

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
March 31, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re USA Devview, Inc.

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Serial No. 76613995

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Richard C. Litman of Litman Law Offices, Ltd. for USA  
Devview, Inc.

Melissa Vallillo, Trademark Examining Attorney, Law Office  
113 (Odette Bonnet, Managing Attorney).

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Before Quinn, Grendel and Cataldo, Administrative Trademark  
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant USA Devview, Inc. seeks registration on the  
Principal Register of the mark DO YOU DEVIEW? (in standard  
character form) for goods identified in the application as  
"photographic apparatus and instruments, namely, cameras,  
closed circuit television cameras; surveillance apparatus  
and instruments, namely, charge-coupled device cameras

(CCD), closed circuit television (CCTV), parts and fittings for all the aforesaid goods," in Class 9.<sup>1</sup>

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that applicant has failed to submit an acceptable specimen which demonstrates trademark use of the mark on the identified goods. See Trademark Act Sections 1(d)(1) and 45, 15 U.S.C. §§1051(d)(1) and 1127; Trademark Rules 2.56(b)(1) and 2.88(b)(2), 37 C.F.R. §§2.56(b)(1) and 2.88(b)(2).<sup>2</sup>

Applicant has appealed the final refusal. After careful consideration of the record and the arguments of counsel, we affirm the refusal to register.

The specimen of record upon which applicant relies in its brief is the webpage screenshot from applicant's website depicted below.<sup>3</sup> The page is entitled "tamper dome

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<sup>1</sup> Serial No. 76613995, filed on September 30, 2004. The application was filed as an intent-to-use application under Trademark Act Section 1(b), 15 U.S.C. §1051(b). After publication of the mark and issuance of a notice of allowance, applicant filed a statement of use on May 24, 2006.

<sup>2</sup> The Trademark Examining Attorney also has refused registration on the ground that applicant has failed to support its substitute specimens with an affidavit or declaration attesting that the substitute specimens were in use prior to the time allowed for filing the statement of use. See Trademark Rule 2.59(b), 37 C.F.R. §2.59(b); TMEP §904.05. In view of our finding that applicant's substitute specimens are insufficient in any event, we need not and do not reach this declaration issue.

<sup>3</sup> Applicant also has submitted additional specimens, i.e., a Product Guide and additional webpage screenshots from its website. However, the screenshot depicted above is the only

configurator." Under the heading "Select a Housing" is the text "Select a housing to begin the configuration of a deView modular tamper dome. Hover over product images to view an expanded list of features." Below this, four different models of domes are pictured, described and identified by model number. Each description includes a clickable button such as "Select TP30W->" which apparently is a link which sends the viewer to the next screen and step in the camera configuration process. The matter applicant seeks to register, DO YOU DEVIEW?, appears in the lower left corner of the webpage, above a toll-free telephone number.

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specimen of record upon which applicant relies in its main appeal brief and its reply brief. We accordingly shall limit our discussion to this screenshot, which undoubtedly is the specimen which most strongly supports applicant's position in this case. We find in any event that the Product Guide and the additional screenshot specimens are insufficient as trademark specimens, for the same reasons that render unacceptable the screenshot upon which applicant specifically relies as its specimen of use.

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tamper dome configurator

Select a Housing All Configurators | Build Camera | My Cameras

Select a housing to begin the configuration of a deView modular tamper dome.  
Hover over product images to view an expanded list of features.

<p><b>TP30W</b> Housing Round Tamper Proof Dome Polycarbonate White (Surface)</p> <p>Select TP30W -&gt;</p>	<p><b>TP30B</b> Housing Round Tamper Proof Dome Polycarbonate Black (Surface)</p> <p>Select TP30B -&gt;</p>
<p><b>TP33W</b> Housing Round w/ Sunshade Tamper Proof Polycarbonate White (Surface)</p> <p>Select TP33W -&gt;</p>	<p><b>TP33B</b> Housing Round w/ Sunshade Tamper Proof Polycarbonate Black (Surface)</p> <p>Select TP33B -&gt;</p>

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do you deView?  
1-877-4-deView

The Trademark Act requires that the statement of use submitted by an intent-to-use applicant must be accompanied by "such number of specimens or facsimiles of the mark as used in commerce as may be required by the Director..."

Trademark Act Section 1(d)(1). Implementing this statutory provision, Trademark Rule 2.56(a) requires that the statement of use be accompanied by "one specimen showing

the mark as used on or in connection with the goods..." Trademark Act Section 45 provides in pertinent part that a mark shall be deemed to be used in commerce on goods when "it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale." Implementing this statutory provision, Trademark Rule 2.56(b)(1) provides that "[a] trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods."

Applicant contends that its webpage screenshot specimen, depicted above, constitutes and suffices as "a display associated with the goods."<sup>4</sup> We disagree.

