

THIS OPINION
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Oreck Holdings, LLC
v.
BISSELL Homecare, Inc.

Opposition No. 91173831
to application Serial No. 78766720
filed on December 5, 2005

Kimberly A. Eckhart of Winston & Strawn for Oreck Holdings, LLC.¹

Daniel P. Albers and Melissa A. Vallone of Barnes & Thornburg for BISSELL Homecare, Inc.

Before Quinn, Zervas and Kuhlke, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

BISSELL Homecare, Inc. filed an application to register the designation HEALTHY HOME VACUUM ("VACUUM" disclaimed) for "vacuum cleaners."²

¹ Opposer's current counsel did not make an appearance and become the attorney of record until after briefing, but prior to the oral hearing. Up to that point opposer was represented by Carl F. Manthei of The Ollila Law Group.

² Application Serial No. 78766720, filed December 5, 2005, alleging a bona fide intention to use the mark in commerce.

Oreck Holdings, LLC opposed registration on the ground that applicant's mark, when applied to applicant's goods, is merely descriptive thereof under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).³

Applicant, in its answer, denied the salient allegations of the notice of opposition.

Evidentiary Objections

Applicant moved to strike portions of the testimonial deposition (along with exhibits related thereto) of Marshall Oreck, applicant's executive vice president with forty-four years of experience in the vacuum cleaner industry. As grounds for the motion applicant contends that Mr. Oreck's testimony contradicts his earlier statements as a Fed. R. Civ. P. 30(b)(6) discovery witness; and that this "new" testimony "was not disclosed" during discovery. More specifically, Mr. Oreck stated during his discovery deposition that "healthy home" has a wide variety of meanings; that the characteristics of a "healthy home" vary widely; and that the term does not directly convey any information about a feature of a vacuum cleaner. During his

³ Opposer also pleaded that the applied-for mark is generic, and this issue was raised in opposer's brief. However, opposer's current counsel, in response to an inquiry from the Board panel at the oral hearing, specifically indicated that genericness was no longer an issue in this case. Accordingly, the issue of genericness will not be considered.

testimony deposition, Mr. Oreck asserted that "healthy home" is descriptive in that it tells consumers what the product does. Opposer responded to applicant's motion, contending that the testimony is consistent, and that he should be considered as "an expert on marketing vacuums." (Response, p. 10).

The motion to strike is denied. We have considered both the discovery deposition of Mr. Oreck, as well as the objected-to portions of the trial deposition. To the extent that the testimony is inconsistent, we have taken that into account in assessing Mr. Oreck's credibility, and in giving probative weight to the various statements by Mr. Oreck. Further, whether the objected-to testimony is considered or not, Mr. Oreck's answers relative to the ultimate issue in this proceeding - whether HEALTHY HOME VACUUM is merely descriptive - are not probative inasmuch as his judgment (given as either an expert or a fact witness) may not be substituted for our own judgment in determining the merits of this litigation.

Applicant also moved to strike in its entirety the testimony deposition of Shane Cohen, a former employee of opposer who no longer works in the vacuum cleaner industry. Applicant contends that this "expert" testimony contradicts Mr. Oreck's discovery testimony, and that Mr. Cohen's testimony lacks proper foundation. In response, opposer

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argues that late in the discovery phase, Mr. Cohen was identified as a fact witness, and not as an expert. Opposer further responded, however, by stating that Mr. Cohen is qualified as an expert, and that his identity was properly disclosed to applicant. Opposer also contends that the testimony of Messrs. Oreck and Cohen is consistent.

The motion to strike is denied. Although we have denied the motion, we do not consider Mr. Cohen an "expert" in the vacuum cleaner field. Mr. Cohen's twelve years of experience, does not, in our minds, qualify him as an expert in the field. We have considered his testimony, however, as a fact witness, and accorded it, as in the case of Mr. Oreck, whatever probative value it merits.

So as to be clear, we have considered the depositions of Messrs. Oreck and Cohen in their capacity as fact witnesses. In reading their testimony, we have not, of course, considered them to be experts in trademark law, and any opinion relating to the ultimate question of law in this case has been given no weight. *See, e.g., Capital Project Management Inc. v. IMDIDI Inc.*, 70 USPQ2d 1172, 1174 (TTAB 2003); and *Fisons Limited v. UAD Laboratories, Inc.*, 219 USPQ 661, 663 (TTAB 1983).

