

7/26/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jeffrey Kellogg

Serial No. 75/524,117

Curtis V. Harr for Jeffrey Kellogg.

Rodney Dickinson, Trademark Examining Attorney, Law
Office 112 (Janice O'Lear, Managing Attorney).

Before Hanak, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Jeffrey Kellogg (applicant) seeks to register in
typed drawing form SKEETER VAC for "electrically powered
insect control devices, namely, a fan driven vacuum
cleaner using air to trap and kill insects and to clean
up debris." The intent-to-use application was filed on
July 23, 1998.

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

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.

Ser. No. 75/524,117

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). Whether a mark is merely descriptive is determined in relation to the identified goods, not in the abstract. In re Omaha National Corp., 819 F.2d 1117, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987); In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

At page 2 of his brief, applicant acknowledges that "the terms SKEETER and VAC, although subject to different meanings in different contexts, are slang words, one meaning of which is mosquito as to the former, and vacuum as to the latter." While it is true that the word SKEETER can also mean a skeet shooter, and while the word VAC can also mean vacant or vacation, these are not the

meanings of the words SKEETER and VAC which would come to mind when one views applicant's mark SKEETER VAC in connection with applicant's "electrically powered insect control devices, namely, a fan driven vacuum cleaner using air to trap and kill insects and

2

Ser. No. 75/524,117

to clean up debris." Obviously, when the mark SKEETER VAC is used in connection with the foregoing goods, one would not think of a skeet shooter (a person) or a vacation. As previously noted, the mere descriptiveness of a mark is not determined in the abstract, but rather is determined in relation to the identified goods. Omaha National Corp., 2 USPQ2d at 1861; Abcor Development Corp., 200 USPQ at 218. Indeed, applicant himself recognizes this very proposition when he makes the following statements at page 4 of his brief: "The descriptiveness of a mark is not considered in the abstract. The mark is considered in relation to the goods or services for which registration is sought ..."

When applicant's mark SKEETER VAC is considered in relation to "electrically powered insect control devices, namely, a fan driven vacuum cleaner using air to trap and

kill insects and to clean up debris," said "mark" immediately conveys a significant characteristic of applicant's insect control devices, namely, that they can be used to trap and kill mosquitoes (skeeters).

At page 6 of his brief, applicant argues that SKEETER VAC is not descriptive of his electrically powered insect control devices because "mosquito eradication is not even a

3

Ser. No. 75/524,117

primary purpose for the goods in question, but merely a single potential use among an unlimited plethora of possible eradication uses for the goods in question." Applicant's argument at page 6 is particularly perplexing given the fact that at pages 3 and 4 of his brief, applicant acknowledges that "to be 'merely descriptive,' a term need only describe a single significant quality or property of the goods." (emphasis added). See Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). ("A word may be descriptive though it merely describes one of the qualities or properties of the goods.").

In short, the fact that applicant's mark SKEETER VAC

does not identify all of the insects which applicant's electrically powered insect control devices trap and kill does not mean that said mark is not merely descriptive. Applicant's mark clearly identifies a significant insect which applicant's device traps and kills, namely, mosquitoes (skeeters). Applicant's argument at page 6 of his brief that "it is highly possible that [applicant's goods] may never be used for mosquito eradication" is simply not plausible. If this were the case, it is hard to understand

4

Ser. No. 75/524,117

why applicant would have selected the mark SKEETER VAC when said mark is, in terms of meaning, identical to the "mark" MOSQUITO VAC.

At page 9 of his brief, applicant argues that his mark SKEETER VAC is not merely descriptive because the very dictionary definitions supplied by the Examining Attorney demonstrate that "multiple definitions apply to both SKEETER (mosquito, skeet shooter), and VAC (vacation, vacuum)." Once again, applicant's argument at page 9 is particularly perplexing in light of his concession at page 4 of his brief that "the

descriptiveness of a mark is not considered in the abstract. The mark is considered in relation to the goods or services for which registration is sought ...” As previously noted, when an average prospective consumer sees the mark SKEETER VAC in connection with “electrically powered insect control devices, namely, a fan driven vacuum cleaner using air to trap and kill insects and to clean up debris,” that average prospective purchaser would not be thinking of a skeet shooter or a vacation.

Two final comments are in order. First at page 8 of his brief applicant argues that “the combination of terms including terms only available as slang terms is a factor in

Ser. No. 75/524,117

rendering the applicant’s mark unique or incongruous since the combination of the two words does not result in a designation that has a plain and readily understood meaning for any goods.” (emphasis added). To begin with, we are by no means convinced that the term VAC, as a shortened form of VACUUM, is any more of a “slang” term than is the term AUTO as a shortened form of AUTOMOBILE.

However, whether the terms SKEETER and VAC are slang or not is not particularly relevant given the fact that as applied to applicant's goods, they have, as acknowledged by applicant, meanings which are readily understood by the relevant purchasing public. Moreover, applicant has failed to explain how its mark SKEETER VAC is in any way incongruous.

Second, applicant is entirely correct when, at page 3 of his brief, he notes that in determining whether a mark is merely descriptive, it is the practice of this Board to resolve doubts in applicant's favor. See In re Gourmet Bakers Inc., 173 USPQ 565 (TTAB 1972). However, while applicant's mark is perhaps not highly descriptive of his goods, we have no doubt that the mark does describe a significant feature of applicant's electrically powered insect control devices, namely, that said devices use a fan

Ser. No. 75/524,117

driven vacuum cleaner to trap and kill, amongst other insects, mosquitoes (skeeters).

Decision: The refusal to register is affirmed.

