

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB OCT. 6, 99  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Daniel Malley

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Serial No. 75/250,802

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Kenneth L. Mitchell of Woodling, Krost & Rust for Daniel Malley.

Darlene D. Bullock, Trademark Examining Attorney, Law Office 101 (Jerry Price, Managing Attorney)

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Before Hanak, Quinn and Bottorff, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Daniel Malley (applicant) seeks to register PRETZEL BAR in typed drawing form for "candy." The intent-to-use application was filed on March 3, 1997.

The Examining Attorney refused registration pursuant to Section 2(e)(1) of the Trademark Act on the basis that applicant's mark is merely descriptive of applicant's goods.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

As has been stated repeatedly, "a term is merely descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services]." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2<sup>nd</sup> Cir. 1976). Moreover, the descriptiveness of a term must be determined as applied "to the goods or services involved," that is, the goods or services set forth in the application. Abcor, 200 USPQ at 218.

It is applicant's contention that his mark is not merely descriptive because his "goods are not pretzel-shaped. Rather, the goods are pieces of pretzels in a chocolate bar." (Applicant's brief page 2).

We find applicant's argument to be unpersuasive. Obviously, the word "bar" is highly descriptive as applied to candy in that it indicates that the candy is in the shape of a bar. Indeed, we believe that almost all consumers are well aware of the meaning of the term "candy bar."

Moreover, it is a common practice to insert in candy bars various types of ingredients such as nuts, pieces of fruit etc. Indeed, applicant has conceded that his own goods are in actuality "pieces of pretzels within a chocolate bar." (Applicant's brief page 2). Thus, upon seeing the term "pretzel bar" on candy, consumers would immediately recognize that this candy is in the shape of a bar and contains, in some form, pretzels.

We will concede that the term "pretzel bar" when used on candy does not inform consumers precisely how the pretzels or pieces of pretzels are incorporated into the bar. However, in order to be held merely descriptive, a term "need not describe [the goods] exactly." In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd (Fed. Cir. February 13, 1991). The following comments from the Entenmann's case are particularly instructive: "By way of analogy, the term 'nut bread' does not inform purchasers of the particular type of nuts found in a particular loaf of nut bread. Nevertheless, the fact that the term 'nut bread' does not inform purchasers of the precise type of nuts in the bread does not mean that the term 'nut bread' is not descriptive of, and indeed generic for, bread." 15 USPQ2d at 1751.

In short, we find that the term "pretzel bar" is descriptive when applied to candy despite the fact that consumers may not be able to discern precisely how the pretzels (or bits thereof) are incorporated into the bar and despite the fact that consumers will not be able to discern, simply from viewing applicant's purported mark, the precise shape of the bar. Whether applicant's proposed candy will be in the shape of a traditional candy bar, or instead will be in the shape of a bar resembling a straight pretzel simply does not mean that applicant's mark is not merely descriptive when applied to candy.

Decision: The refusal to register is affirmed.

E. W. Hanak

T. J. Quinn

C. M. Bottorff  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

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