

This Opinion is not a
Precedent of the TTAB

Mailed: May 21, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joseph E. Sielski

Serial No. 86032662

Morland C. Fischer of Law Offices of Morland C. Fischer for Joseph E. Sielski.

Daniel S. Stringer, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Cataldo, Shaw and Masiello,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Joseph E. Sielski (“Applicant”) seeks registration on the Principal Register of the mark CHEF’S CUBE (in standard characters) for the following goods, as amended: “vacuum packaging machines for sealing plastic pouches,” in International Class 7.¹

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), on the ground that CHEF’S CUBE merely describes a function, feature or

¹ Application Serial No. 86032662 was filed on August 8, 2013, based upon Applicant’s allegation of May 21, 2013 as a date of first use of the mark anywhere and in commerce under Section 1(a) of the Trademark Act.

characteristic of the identified goods. When the refusal was made final, Applicant appealed. Both Applicant and the Examining Attorney filed briefs.

A term is 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 thereof. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). *See also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark is merely descriptive is determined in relation to the goods for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). A term need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of them. *See In re Gyulay*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). This requires consideration of the context in which the mark is used or intended to be used in connection with those goods, and the possible significance that the mark would have to the average purchaser of the goods in the relevant marketplace. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Abcor Dev. Corp.*, 200 USPQ at 218; *In re Venture Lending Assocs.*, 226 USPQ 285 (TTAB 1985).

In other words, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *In re Patent & Trademark Servs. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). “On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *Coach Servs. Inc. v. Triumph Learning LLC*, 96 USPQ2d 1600, 1616 (TTAB 2010) (quoting *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978)), *vacated-in-part on other grounds*, 668 F.3d 1356, 101 USPQ2d 1713 (Fed. Cir. 2012).

Where marks are comprised of multiple words, it is generally held that if the individual components of a mark retain their descriptive meaning in relation to the goods, the combination results in a composite mark that is itself descriptive and not registrable. *In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012). *See also, e.g., In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs, and pillows where the evidence showed that the term “BREATHABLE” retained its ordinary dictionary meaning when combined with the term “MATTRESS” and the resulting combination was used in the relevant industry in a descriptive sense); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1663 (TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket

sales services, because such wording “is nothing more than a combination of the two common descriptive terms most applicable to applicant’s services which in combination achieve no different status but remain a common descriptive compound expression”).

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods is the combined mark registrable. *See In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1162-63 (TTAB 2013).

In support of the refusal to register, the Examining Attorney made of record with his November 22, 2013 Office Action, the following definitions of the terms comprising the mark from Collins American English Dictionary (collinsdictionary.com):

chef – a cook in charge of a kitchen, as of a restaurant; head cook

any cook;

cube – a solid with six equal, square sides

anything having more or less this shape.

In addition, the Examining Attorney made of record with his November 22, 2013 Office Action copies of pages from informational and commercial Internet websites displaying various vacuum packaging machines used to seal plastic pouches containing food. The following examples are illustrative:

Vacuum packing machine



Model:DZQ-400B

Single chamber Vacuum packing machine/vacuum packer- stand model, double sealing, flushing function is available

[MORE >](#)



Model:DZQ-4002SA

Double chamber vacuum packing machine/Vacuum sealing machine-heavy duty,flushing function is available

[MORE >](#)



Model:DZ-400

Table vacuum packing machine/Vacuum sealing machine- table model,single sealing, flushing function is available

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Model:VS-600

Flushing vacuum packing machine/vacuum sealing machine-outside working table, flushing model.easy operation

[MORE >](#)

(xutiapack.com/Vacuum-machine);

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Bags and Rolls for FoodSaver, etc.



Flat Pouches for Chamber Vacuum Sealers



Gold/Clear Bags for FoodSaver, etc.



Home Use Vacuum Sealing Systems



Commercial Use Chamber Vacuum Sealers



Retractable Nozzle Vacuum Sealers

(Vacuumsealersunlimited.com); and

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J-V006 Single Chamber Vacuum Packaging Machine

Vacuum Packaging Machine

J-V006



(jawfeng.com/en/product).

The Examining Attorney further made of record with his May 7, 2014 Office Action additional Internet webpages, of which the following are illustrative:

Here is my first post about my new [Sous Vide Supreme](#).

Let me begin by saying that I've only used it six times so far (in two weeks), but already it's life changing. [Sous-vide](#), French for "under vacuum," involves vacuum sealing food into plastic bags and cooking them at low temperatures for extended periods of time in a temperature controlled water bath. In concept, this method of cooking maintains the integrity of the ingredients due to the low temperatures.