Opposer moved to strike the numerous third-party registrations attached to applicant's main brief identified as Appendices C and D. Opposer points out that this

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evidence was not properly introduced by a notice of reliance, but rather was improperly and untimely submitted with the appeal brief. Opposer contends that applicant is "simply trying to ambush opposer with documents never disclosed, not submitted in a notice of reliance and not introduced as exhibits in a trial deposition." Opposer further asserts that had this evidence been properly introduced opposer would have countered with its own third-party registrations to rebut those submitted by applicant.

Applicant responds by arguing that the registrations were part of the prosecution record of the involved application because the registrations were submitted with a response to an Office action. Thus, applicant urges, the evidence is of record based on the plain language of Trademark Rule 2.122(b)(1).

In taking up this specific evidentiary dispute, the Board must consider an intervening decision by the Federal Circuit issued after the oral hearing. *See Cold War Museum Inc. v. Cold War Air Museum Inc.*, 586 F.2d 1352, 92 USPQ2d 1626 (Fed. Cir. 2009). The Court took issue with the Board's decision to not consider evidence of acquired distinctiveness that applicant had submitted during prosecution. The Board's ruling was based on applicant's failure to resubmit the evidence during the inter partes proceeding. The Board has long considered that, although

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the application file is automatically part of the record under the rule, it does not follow from this fact that the allegations made and documents and other things filed therein are proof of facts on behalf of the applicant in an opposition proceeding. *See, e.g., Osage Oil & Transportation, Inc. v. The Standard Oil Company*, 226 USPQ 905, 906 n.4 (TTAB 1985).

In making its evidentiary ruling, the Court looked to Trademark Rule 2.122(b). This rule provides, in pertinent part to an opposition proceeding, that "the file...of the application against which a notice of opposition is filed...forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose."

The Court found Trademark Rule 2.122(b) "to be clear and unambiguous," and determined that the Board's refusal to consider evidence from the registration file "conflicts with the plain language of the regulation." *Cold War Museum Inc. v. Cold War Air Museum Inc.*, 92 USPQ2d at 1628-29. The Court went on to state that the *entire* file of the involved application (or registration) - "including any evidence submitted by the applicant during prosecution" - is part of the record of the relevant inter partes proceeding, without any action by the parties. *Id.* at 1628.

The third-party registrations at issue herein were made part of the application record during prosecution. Accordingly, this evidence forms part of the record "without any action by the parties," and pursuant to the Court's ruling in *Cold War Museum*, we are constrained to consider it "for any relevant and competent purpose."

We hasten to add, however, that this evidence is of very limited probative value in determining the issue of mere descriptiveness. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."]; and *In re Classic Media Inc.*, 78 USPQ2d 1699, 1700 (TTAB 2006). Ultimately, our dismissal of the opposition is not based on this disputed evidence having overcome a prima facie case by opposer but, rather, is based on opposer having failed to convince the panel, by a preponderance of the evidence, irrespective of these registrations, that the involved mark is merely descriptive.

The Record

The record consists of the pleadings; the file of the involved application; trial testimony, with related exhibits, taken by each party; a discovery deposition with

related exhibits, official records, articles and excerpts retrieved from printed publications, including dictionaries, and applicant's answers to certain of opposer's interrogatories, all introduced by way of opposer's notice of reliance; and a discovery deposition with related exhibits made of record in applicant's notice of reliance. The parties introduced additional evidence by stipulation, including news articles, Internet evidence, emails, and discovery responses.⁴ The parties filed briefs, and counsel for both parties appeared at an oral hearing.

The Parties

The parties are direct competitors, with both manufacturing and selling vacuum cleaners. After years of intense price competition in the industry, manufacturers recently have focused their attention on adding features to their vacuum cleaners, including ones directed to a more environment-friendly cleaning experience. Applicant's line of products includes a vacuum cleaner sold under the designation HEALTHY HOME VACUUM. This vacuum cleaner has certain features, including a HEPA (high efficiency

