Seal” to color code a line of adhesive tape products that also includes “Black Seal,” “Blue

³⁵ Registration No. 4073833 issued on December 20, 2011.

³⁶ Registration No. 4114444 issued on March 20, 2012.

³⁷ Registration No. 4135671 issued on May 1, 2012.

Seal” and “Double Blue Seal.” Finally, as noted earlier, applicant also points out that it uses this term in connection with the imagery of a sea mammal.

As seen above in the pages of blogs and advertisements from the Internet, an increasingly common feature of adhesive and packaging tape is that it is ecologically sound. Sometimes the focus is on how the tape deteriorates over time, and others times it has to do with the use of recycled materials. The term “Green” is frequently used to capture this idea. Accordingly, consumers encountering applicant’s mark with the term “Green” will likely understand the term in context to refer to the fact that this tape is an environmentally-friendly product.

The two word composite term, “Green Seal,” would be merely descriptive if applicant’s goods were made of eco-friendly materials. Green would convey information about the environmental claims that the tape possessed, and a most important feature of adhesive tape or adhesive packaging tape is that it “seals,” or “tightly or completely closes or secures a thing.”

Applicant argues that it merely “uses the term ‘Green’ to denote one of several different products” in a product line that includes other colors. Of course, the question of whether “Black Seal,” “Blue Seal” and “Double Blue Seal” function as trademarks is not before us. The only part of applicant’s naming program before us is how consumers will react to the term “Green Seal.” And under our precedent, the applied-for mark must stand on its own. *See In re Budge Mfg. Co.*, 857 F.2d 773, 8 USPQ2d 1259, 1260-61 (Fed. Cir. 1988), *aff’g* 8 USPQ2d 1790 (TTAB 1987) (LOVEE LAMB deceptive for “automotive seat covers”); *In re ALP of S. Beach*

Inc., 79 USPQ2d 1009, 1014-1015 (TTAB 2006) (CAFETERIA deceptive for “restaurants providing full service to sit-down patrons, excluding cafeteria-style restaurants”). Moreover, whether or not affected consumers are aware of applicant’s nomenclature scheme, we find that many of these consumers are likely to believe that the choice of “Green” for the applied-for mark describes applicant’s line of adhesive tapes as being environmentally friendly.

Similarly, applicant claims that consumers would understand that “Green Seal,” as used on its packaging, refers to a sea mammal colored green, as shown above in the imagery on the product packaging. However, even if applicant consistently used this imagery on its packages, that is not part of the applied-for mark. Furthermore, we cannot be sure how many prospective customers will notice this usage, or whether upon seeing it, will automatically reject any suspicion that it may still describe an environmentally-friendly product.

Moreover, this imagery cannot negate the misdescriptiveness with regard to use of the literal word mark in relation to the goods. The green sea mammal design, like any other features of applicant’s advertising, labeling, or information found on the specimens that clarifies that the word green in the mark does not refer to a character, quality, function, composition or use of the goods, simply is not part of the mark at issue. Thus we find the first prong of the deceptive misdescriptiveness test to be satisfied.

For the second prong of the deceptiveness analysis, we ask whether consumers are likely to believe that the misdescription actually describes the goods. In this

regard, the examining attorney submitted sufficient evidence into the record to show that “green” is a common characteristic of adhesive and packaging tape. Hence, based on the mark and the goods at issue, purchasers and prospective consumers would be likely to believe the misrepresentation readily conveyed by the term, namely, that applicant’s goods are environmentally-friendly. Thus, the second prong of the deceptive misdescriptiveness test has also been satisfied.

Accordingly, we affirm the examining attorney’s refusal to register this term as deceptively misdescriptive under Section 2(e)(1) of the Act.

IV. Analysis of Deceptiveness Refusal

The Court of Appeals for the Federal Circuit, our primary reviewing court, has articulated the following test for whether a mark consists of or comprises deceptive matter:

- (1) Is the term misdescriptive of the character, quality, function, composition or use of the goods?
- (2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods?
- (3) If so, is the misdescription likely to affect a significant portion of the relevant consumers’ decision to purchase?

In re Budge Mfg. Co., 857 F.2d 773, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988), *aff’d* 8 USPQ2d 1790 (TTAB 1987).

The first two factors have already been established in connection with the refusal under Section 2(e)(1), as discussed above. What remains is to determine whether the misdescription is likely to affect the decision to purchase, i.e., whether the misdescription is material to consumers’ decision to purchase the goods. *Id.*

The word “Green” is being used ever more frequently in recent years. The Internet entries are contemporaneous with the prosecution of this application, and the third-party registrations all issued within a recent two-year period. The urgency for consumers to recycle as well as to purchase products made of recycled materials, to use biodegradable products, to avoid toxic substances, etc., has never been greater. The advertisements and blogs placed into the record show that a segment of the relevant purchasers would be more inclined to purchase eco-friendly adhesive tape and adhesive packaging tape products. The level of excitement on the part of consumers reflected above over the availability of environmentally friendly / green tape products demonstrates that this characteristic would be material to the decision of consumers to purchase applicant’s goods. Accordingly, we find on this record that such a misdescription is likely to affect the decision to purchase the goods, and the third and final prong of the Section 2(a) deceptiveness test has also been satisfied.

In sum, after reviewing the evidence of record, we find that all three prongs of the deceptiveness test have been satisfied: 1) applicant’s mark misdescribes its goods because consumers would understand the term “Green Seal” in the context of the goods sought to be registered to refer to environmentally friendly products – a characteristic applicant’s goods do not possess; 2) due to the growing availability of environmentally-friendly adhesive tape and packing tape on the market, consumers are likely to believe the misdescription; and 3) due to the fact that being “green” is a desirable characteristic of tape, the misrepresentation will materially affect the

decisions of consumers whether to purchase the goods. The examining attorney's evidence established a *prima facie* case against registration, and applicant did not meet its burden to come forward with countering evidence to overcome the refusal. *See Budge*, 8 USPQ2d at 1260-61.

Therefore, the trademark refusal under Section 2(a) is also affirmed on the ground that the mark sought to be registered is deceptive of a feature or ingredient of the identified goods under Section 2(a) of the Act.

Decision: The refusals to register applicant's **GREEN SEAL** mark under Sections (2)(e)(1) and 2(a) of the Act are hereby affirmed.