A technique frequently used in fine dining settings (my Top Chef Brother does a ton of it, and is my chief culinary consultant in all things sous vide), it's only recently become affordable to the home chef thanks to the Sous Vide Supreme.

Lean meats (pork tenderloin, beef tenderloin) are the most clearly appropriate for sous vide cooking. Not only does it render them exceptionally tender and keep them moist, but it brings them to a perfect medium rare throughout. With sous vide, there is no risk of overcooking.



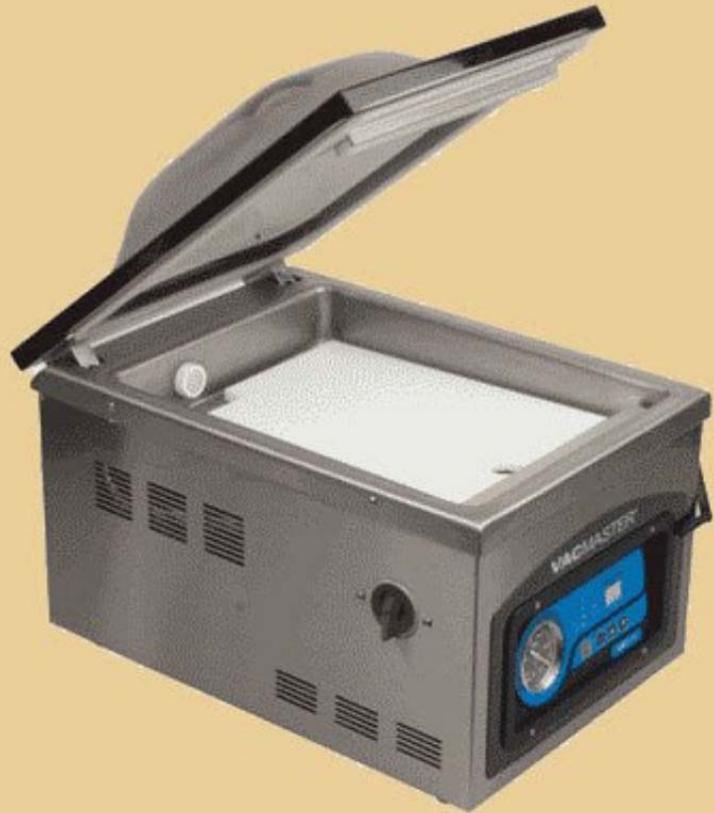
Cooking sous vide depends on two things—temperature and time. To assist in learning this technique, I relied on blog posts, the cookbook "[Sous Vide for the Home Cook](#)," the temperature charts that came with the Sous Vide Supreme, and my Top Chef Brother's advice. The ubiquitous tome, "[Under Pressure](#)" by Thomas Keller, is

(domesticdivasblog.com);

STEPPING UP TO A “REAL” VACUUM SEALER

As an avid outdoorsman who lives in a two-person household, we use our vacuum sealer all the time. Half the time I'm sealing up lobsters, fresh-caught fish or some other game that I've harvested. The other half we use it to seal up single portions of meat we buy in bulk from places like Costco to save money.

For more years than I can remember we turned to our trusty Foodsaver to handle the vacuum sealing. I think we've owned three or four over the years, but they have all given up the ghost after two or three years.



(bdoutdoors.com/story/vacuum-sealer-vacmaster); and



Vollrath Vacuum Pack Machine - Tabletop, 21-7/8x22-

Brand: Vollrath | Power: 1200 W
Updated: 04.29.14 | [More info >](#)



KaTom



Vacmaster, Vacuum Packaging/sealer, Table Top, (1) 16"

Power: 1300 W
Updated: 04.29.14 | [More info >](#)

HotelRestaurantSupply



Vollrath Vacuum Pack Machine - Tabletop, Dry Items Only,

Brand: Vollrath | Power: 450 W
Updated: 04.29.14 | [More info >](#)



KaTom



Vollrath 40850 In-Chamber Vacuum Packing Machine 10.63

Updated: 04.29.14 | [More info >](#)



ACityDiscount



Eurodib Vacuum Pack Machine w/ 12.25-in Sealing Beam

Power: 100 W
Updated: 04.29.14 | [More info >](#)



KaTom



Ary Vacmaster Vp210 Vacuum Sealer

Updated: 04.29.14 | [More info >](#)



Cabela's



(twenga.com/vacuum-sealer).