⁴ Much of the record, not to mention the briefs, was designated as "confidential." Suffice it to say, counsel should have been far more judicious in their designating certain testimony and evidence, as well as the briefs, as "confidential." Our view is that much of the record is not truly confidential. Nevertheless, we have, of course, respected the confidentiality agreement

particulate air) filtration system and antimicrobial protection. According to James Krzeminski, applicant's executive vice president of sales, marketing and product development, a "key feature" of this particular vacuum cleaner is the "airtight HEPA filtration." (Dep., p. 19). Applicant's competitors, including opposer, also sell vacuum cleaners with a HEPA filter. This feature allows higher filtration of the air released by the vacuum cleaner back into the home environment during vacuuming. Applicant's vacuum cleaner also uses Microban antimicrobial product protection to fight the growth of bacteria, mold and mildew within the vacuum so these microbes do not multiply and cause odors. In the trade, vacuum cleaners with one or more special features, such as this particular model of applicant's, are sold at a higher price than a standard vacuum cleaner. As borne out by the results of the parties' respective focus group studies, consumers are becoming increasingly aware of the advantages of an environment-friendly home. Their awareness extends to a desire to eliminate allergens, dust mites and the like in the home, and manufacturers are marketing certain of their vacuum cleaners to aid in this process.

The Law

between the parties, and have refrained from disclosing any information that is truly proprietary in nature.

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Opposer bears the burden of showing, by a preponderance of the evidence, that the designation sought to be registered is merely descriptive. *Goodyear Tire & Rubber Co. v. Continental General Tire Inc.*, 70 USPQ2d 1067, 1070 (TTAB 2003). A mark is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [and/or services]." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976) (emphasis added). See *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the qualities, features or characteristics of the goods and/or services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981). See *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949, 952 (TTAB 1981); *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

A term need not immediately convey information about each and every specific feature of the applicant's goods and/or services in order to be considered merely descriptive; rather, it is sufficient that the term describes one significant attribute, function or property of

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the goods and/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 term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought, the context in which it is being used on or in connection with the goods and/or services, and the possible significance that the term would have to the average purchaser of the goods and/or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *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). The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of the parties' goods in this case. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

The Parties' Arguments

Opposer argues that applicant's mark describes a significant characteristic of its vacuum cleaners, namely that it is intended to create a "healthy home" through the use of enhanced filtration:

Most importantly, the phrase [HEALTHY HOME VACUUM] immediately tells the prospective consumer that the vacuum is not just a standard machine that sucks up dirt and dust from one's home. Without conjecture or speculation, a consumer knows at once that the vacuum bearing the name "Healthy Home" is equipped with one or more features that go beyond the traditional vacuum function to promote the healthiness of a home. Although a consumer may not know the exact "healthy" feature that any particular vacuum employs, he or she knows it has something an ordinary vacuum lacks that enhances home health.

(Brief, p. 10). According to opposer, "[a]s applied to the proposed mark, 'Healthy Home Vacuum,' means a vacuum cleaner that helps one achieve a home that is free of disease."

(Brief, p. 14).⁵

Applicant, on the other hand, contends that the mark merely suggests a possible result or an aspirational goal (an improvement in the environment of a house), thus requiring imagination on the part of consumers. Applicant describes the multi-stage reasoning process as follows:

⁵ Opposer owns a registration of the mark ORECK CLEAN HOME for vacuum cleaners wherein the Office required a disclaimer of the words "Clean Home" because they convey to consumers the purpose of the goods. Contrary to the gist of opposer's argument on this point, that the words "Clean Home" were disclaimed has no bearing

First, the buyer must realize that something can assist in improving a home without actually being a part of the healthy home. Second, the buyer must realize that vacuums may create nuisances in a house. These nuisances include pollutants that are discharged from the vacuum, noise, and the growth of micro-organisms. Third, the buyer must realize that these nuisances may affect the house within which they live, creating an unhealthy home. Fourth, the buyer must realize how features of a vacuum cleaner can be used to reduce these nuisances. For example, such features include filtration systems for the air quality, reduced sound for the noise pollution, and anti-microbial features. Finally, the buyer must appreciate how achieving such goals through a vacuum cleaner may assist in improving the environment in a house. A buyer must also reflect on the health of his/her home and how the features of applicant's vacuum could affect it.

(Brief, pp. 21-22). Applicant also points out that in advertisements of its product, it does not just use HEALTHY HOME VACUUM, but rather it must also use other words to describe or explain the various features of the vacuum cleaner. Applicant posits that if the designation were merely descriptive, further explanation about the product's features would not be necessary.

