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precedent of the TTAB

Mailed: April 22, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Thee Earth & Composting Solutions, LLC
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Serial No. 98020099
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Thee Earth & Composting Solutions, LLC, pro se.

Tasneem Hussain, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

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Before Greenbaum, Casagrande, and Bradley,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

This appeal concerns a refusal to register on the ground that the specimens do not show use of the mark on the single good identified in the application. But, as we explain below, the problem is not so much with the specimens themselves. The problem is a mismatch between the identified good and the goods and/or services reflected by the specimens.

Applicant Thee Earth & Composting Solutions, LLC, seeks to register the mark THEE EARTH & COMPOSTING SOLUTIONS LLC & design for “compost” in

International Class 1.¹ After the mark was published in the Official Gazette and nobody opposed it, the USPTO issued a Notice of Allowance. Applicant then filed its Statement of Use and submitted the following specimen:



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In its Statement of Use, Applicant described the specimen as “Compost totter (sic) bin with LOGO.”³

¹ Applicant filed Application No. 98020099 on May 30, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark for “compost.” The application disclaims the exclusive right to use “COMPOSTING SOLUTIONS LLC” apart from the mark as a whole. The drawing of the mark and Applicant’s description of it are reproduced in the Appendix to this decision.

² See March 11, 2025, Statement of Use & Specimen (the “original” specimen). Citations in this opinion to the application record refer to the version of the documents as downloaded in .pdf format from the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO).

³ See March 11, 2025, Statement of Use. “Totter” appears to be a misspelling of “toter.”

The Examining Attorney issued a Nonfinal Office Action refusing the specimen under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§ 1051 and 1127.⁴ The Nonfinal Office Action explained that there was no indication what was within the bin, whether Applicant sold the identified goods (compost) in the bin, or whether, instead, the bin functioned as a receptacle into which customers place compostable material.⁵ Applicant responded to the Nonfinal Office Action, but the response only proposed to change the name of the applicant. It didn't address the specimen refusal. So the Examining Attorney made the specimen refusal final.⁶

Applicant then requested reconsideration and attached two substitute specimens:



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⁴ See June 11, 2025, Nonfinal Office Action.

⁵ See *id.* at 2. The Examining Attorney also noted that the original specimen lacked “other industry typical information such as weight, list of contents, or pricing” See *id.* This statement refers to information that typically appears on labels. A specimen bearing information may be required when an applicant submits a specimen consisting of a label not attached to the good(s). See generally TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 904.03(a) (Nov. 2025).

⁶ See July 9, 2025, Final Office Action. The Final Office Action also denied the request to change the named applicant. Applicant does not contest this denial.

⁷ See Sept. 1, 2025, Request for Reconsideration.

The reconsideration request described the substitute specimens as follows:

The specimen(s) submitted consists of One photo [that] shows food waste, food scraps, and solid food inside the bin which is considered compost. Customers place all composted food waste inside of the bin to be collected. The second photo is a composted bin which can also be called a totter (sic). The bin is used for composted waste to be stored and collected properly.⁸

The Examining Attorney denied the reconsideration request, explaining that:

the substitute specimen is still unacceptable as it does not show the mark ... on compost as it is sold in commerce. ... Applicant makes clear that the bins are intended to collect and store food waste. However, the applied for goods are “compost” and to date there is no indication that applicant sells compost in commerce under this mark.⁹

Applicant timely appealed.¹⁰

Applicant’s appeal brief purports “to clarify the nature of its goods and services”¹¹ Applicant explains that its business consists of “compost collection services” and the “production and sale of finished compost.”¹² Applicant elaborates:

Applicant operates a compost collection service that involves the aggregation of organic solid waste from residential and commercial customers. ... Customers purchase a heavy-duty, two-wheeled plastic compost toter bin—available in 35-gallon, 65-gallon, and 96-gallon sizes—for purposes of storing their compostable organic waste prior to scheduled collection. Each toter bin bears the Applicant’s mark: Thee Earth & Composting Solutions, LLC.

⁸ *See id.* at 4.

⁹ *See* Sept. 9, 2025, Denial of Reconsideration, at TSDR 2.

¹⁰ *See* 1 TTABVUE. References to the briefs and appeal record cite to the Board’s TTABVUE electronic docket system. The number preceding “TTABVUE” represents the docket number assigned to the cited filing in TTABVUE and any number immediately following “TTABVUE” identifies the specifically-cited page(s), if any.

¹¹ *See* 4 TTABVUE 2.

¹² *See id.* (capitalization altered).

