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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BSH Home Appliances Corporation

Serial No. 77010429

Russell W. Warnock of Carter & Schendler, P.A. for BSH Home Appliances Corporation.

Allison P. Schrody, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Hairston, Bucher and Wellington, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

BSH Home Appliances Corporation, applicant, seeks registration on the Principal Register of the mark TITANIUM (in standard character form) for goods identified in the application as "household and kitchen machines and equipment, namely, electric kitchen machines and equipment, namely, dishwashers; parts of all aforementioned goods in this class" in International Class 7 and "household and

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kitchen machines and equipment, namely, heating, steam producing, and cooking devices, namely, cooking, baking, frying, grilling, toasting, thawing, and hot-keeping apparatus, namely, microwave appliances, namely, microwave ovens; cooling devices, namely, refrigerators, freezers, combination refrigerator-freezers, deep freezers, ice making machines, ice-cream machines; parts of all aforementioned goods in this class" in International Class 11.<sup>1</sup>

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the proposed mark is merely descriptive of the identified goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Applicant has appealed the final refusal. Applicant and the Trademark Examining Attorney have filed briefs on appeal. After careful consideration of the evidence of record and the arguments, we affirm the refusal to register.

A term is merely descriptive of goods within the meaning of Section 2(e)(1) if it forthwith conveys an

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<sup>1</sup> Serial No. 77010429, filed on September 29, 2006. The application is based on applicant's asserted bona fide intent to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

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immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

A term need not immediately convey an idea of each and every specific feature of the applicant's goods in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods. See *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778 (Fed. Cir. 2003) (MONTANA SERIES and PHILADELPHIA CARD held merely descriptive of credit card services featuring credit cards depicting scenes or subject matter of, or relating to the state of Montana or the city of Philadelphia); *In re Busch Entertainment Corp.*, 60 USPQ2d 1130 (TTAB 2000) (EGYPT held merely descriptive of amusement park services; namely an area within an amusement park). See generally *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

The Trademark Examining Attorney initially notes the definition of "Titanium" as an element of the periodic

table,<sup>2</sup> and then argues that the term is merely descriptive because it identifies "the color or type of metallic finish applied to the goods." Brief, (unnumbered) p. 2. She contends that "[i]n the household kitchen appliance industry, the evidence of record shows that the term 'TITANIUM' is commonly used to describe color or type of silvery-metallic finish for appliances, particularly refrigerators, dishwashers, ovens, ice-makers and other large kitchen appliances." *Id.* at 3. In support, she submitted evidence from third-party websites showing use of the term "Titanium" in connection with large kitchen appliances.<sup>3</sup> The evidence shows e-commerce websites, such

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<sup>2</sup> Defined as "*Symbol Ti*. A strong, low-density, highly corrosive-resistant, lustrous white metallic element that occurs in igneous rocks and is used to alloy aircraft metals for low weight, strength, and high-temperature stability." American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000.) Attached to Office Action dated December 8, 2006.

<sup>3</sup> Although we find ultimately that the evidence is sufficient to establish that applicant's mark is merely descriptive of the identified goods, we note that some of the evidence submitted has little, if any, probative value and did not play a part in our determination. Specifically, the examining attorney submitted evidence from the websites: "Kelkoo Household Appliances"; "DealTime.co.uk"; "biasco" and "Bing Lee." These are clearly foreign websites (note the top level domains ".uk" and ".au" indication they are either British or Australian commercial entities. Moreover, the appliances identified therein are evidently being advertised to a foreign consumer (e.g., prices are identified in British pounds, not U.S. dollars). Thus, these websites do not help show whether the American consumer has been exposed to such advertising or whether usage of the term "Titanium" is commonplace in advertising appliances. Nevertheless, as mentioned and discussed *infra*, there is other evidence which suffices for purposes of establishing the descriptiveness of applicant's proposed mark.

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as NexTag Comparison Shopping, offering information on refrigerators described as "available in Premium Titanium Finish Contour Doors..." or "Premium Finishes in Stainless Steel, Titanium, Smooth White and Smooth Black with Metal Handles..."<sup>4</sup> Another website for the Thor Appliance Company advertises a "Thor Titanium Washer/Dryer."<sup>5</sup> In an appliance review website sponsored by Kenmore Elite, a consumer described a refrigerator as having "sharp looking titanium doors, spacious interior."<sup>6</sup> As pointed out by the examining attorney, there is a blog website, The Home Appliance and Lighting Blog, where the writer posts the following question and answer regarding "titanium" appliances:<sup>7</sup>

### Titanium Appliances

Whatever happened to Titanium, which is appliance speak for stainless with white accents. This is in contrast to stainless, which is stainless with black appointments.

Frigidaire inexplicably discontinued the style 8 years again [sic]. Bosch picked up the baton 2 years [sic] with similar lack of success. For some reason, I think it is refreshing. Then again, I have stainless in my kitchen.

Take a look:



As to dishwashers in particular, the examining attorney submitted printouts from the "AJ Madison" website

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<sup>4</sup> Attached to Office Action dated December 8, 2006.

<sup>5</sup> *Id.*

<sup>6</sup> Attached to Office Action dated November 14, 2008.

<sup>7</sup> *Id.*

that allows the consumer to refine a search for dishwashers by selecting a particular brand, price range and/or "color(s)," and under the last option the consumer may select from "Black, Bisque, Stainless Steel, Stainless Steel Look, Titanium, White..."<sup>8</sup> One of the dishwashers advertised on that website (a "Dacor Preference Series") listed as "Titanium Siver (sic)."

In its appeal brief, applicant does not address the examining attorney's evidence. Applicant's primary argument in support of registration is that TITANIUM is merely suggestive, not descriptive, of the identified goods because the proposed mark "requires imagination to reach any conclusion as to the nature of the goods." Brief, p. 2. Applicant asserts that "consumers would undergo a mental pause [because]...due to the wide range of products that may be made of titanium or feature a titanium finish, a potential purchaser of the goods would pause to reflect as to the type of goods or services that may be offered in connection with mark."

We disagree with applicant. We find that the evidence submitted by the examining attorney establishes that TITANIUM is merely descriptive of applicant's goods. It is clear that consumers are accustomed to seeing the term

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<sup>8</sup> *Id.*

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"Titanium" being used to describe the color or finish of kitchen appliances such as refrigerators and dishwashers. Contrary to what applicant seems to suggest by way of its argument, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services identified in the application, and the possible significance that the term would have to the average purchaser or user of the goods or services. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The question whether a mark is merely descriptive is not determined by asking whether one can guess from the mark what the goods are, but rather by asking, when the mark is seen on or in connection with the goods, whether it immediately conveys information about their nature. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). In this case, we find that upon seeing or hearing the term "Titanium" in connection with appliances such as those identified in the application, consumers will immediately understand that the term is being used to describe the color or finish of the appliance.

**Decision:** The refusal to register is affirmed.