

This Opinion is Not a
Precedent of the TTAB

Mailed: June 1, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

In re DuraVent, Inc.

Serial No. 90192019

Daniel H. Bliss of Howard & Howard Attorneys PLLC
for DuraVent, Inc.

April Roach, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Adlin, Coggins and Johnson, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant DuraVent, Inc. seeks a Principal Register registration for the proposed mark EZ-INSTALL SLEEVE, in standard characters, for “metal venting parts, namely, metal connector pipes for venting; metal pipes and fittings of metal for pipes; alignment pipes, namely alignment pipes of metal for venting” in International Class 6.¹ The Examining Attorney refused registration on the ground that the proposed mark is merely descriptive of the identified goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). After the refusal became final, Applicant

¹ Application Serial No. 90192019, filed September 18, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the proposed mark in commerce.

appealed and filed a request for reconsideration that was denied. The appeal is fully briefed.

I. The Examining Attorney’s Objection and Applicant’s Belated Request for Remand Buried in Its Appeal Brief

The Examining Attorney’s objection to third-party registration evidence Applicant submitted for the first time with its Appeal Brief, 8 TTABVUE 3, is sustained. Trademark Rule 2.142(d) (“The record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.”). While Applicant’s Appeal Brief also requested a remand “for consideration of these third-party registrations,” 6 TTABVUE 9, that request was untimely, improper and unsupported by a showing of good cause. It is accordingly denied. *In re HerbalScience Grp., LLC*, 96 USPQ2d 1321, 1323 (TTAB 2010). Indeed, all of the third-party registrations Applicant introduced with its Appeal Brief issued before Applicant filed its appeal. *See id.*; TRADEMARK BOARD MANUAL OF PROCEDURE (“TBMP”) § 1207.02 (2021).

II. Evidence and Arguments

The Examining Attorney relies on the following dictionary definitions of the proposed mark’s constituent terms (or the phonetic equivalent thereof):

EASY—“capable of being accomplished or acquired with ease; posing no difficulty: an easy victory; an easy problem”²

² <https://www.ahdictionary.com/word/search.html?q=easy>

INSTALL—“to connect or set in position and prepare for use”³

SLEEVE—“a case into which an object or device fits: a record sleeve”⁴

February 3, 2021 Office Action TSDR 6, 8, 10.⁵

She also relies on a number of third-party descriptive uses of EASY-INSTALL or close variations thereof in connection with goods that fall within Applicant’s identification of goods, including venting parts, pipes and related products. For example, Quarrix offers pipe flashing, called a “pipe boot,” with “all steel,” i.e. metal, construction, that “covers vent pipes to blend into roof.” *Id.* at 15. The product’s brochure states “Raised nail bosses on the Pipe Boot provide nailing guides for **easy installation.**” *Id.* (emphasis added). McMaster-Carr uses “easy-install” for U-joints, including U-joints to “connect misaligned shafts,” as shown below:



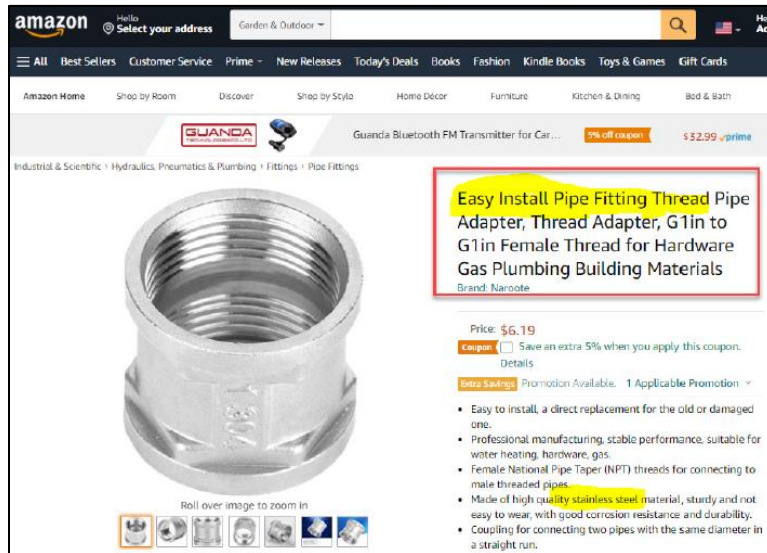
³ <https://www.ahdictionary.com/word/search.html?q=install>