Applicant's service consists of collecting this solid organic material and transporting it to an approved processing facility, where the waste undergoes a controlled decomposition process to become finished compost.

...

Applicant packages finished compost in bags ranging from 5-pound to 50-pound units. All packaging prominently displays Applicant's applied-for mark. Customers may purchase finished compost directly, and, as part of Applicant's community program, each customer receives one complimentary 5-pound bag annually.

...

Applicant's mark is used in commerce on: 1. Compost toter bins sold to customers for the purpose of storing organic waste prior to collection; and 2. Bags of finished compost sold or distributed as a soil amendment product.

The logo appears clearly and consistently on each bin and on every bag of finished compost ...¹³

This explanation makes clear that Applicant does indeed sell compost, which is the only good identified in the application. And Applicant states that the compost is sold in bags with Applicant's mark on them. That's all good. But the problem is that none of the specimens Applicant submitted shows a labelled bag of compost as Applicant sells it. Rather, the specimens depict other things. The original specimen (and one of the substitute specimens) depicts a toter bin. Applicant's brief says Applicant sells these, too, but the identification of goods in the application does not identify "totter bins." The other photo depicts an unlabeled plastic bag with food waste and other refuse in it. This appears to depict a step in Applicant's composting services

¹³ See *id.* at 2-3.

during which customers store compostable material between scheduled pickups by Applicant, who then processes it into compost. But even if the bag with food waste in it depicted the mark, the application doesn't identify any services, just the one good: compost (or, as Applicant's brief calls it, "finished compost").

Trademark Act Section 1(d)(1), 15 U.S.C. § 1051(d)(1), provides for the filing of "a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce," along with "such number of specimens ... of the mark as used in commerce as may be required by the Director." Through Trademark Rule 2.56(a), 37 C.F.R. § 2.56(a), the Director requires applicants to submit a specimen of the mark as used with their statements of use.¹⁴ And Rule 2.56(b)(1), 37 C.F.R. § 2.56(b)(1), provides that the specimen "must show use of the mark on the goods, on containers or packaging for the goods, on labels or tags affixed to the goods, or on a display associated with the goods." Regarding specimens, the Federal Circuit's predecessor court has stated:

An important function of specimens in a trademark application is, manifestly, to enable the PTO to verify the statements made in the application regarding trademark use. In this regard, the manner in which an applicant has employed the asserted mark, as evidenced by the specimens of record, must be carefully considered in determining whether the asserted mark has been used as a trademark with respect to the goods named in the application.

¹⁴ See also Trademark Rule 2.34(a)(1)(iv), 37 C.F.R. § 2.34(a)(1)(iv) (requiring a specimen in a use-based application).

In re Bose Corp., 546 F.2d 893, 897 (CCPA 1976) (citations omitted). Our careful consideration of the application record, including the identification of goods, the specimens and Applicant's explanations,¹⁵ has revealed that Applicant's identified goods are compost, that Applicant "packages finished compost in bags," that Applicant has represented that "[a]ll packaging prominently displays Applicant's applied-for mark," and that "[c]ustomers may purchase finished compost" from Applicant. But the two specimens that show the mark show it only on a "toter bin," and Applicant is clear that it does not sell compost in a toter bin, but in bags. In layperson's terms, there is a "disconnect" or "mismatch" between the single good listed in the application (compost) and the goods and services Applicant says that specimens represent.

Unfortunately, at this late stage, nothing can be done to "fix" this issue. Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g), provides: "An application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under section 6" (There is no disclaimer issue in this case.) Applicant, of course, remains free to file another application and provide a proper specimen or specimens showing use of the mark on the good(s) and/or service(s) identified in the application.

Decision: We affirm the refusal under Trademark Act Sections 1 and 45.

¹⁵ We note that the USPTO considers "explanations offered by Applicant clarifying the nature, content, or context of use of the specimen" so long as they "are consistent with what the specimen itself shows." *In re Pitney Bowes, Inc.*, No. 86502157, 2018 WL 360241, at *3 (TTAB 2018) (citation omitted).

APPENDIX

Mark drawing



Applicant's description of the mark and color claim

The mark consists of the stylized wording “THEE EARTH & COMPOSTING SOLUTIONS” in a green uppercase font followed by a light blue line followed by “LLC” in a green uppercase font followed by another light blue line. The wording circles a design of a globe that consists of an image of land that is green in color and water that is dark blue in color. In the middle of the globe are three light blue arrows in triangular rotation. The color gray represents background areas and is not part of the mark.

The color(s) green, dark blue, light blue are claimed as a feature of the mark.