

Hearing:
April 11, 2006

**THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB**

Mailed:
August 28, 2006
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Belle Garden LLC

Serial No. 78411088

David Bogart Dort of Dort Close IP, PLLC for Belle Garden LLC.

Jason Eric Lott, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Seeherman, Hohein and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Belle Garden LLC seeks registration on the Principal Register of the mark **GARDEN BAG** (*in standard character format*) for goods identified in the application as "flower and plant holders made of cloth" in International Class 21.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this mark given applicant's failure to disclaim the word "bag" as required by the Trademark Examining Attorney.

Applicant and the Trademark Examining Attorney have fully briefed the case, and both appeared at an oral hearing held before this panel of the Board. We affirm the refusal to register.

The issue herein is straightforward. The Trademark Examining Attorney takes the position that the term "bag" is merely descriptive and should be disclaimed. By contrast, applicant argues that the term "bag" is, at worst, suggestive of its goods, rather than descriptive, and does not need to be disclaimed. Applicant's brief pp. 2 - 5.

As explained by the Trademark Examining Attorney, Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), states that the Office may require an applicant to disclaim an unregistrable component of a mark. Inasmuch as Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e), bars the registration of a mark which is merely descriptive of the goods, the Office may require that applicant disclaim a merely descriptive portion of a mark. In the event that applicant does not comply with this disclaimer requirement, the Trademark Examining Attorney may refuse registration of the entire mark.

¹ Application Serial No. 78411088 was filed on April 30, 2004 based upon applicant's allegation of first use anywhere and use in commerce at least as early as April 26, 2004.

Applicant takes the position that its "holders for ... plants" are "planters" - and not "bags." However, even if we accept that the word "planters" may well be a generic category or class of goods for these plant holders, it does not foreclose the possibility that the word "bag" continues to be merely descriptive of the involved goods. It is in this context that we explore the record to see if it supports the position of the Trademark Examining Attorney: namely, if applicant's plant holder made of cloth looks like a bag, functions as a bag, and is referred to as a bag by applicant, then we should find "bag" to be a merely descriptive term for the goods.

Applicant's website depicts a flexible cloth container hanging from the arm of a wooden bench and holding a plant.



Garden Bags

BelleGarden's original Garden Bag was created especially for plants. Our cutting edge design maintains the beauty of the fabric while allowing water to escape from the container, protecting your plant's roots.

In this website example, applicant has also pluralized its mark in a way that excentuates the highly descriptive nature of the second term of this suggestive combined mark.

Then with its request for reconsideration, applicant submitted a specimen using the word "bag" twice to describe its planter.

3 Easy Steps for Planting your Garden Bag

1. Hang bag and fill with potting Soil
2. Add your plant and fill in with more potting soil (soil will settle into bag)
3. Hang outside and water daily. Enjoy!

So, just as it has often been said that, if it walks like a duck and quacks like a duck, it is a duck - it is likewise the case with applicant's planter that inasmuch as the record shows that it looks like a bag and is referred to even by applicant as a bag, consumers would immediately perceive the product as a bag.

Accordingly, we find that the word "bag" in applicant's mark immediately and directly conveys specific information about the nature of this planter, i.e., it tells consumers that the planter is in the form of a bag. Hence, we affirm the refusal of the Trademark Examining Attorney to register the mark absent a disclaimer of the unregistrable component, "bag."

Decision: The requirement for a disclaimer of the word "bag" on the ground that this term is merely descriptive of the identified goods is affirmed.

However, in accordance with Trademark Rule 2.142(g), this decision will be set aside and this application will be returned to the Trademark Examining Attorney to place it in

condition for publication for opposition, if applicant, no more than thirty days from the mailing date of this decision, submits an appropriately worded disclaimer, namely:

No claim is made to the exclusive right to use the word "Bag" apart from the mark as shown.