⁴ <https://www.ahdictionary.com/word/search.html?q=sleeve>

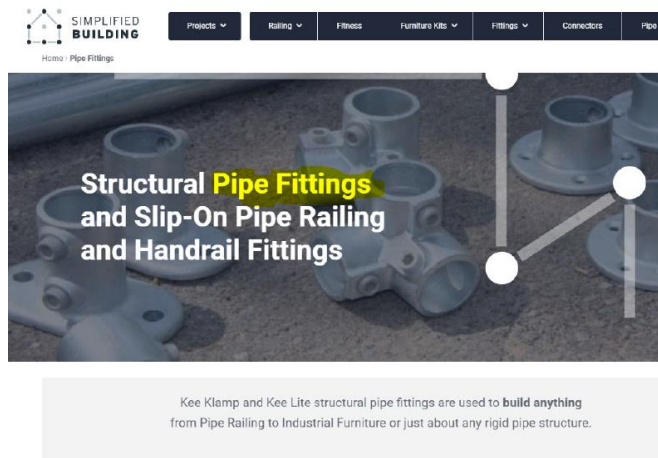
⁵ Citations to the application file are to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) online database, by page number, in the downloadable .pdf format.

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Id. at 12 (highlighting added). Amazon sells a stainless steel “Easy Install Pipe Fitting Thread Pipe Adapter, Thread Adapter, G1in to G1in Female Thread for Hardware Gas Plumbing Building Materials,” as shown below:



April 27, 2021 Office Action TSDR 16 (highlighting added). Simplified Building offers pipe fittings which its website claims are made of “anodized aluminum” and “Easy Install”:



Modular Pipe Fittings vs. Welded

Lasts Longer

Structures built with pipe and pipe fittings typically last up to seven times longer than a fabricated solution.

Easy Install

When installing Kee Klamps, a simple hex key is the only tool required to create a strong, rigid joint.

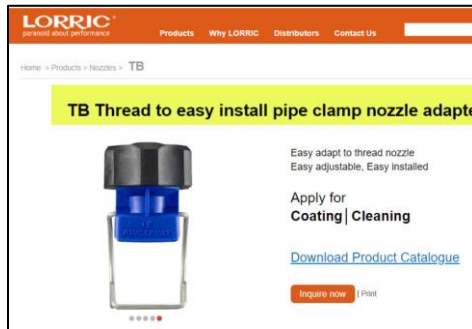
Easier to Maintain

If a fitting or section of pipe is damaged, a replacement part can be ordered and installed easily by a general contractor. No welding or costly repairs are needed.

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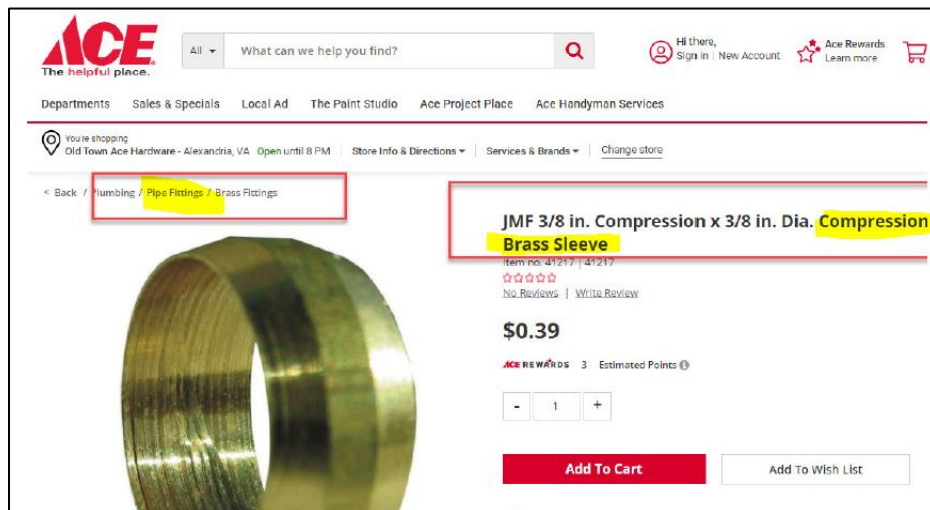
Id. at 19-20 (highlighting added).