The Evidence

Mr. Krzeminski asserted that applicant's HEALTHY HOME VACUUM vacuum cleaner "is one of the best performing

on the issue of mere descriptiveness of the words "healthy home"

products for the least amount of total emissions back into the air, indoor air quality becoming more important as a driver of purchase, certainly, among some end consumers." (Dep., p. 16). In this connection, he went on to acknowledge that "the consumer would expect that the BISSELL product would advance their cause of a - or the idea of their home being a healthier indoor living environment for their children and families." (Dep., p. 108). As indicated earlier, Mr. Krzeminski testified that the "airtight HEPA filtration" is a "key feature" of applicant's vacuum cleaner. (Dep., p. 19).

The terms comprising applicant's mark are commonly used and readily understood terms; the relevant dictionary definitions of these terms, in relevant part, read as follows:

healthy: evincing health; conducive to health.

home: one's place of residence; a house, apartment, or other shelter that is the usual residence of a person, family, or household.

Vacuum: a vacuum cleaner or sweeper.

(www.dictionary.com).

Applicant's Use

for vacuum cleaners.

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Mr. Krzeminski testified that "[t]he term healthy home is not something we came up with. It's a big general topic to start from." (Dep., p. 92).

Applicant's uses of "Healthy Home" and similar terms on its website (Ex. No. 26) include the following: "How to create a Healthier Home." In introducing its HEALTHY HOME VACUUM brand product, applicant touts it as "Built like no other vacuum so you can breathe easy." The website continues: "BISSELL is committed to helping you make your home healthier. From the air you breathe to the floors your children play on, by taking a few simple steps and using the right products you can provide a healthier home for your family." Other uses on the website include: "Click on the links to learn more about a healthy home"; "BISSELL is here to help you create and maintain your own healthy home with the following products:"; "Create a Healthy Home - Use BISSELL cleaning products to remove allergens from your home"; "Frequently Asked Questions About A Healthy Home. Below you will find some little-known facts about healthy and unhealthy homes."; "Facts and Cleaning Tips for a Healthier Home"; "Everything you need to know about a Healthier Home. Click here to learn more about the Healthy Home Vacuum™"; and "How do I make my home a healthier home?" Several of applicant's advertisements include the slogans "We mean clean" or "We mean a healthier clean." Other

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advertisements read "There's clean. And then there's healthier clean. Introducing the BISSELL HEALTHY HOME VACUUM."

Opposer also introduced various internal documents produced by applicant to show that applicant itself considered the term "healthy home" to be descriptive. The documents include emails among certain of applicant's employees, as well as reports on focus group studies undertaken to gauge consumers' perceptions and responses to the "concept of a healthier home" and the role of a vacuum cleaner therein.

We acknowledge that these internal documents show use of "healthy home" in lower case letters. However, to the extent that any of these uses may be characterized as descriptive uses, the consuming public was never exposed to them. And, given the small number (64) of consumers taking part in the focus groups, we are not willing to find that their views are truly reflective of the general consuming public. That is to say, we decline to extrapolate the views of a few dozen consumers to the general purchasing public at large. Accordingly, the in-house uses in emails, and the focus group study results, are of minimal probative value to a determination of the likely reaction of consumers when encountering applicant's designation HEALTHY HOME VACUUM on vacuum cleaners.

Opposer's Use

Opposer paid an undisclosed amount of money to be the number one result (a "sponsored link") when a consumer searched "healthy home vacuum" on the GOOGLE website; this "use," according to opposer, is its only use of "healthy home vacuum." Opposer's website and various press releases show uses of "healthier home" in its marketing of vacuum cleaners, as for example: "Regular, thorough vacuuming helps create a healthier home"; "To remove dust, dirt and allergens and help create a healthier home, the first line of defense is a high quality bagged vacuum cleaner with high efficiency filtration and dust containment..."; and "Introducing a new standard in filtration technology for a healthier home."

Other press releases of opposer show the following uses: "Fight your family's allergies with Oreck products and create a healthier home. The solution to a healthier home and cleaner vacuuming experience is an advanced self-sealing vacuum bag that locks in dust and dirt"; "'Since house dust and allergens can be a health risk, thorough home cleaning can be an important part of a healthier home prescription,' said Dr. John Winder, allergist and chair of the National Asthma Screening Program of the American College of Allergy, Asthma and Immunology."; "'Bagged

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vacuums have a major role to fill in creating a healthier home,' said Dr. Winder. Oreck vacuum and other Oreck products designed to make homes healthier are sold in Oreck Clean Home Centers across the country. The Oreck XL Deluxe Model Vacuum - Improved cleaning performance for a healthier home & still incredibly lightweight."