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<sup>4</sup> Applicant also argues that because the nature of applicant's goods makes it impossible to place the mark on the goods or their packaging, its specimen constitutes and suffices as "another document related to the goods or the sale of the goods." To the extent that applicant is asserting this argument in the alternative to its primary argument that its specimen suffices as "a display associated with the goods," we are not persuaded. We find that there is nothing about applicant's identified goods which would make it impossible to place the mark on the goods or their packaging, or on a display associated with the goods. See *In re Settec Inc.*, 80 USPQ2d 1185 (TTAB 2006). Therefore, we reject applicant's apparent argument that, if its specimen does not suffice as "a display associated with the goods," it suffices

It is settled that "...a website page which displays a product, and provides a means of ordering the product, can constitute a 'display associated with the goods,' as long as the mark appears on the webpage in a manner in which the mark is associated with the goods." *In re Dell Inc.*, 71 USPQ2d 1725, 1727 (TTAB 2004). *Cf. Lands' End Inc. v. Manbeck*, 797 F.Supp. 511, 24 USPQ2d 1314 (E.D. Va. 1992).

The webpage specimen upon which applicant relies in this case, depicted above, includes pictures of applicant's goods. We will assume, *arguendo* and despite the Trademark Examining Attorney's contrary contention, that the mark as it appears in the lower left corner of the webpage is near enough to and sufficiently "associated with the goods." Those elements of the test therefore may be deemed to have been satisfied. However, we find that the proffered specimen fails as "a display associated with the goods" because it does not provide a means of ordering the goods, as required by the authorities cited above.

At pages 5-6 of its appeal brief, applicant contends that the webpage:

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as "another document related to the goods or the sale of the goods." The sole issue in this case is whether the specimen suffices as "a display associated with the goods," under the applicable case law.

...clearly provides the means necessary to order the goods, principally "a visible weblink to order the goods." ... This means to order the goods can be established by first reading the sentence above the goods, "Select the housing to begin the configuration of a Derview Modular Tamper Dome." Further, the top headers state "Select a Housing" and "Build Camera," further reinforcing that this page is about choosing products for purchase which are highly customizable, much like the computer in *Dell*. The visible web link is shown as a clickable button next to each photo of the goods stating "Select [MODEL #1->." ... The arrow character further indicates to the consumer visually that this button will take them to the next step of the custom ordering process as they configure their goods for purchase.

Contrary to applicant's assertions, however, there is nothing on the webpage which demonstrates that a person viewing the webpage can actually order or purchase the goods from the webpage or even from the website as a whole. The clickable button next to each photograph might send the viewer to the next screen and the next step in the process of configuring the product. (We note that the content of that next screen or linked page is not of record). However, we cannot conclude from this webpage that the viewer, upon completing the configuration process, then can proceed to a screen from which he or she may actually place an order for the product once it has been configured. On its face, the webpage demonstrates that the product may be configured or customized via the website, but it does not

demonstrate that the product may be ordered or purchased via the website.

Applicant's reliance on *In re Dell Inc., supra*, is misplaced. In that case, the specimen webpage not only had a link which allowed the viewer purchasing a computer to "Customize it," it also specifically informed the purchaser that he or she could "Buy Online," and it provided an additional link button directing the viewer to "Purchasing Tools." No such links or information relating specifically to the ability to purchase the goods via the website are present on applicant's specimen webpage.

Again, on its face, the webpage merely suggests that the viewer can configure the product via the website; it makes no mention of or provision of means for actually ordering the product once it is configured or customized. This case therefore is distinguishable from *In re Dell Inc., supra*, and *Lands' End v. Manbeck, supra*, as well as from *In re Valenite Inc.*, 84 USPQ2d 1346 (TTAB 2007) (webpage provided link to customer service representatives who took orders for goods). Rather, this case is more akin to *In re Genitope Corp.*, 78 USPQ2d 1819 (TTAB 2006) (webpage provided links to screens which provided more information about products, but not to a means of, or instructions for, ordering the products).

For these reasons, we find that applicant's webpage specimen does not constitute "a display associated with the goods," and it therefore does not suffice as a specimen of trademark use of the mark on the goods identified in the application.<sup>5</sup> We conclude that the matter applicant seeks to register, DO YOU DEVIEW?, as it appears on the specimens submitted by applicant, fails to function as a trademark for the identified goods. It therefore is unregistrable under Trademark Act Sections 1 and 45.

Decision: The refusal to register is affirmed.

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<sup>5</sup> For the same reasons, we find that all of the other specimens submitted by applicant (a Product Guide and more webpage screenshots; see *supra* at footnote 3), as to which applicant has presented no arguments in its briefs, likewise do not suffice as "display" specimens (or any other acceptable type of specimen).