The Examining Attorney argues that the CHEF’S CUBE mark merely describes “a feature and intended user of applicant’s goods; namely, cube-shaped vacuum packaging machines for use by chefs.”² The Examining Attorney further argues that the evidence of record establishes that chefs use vacuum packaging machines, and that “vacuum packaging machines are commonly designed in the shape of a cube.”³

Applicant “admits the dictionary definitions of ‘chef’ and ‘cube’ and that vacuum packaging machines could be cubical in shape.”⁴ However, Applicant contends that “use of the applicant’s vacuum packaging machines is not limited to a chef.”⁵ Applicant further contends that CHEF’S CUBE is arbitrary and fanciful and that “the evidence being relied upon by the Examining Attorney fails to show or suggest that the compound mark CHEF’S CUBE is a commonly-used term of art or would have any particular meaning or significance in any trade or business, let alone the business of applicant.”⁶ (emphasis in original).

The evidence made of record by the Examining Attorney indicates, and Applicant acknowledges, that vacuum packaging machines of a type identified in the involved application may be used by chefs. The record also indicates, and Applicant further

² 6 TTABVUE 7. Record citations are to TTABVUE, the Trademark Trial and Appeal Board’s publically available docket history system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

³ *Id.*

⁴ 4 TTABVUE 3.

⁵ 4 TTABVUE 4.

⁶ 4 TTABVUE 3.

acknowledges, that vacuum packaging machines may be cube shaped.⁷ However, the evidence of record fails to show that the cubical shape of Applicant's goods or other vacuum packaging machines so shaped is a significant feature thereof. The evidence excerpted above clearly indicates that vacuum packaging machines are produced in a variety of shapes other than cubes, strongly suggesting that the cube shape of Applicant's goods is an arbitrary, aesthetic or practical choice of product design. The Examining Attorney fails to explain how the cubical shape of Applicant's goods is a significant feature, aspect or characteristic of vacuum packaging machines such that the mark CHEF'S CUBE may be merely descriptive of thereof.

The Examining Attorney specifically relies upon the following cases as support for the refusal to register: *In re Planalytics, Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004) ("Applicant's identification of services makes it clear that its services are directed to those who are in the field of making purchasing decisions for natural gas. The evidence supports the conclusion that these people would be referred to as gas buyers."); *In re Camel Mfg. Co.*, 222 USPQ 1031, 1032 (TTAB 1984) ("That at least some of applicant's goods are directed toward the category of purchaser we could refer to as the 'mountain camper' is clear from a perusal of applicant's Winter 1982 catalog..."). However, in these cases, the mark clearly described an intended user of the goods (GASBUYER and MOUNTAIN CAMPER). The mark at issue, CHEF'S CUBE, combines an intended user of the goods with a term indicating one

⁷ Indeed, the specimen of record submitted with the involved application consists of a photograph of Applicant's mark as it appears on a cube-shaped vacuum packaging machine.

of several shapes in which it may be produced. The Examining Attorney further relies upon *In re Metcal Inc.*, 1 USPQ2d 1334, 1335 (TTAB 1986) (“The term SOLDER STRAP consists of two nouns, each of which has an immediately cognizable meaning in relation to appellant’s goods.”). In that case, the goods were heat-conducting straps used in the soldering process. The mark in that case combined “solder,” describing the primary use of the goods and “strap,” describing the fundamental nature of the goods. Similarly, in *In re H.U.D.D.L.E.*, 216 USPQ at 359 (“Applicant’s goods are in fact fixtures in the form of curved tubes which serve as holders and racks.”), the Board found that TOOBS is a misspelling of “tubes,” which merely described the nature of the goods and might even be the generic name therefor. Unlike these cases, the evidence of record does not support a finding that CHEF’S CUBE merely describes a significant characteristic or feature of vacuum packaging machines. Rather, the mark describes an intended user and one of many shapes in which the goods may be made. As a result, we find the evidence of record is insufficient to support a finding that CHEF’S CUBE merely describes an intended user of the identified goods and a significant feature thereof, and, as such, is insufficient to support the refusal of registration.

We hasten to point out that there may be instances in which a mark – such as CHEF’S VACUUM, for instance – may merely describe an intended user and significant characteristic of goods such as those identified herein. However, the record in this case does not support such a finding as to the involved mark, CHEF’S CUBE.

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DECISION: The refusal of registration under Trademark Act Section 2(e)(1) is reversed.