Opposer also maintains a website devoted to a healthy lifestyle at www.healthier-home.com, and consumers have been offered a pamphlet titled "David Oreck's Helpful Hints for a Cleaner Healthier Home."

Third-Party Use in the Industry

The record includes uses of "healthy home" and "healthier home" on the websites of five third-party manufacturers of vacuum cleaners. Representative examples include the following: "Helping every home become a healthy home. At Aerus, we believe a clean home is a healthy home." (www.aerusonline.com); and "Maintaining a healthy home. Vacuflo central vacuum systems promote a dust and allergen-free home environment. The Healthy Home Advantage. Dust is everywhere...Creating a clean and healthy home environment for your family is important." (www.vacuflo.com).

Third-Party Use in Other Industries

Also of record are numerous third-party uses of "healthy home" and/or "healthy home" in a very general manner or in connection with the marketing and sale of a wide range of goods and services that purportedly improve the quality of health in one's home. Representative examples include the following:

Healthy Homes

Most people spend over 90% of their time indoors. Your home is a very important environment where you and your family may spend much of your time. This brochure offers ways to make your home a healthy place. It includes information on indoor and outdoor air quality, pesticides, toxic household products, mold, tobacco smoke, radon, drinking water contaminants and making your home "green."

(www.epa.gov)

Help Yourself to a Healthy Home—Protect your Children's Health. "Help Yourself to a Healthy Home" is a self-help booklet for parents and caregivers that provides information about housing-related environmental health issues, including asthma and allergies, lead, mold and moisture, carbon monoxide, indoor air quality, drinking water, hazardous household products, home safety and pesticides.

(www.hud.gov)

Healthy Home Care. A healthy home is your goal. There are little things you can do when you clean to keep up appearances and help keep germs at bay.

(www.clorox.com)

What is a healthy home? A healthy home is one that incorporates healthy design elements, non-toxic building materials, and proper construction techniques. It

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"breathes," emits no toxic gases, and is resistant to mold.
(www.architecturalhouseplans.com)

Healthy Home Room-by-Room Guide. Dust mites. Mold. Pet dander. Pollen. These common allergens can be home wreckers. Learn how to control indoor allergens to help keep you and your home healthy!
(www.bedbathandbeyond.com)

The healthy home store. Did you know the average home contains over 150 chemicals that have been linked to allergies, birth defects and even cancer? The cleaning supplies at ECO help you take your health into your own hands.
(www.ecoelements.com)

Healthy Home Carpet Care
(www.healthyhomecarpet.com)

Is your home a healthy home? Healthy Homes, Inc. and its affiliate corporation, Asbestos Removal Technologies Inc., have been serving homeowners and businesses since 1987. Healthy Homes specializes in environmental inspections with remediation of specific individual indoor air quality problems.
(www.healthyhomesinc.com)

Analysis

At the oral hearing, in response to a question from the Board, opposer's counsel acknowledged that the issue of mere descriptiveness of the mark sought to be registered presented "a close case." We agree. While we also agree with opposer that this proceeding has presented the Board with more evidence than was before the examining attorney

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when the application was examined, we nevertheless find that the record falls short of establishing, by a preponderance of the evidence, that HEALTHY HOME VACUUM *merely* describes applicant's vacuum cleaners. Rather, we find the mark to be only suggestive.

There is often a fine line between merely descriptive marks and those which are just suggestive. These determinations are often subjective, this case being no exception. The determination of whether a mark is descriptive or suggestive is not an exact science. Our primary reviewing court has observed:

In the complex world of etymology, connotation, syntax, and meaning, a term may possess elements of suggestiveness and descriptiveness at the same time. No clean boundaries separate these legal categories. Rather, a term may slide along the continuum between suggestiveness and descriptiveness depending on usage, context, and other factors that affect the relevant public's perception of the term.

In re Nett Designs, Inc., 57 USPQ2d at 1566.

Applicant's HEALTHY HOME VACUUM falls on the suggestive side of the line. The mark does not immediately describe a characteristic or feature of applicant's vacuum cleaner with any degree of particularity. At most, the mark suggests that use of applicant's vacuum cleaner somehow will result in an environment-friendly home.