Third parties also use variations of EZ-INSTALL to describe products that are at least related to those in Applicant's identification of goods and are simple to install, as shown below:



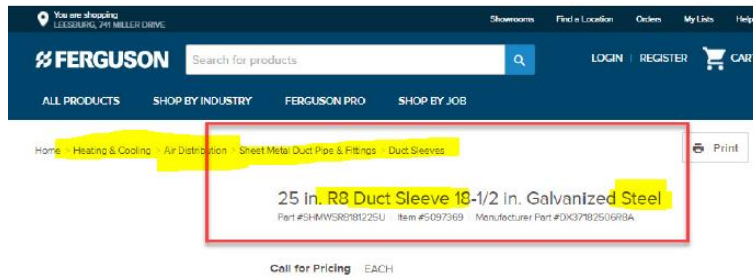
February 3, 2021 Office Action TSDR 17 (highlighting added). *See also id.* at 20 (L-COM fiber coupler).

The Examining Attorney also introduced evidence that SLEEVE is commonly used, descriptively, in connection with goods that fall within the application's identification of goods. For example, Ace Hardware refers to one of its metal pipe fittings as a "Compression Brass Sleeve":



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April 27, 2021 Office Action TSDR 5 (highlighting added). Similarly, Imperial Supplies offers a 37 Degree steel pipe fitting it refers to as a “3 Piece **Sleeve**,” and duct fitting it refers to as a “Steel Connector **Sleeve**.” *Id.* at 7, 9 (emphasis added). Ferguson offers a steel “Duct **Sleeve**”:



Id. at 11 (highlighting added). Sheet Metal Connectors offers a sheet metal pipe fitting it refers to simply as a “Sleeve.” *Id.* at 13.

Finally, the Examining Attorney relies on six third-party registrations for marks including EASY INSTALL, or variations thereof, in which the term is disclaimed, registered on the Supplemental Register or registered on the Principal Register under Section 2(f) of the Act. October 22, 2021 Denial of Request for Reconsideration TSDR 4-21.

Based on this evidence, the Examining Attorney argues that the proposed mark “merely describes that applicant’s goods include sleeve fittings that are designed to be connected and set into position with little difficulty.” 8 TTABVUE 5.

For its part, Applicant relies on dictionary definitions of “install” and “sleeve” which are essentially similar to the definitions introduced by the Examining Attorney. April 22, 2021 Office Action response TSDR 18, 31. It also relies on five third-party Principal Register registrations for marks containing the abbreviation EZ

in which the term is not disclaimed or registered under Section 2(f) of the Act. October 20, 2021 Request for Reconsideration TSDR 28-42.⁶

Applicant argues, based in part on this evidence, and the lack of a dictionary definition of EZ, that the proposed mark does not describe features of Applicant's goods generally, or "the features of being connected and set into position with little difficulty as cases for other objects or devices" specifically. 6 TTABVUE 5-6. According to Applicant, this is especially so because "Applicant's identification of goods is for alignment pipes and not sleeves." *Id.* at 6.

Applicant further argues that the proposed mark is suggestive rather than merely descriptive, because it "has an ambiguous and suggestive meaning that is open to various interpretations." *Id.* at 7. Applicant questions "what does 'ez-install mean? Does it mean 'as install'? Does it mean 'install an e and z'? Does it mean a type of 'install' such as an 'e and z' shape?" *Id.* Finally, Applicant points out that there is no evidence that third parties "have used the word 'ez-install' to refer to metal venting parts." 9 TTABVUE 6.

III. Analysis

The record reveals that the proposed mark EZ-INSTALL SLEEVE "immediately conveys knowledge of a quality, feature, function, or characteristic" of Applicant's goods. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831

⁶ Applicant also submitted its Products Catalog in response to the Examining Attorney's information request. October 20, 2021 Request for Reconsideration TSDR 44-401.

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(Fed. Cir. 2007)); *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

In fact, the proposed mark conveys that Applicant's metal connector pipes for venting and metal pipe fittings – products sometimes referred to in the relevant industries as “sleeves” – are simple to install.

More specifically, some metal pipe fittings and venting parts (which are among Applicant's identified goods) are known as “sleeves,” as revealed by the evidence from Ace Hardware, Imperial Supplies, Ferguson and Sheet Metal Connectors. April 27, 2021 Office Action TSDR 5, 7, 9, 11, 13. Thus, Applicant's proposed mark immediately informs consumers of the identified metal connector pipes and metal pipe fittings that those goods, sometimes known as “sleeves,” are not difficult to install. While Applicant may not intend to use the specific term “sleeve” in connection with its metal pipe fittings and venting parts, its identification of goods nevertheless encompasses metal pipe fittings and venting parts which are known elsewhere as “sleeves” and referred to by Applicant's competitors as such. This makes EZ-INSTALL SLEEVE merely descriptive of Applicant's identified goods.

Indeed, as the Examining Attorney points out, EZ is merely the phonetic equivalent of the word “easy,” and thus is essentially a synonym of “easy,” which means “posing no difficulty.” February 3, 2021 Office Action TSDR 6. It therefore immediately conveys that Applicant's “sleeve” is simple to install. *Nupla Corp. v. IXL Mfg. Co.*, 114 F.3d 191, 42 USPQ2d 1711, 1716 (Fed. Cir. 1997) (“Nupla's mark [CUSH-N-GRIP], which is merely a misspelling of CUSHION-GRIP, is also generic as a matter of law”); *In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505,

507 n.9 (CCPA 1980) (finding QUIK-PRINT merely descriptive of printing and copying services, stating “[t]here is no legally significant difference here between ‘quik’ and ‘quick.’”); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (“applicant’s applied-for mark, URBANHOUSING in standard character form, will be immediately and directly perceived by consumers as the equivalent of the admittedly descriptive term URBAN HOUSING, rather than as including the separate word ZING”); *In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1475 (TTAB 2007) (“The generic meaning of ‘togs’ is not overcome by the misspelling of the term as TOGGS in applicant’s mark. A slight misspelling is not sufficient to change a descriptive or generic word into a suggestive word.”).

Several of Applicant’s competitors tout their pipe fittings as easy to install, or “easy install.” February 3, 2021 Office Action TSDR 12, 15, 17; April 27, 2021 Office Action TSDR 16, 19-20. They should not be denied the opportunity to continue doing so.⁷

Applicant’s tortured effort to call the meaning of “ez-install” into question by suggesting it could convey any number of meanings, such as “install an e and z,” fails. The proffered meanings make no sense in the context of Applicant’s identification of goods. It is clear from both the identification of goods and third-party

⁷ Even if Applicant is the first and only user of the phrase EZ-INSTALL SLEEVE, that would be irrelevant. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1514 (TTAB 2018) (“The fact that Applicant may be the first or only user of a term does not render that term distinctive”); *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001). *Cf. KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111 (2004), 72 USPQ2d 1833, 1838 (2004) (trademark law does not countenance someone obtaining “a complete monopoly on use of a descriptive term simply by grabbing it first”).

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uses of equivalent phrases in connection with similar goods that in the context of metal pipe fittings and metal venting parts, EZ-INSTALL SLEEVE conveys a fitting, part or pipe which is easy to install. *See DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (“The 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.”) (quoting *In re Tower Tech Inc.*, 64 USPQ 2d 1314, 1316-17 (TTAB 2002)).

Applicant’s reliance on a handful of third-party registrations in which EZ is not disclaimed or registered under Section 2(f) of the Act is misplaced. We are not privy to relevant evidence concerning those marks or the records in those cases, Applicant has not demonstrated how those registered terms are used or perceived, and neither the existence of these third-party registrations nor any of the evidence in their prosecution records (even if it were of record here) compels a specific result in later, allegedly analogous cases. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1377 (Fed. Cir. 2018) (“these prior registrations do not compel registration of [Applicant’s] proposed mar[k]”) (citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016)); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009). As we recently stated in an analogous situation, to the extent that our decision here is inconsistent with the third-party registrations, “it is the decision required under the statute on the record before us.” *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, at *11 (TTAB 2020).

Finally, when we consider the composite EZ-INSTALL SLEEVE as a whole, we find that not only are “easy”/EZ, “install” and “sleeve” each merely descriptive of Applicant’s goods, but when those terms are combined into the proposed mark, the resulting combination does not evoke a non-descriptive commercial impression. To the contrary, in Applicant’s proposed mark, each component retains its merely descriptive significance in relation to the goods, and Applicant does not suggest any alternative commercial impression resulting from the combination of these immediately descriptive terms. The composite EZ-INSTALL SLEEVE is therefore merely descriptive. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d at 1198 (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services); *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs).

IV. Conclusion

The record leaves no doubt that EZ-INSTALL SLEEVE is merely descriptive of Applicant’s goods, which as identified encompass fittings and pipes known in the industry as “sleeves.”

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Decision: The refusal to register Applicant's proposed mark on the Principal Register because it is merely descriptive under Section 2(e)(1) of the Trademark Act is affirmed.