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It is not fatal that a mark is informational. One may be informed by suggestion as well as by description. *In re Reynolds Metals Company*, 480 F.2d 902, 178 USPQ 296 (CCPA 1973). That is to say, the terms "descriptive" and "suggestive" are not mutually exclusive. There is some description in any suggestion or the suggestive process does not occur. Applicant's mark is no exception.

The mark at issue, HEALTHY HOME VACUUM, is typical of so many marks that consumers encounter in the marketplace: a highly suggestive mark that tells consumers something general about the product, without being specific or immediately telling consumers anything with a degree of particularity. The information given by the mark is indirect and vague. The mark here conjures up indirect mental associations in the consumer's mind; the thought process beginning with the mark HEALTHY HOME VACUUM and leading to a characteristic or feature of a vacuum cleaner is neither immediate nor direct.

It is interesting to note that opposer, in its brief, offers no fewer than twenty ways that HEALTHY HOME VACUUM describes vacuum cleaners. Indeed, although Mr. Oreck's testimony is somewhat inconsistent on the ultimate issue of mere descriptiveness, he was consistent in stating that "healthy home" has a wide variety of meanings (8/30/07 Dep., pp. 12 and 60; and 7/25/08 Dep., pp. 61 and 82); and that

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the term does not directly convey to consumers an idea of any particular feature of the vacuum cleaner (8/30/07 Dep., pp. 24 and 30; and 7/25/08 Dep., p. 65). Further, Mr. Cohen, while steadfastly maintaining that, on the ultimate issue in this case, applicant's mark is merely descriptive, also stated that the term does not convey a particular feature of the product, and that "healthy home" has a wide variety of meanings that varies consumer to consumer. (Dep., pp. 72-74, 123, 126-127).

When confronting the mark HEALTHY HOME VACUUM on a vacuum cleaner, the ordinary consumer will pause and reflect on the use of the mark before understanding anything specific about a feature or characteristic of the product. One must exercise thought or engage in a multi-step reasoning process to determine what attribute may be identified by the mark. The mark does not, in any clear or precise way, serve to immediately describe a particular characteristic or feature of the goods with any degree of particularity. As the witnesses have testified, and as shown by the numerous websites, the meaning of the term "healthy home" varies from consumer to consumer. The mark HEALTHY HOME VACUUM does not serve to directly tell a consumer anything other than a vacuum cleaner is involved. The mark is an ephemeral concept and consumers are likely to have various ideas about how a vacuum cleaner results in a

more environment-friendly home. That is, the mark conveys a nebulous and amorphous concept, almost like, as applicant contends, an aspirational goal.

Opposer has expressed concern for itself, as well as the industry in general, if the mark HEALTHY HOME VACUUM is subject to exclusive appropriation by applicant.⁶ We do not think that registration by applicant will prevent opposer from using similar terms in describing its vacuum cleaners. Applicant itself stated that it

is not seeking to prohibit its competitors from ever using the terms "healthy," "home," or "vacuum." Applicant's competitors will still be able to use the terms "healthy," "home," and "vacuum" to describe their products, as necessary. Applicant's registration will merely prohibit its competitors from branding their products under the Healthy Home Vacuum mark or a confusingly similar mark.

(Brief, p. 40). That is to say, opposer (or, for that matter, any other competitor in the industry) remains perfectly free to inform consumers that its vacuums may provide a "healthier home," or to use the words "healthy," "home" or "vacuum" in whatever other non-trademark manner it chooses. See *Bose Corp. v. International Jensen Inc.*, 963 F.2d 1517, 22 USPQ2d 1704, 1706-07 (Fed. Cir. 1992) [ACOUSTIC RESEARCH not merely descriptive for loudspeakers].

⁶ The record reveals numerous competitors in the vacuum cleaner industry. Only opposer, however, objected to the registration of applicant's mark.

Conclusion

We find, based on the record before us, that opposer has not established by a preponderance of the evidence that HEALTHY HOME VACUUM is merely descriptive of vacuum cleaners. In reaching our conclusion we have considered all of the evidence pertaining to the issue of mere descriptiveness, as well as all of the parties' arguments with respect thereto (including any evidence and arguments not specifically discussed in this opinion).

Decision: The opposition is dismissed.