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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mirama Enterprises, Inc.

Serial No. 76637648

Mirama Enterprises, Inc. Pro Se.

Stephen Aquila, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Drost, Zervas and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On May 2, 2005, Mirama Enterprises, Inc. (applicant)
applied to register the mark CRUSH & BLEND in standard-
character form on the Principal Register for goods now
identified as "electric food blenders, electric food
processors, and electric food blenders for making
smoothies" in International Class 7. Applicant asserts a
bona fide intention to use the mark in commerce under

Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), as the basis for the application.

The Examining Attorney has finally refused registration on the grounds: (1) that the mark merely describes the goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1); and (2) that applicant has failed to respond to the Examining Attorney's requirement under 37 C.F.R. § 2.61(b) for information regarding applicant's goods.¹

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. We affirm the refusal on both grounds.

A term is merely descriptive of goods within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods in order to be considered merely descriptive; it is enough that the term describes one

¹ A different Examining Attorney acted on this application prior to this appeal.

significant attribute or function of the goods. See *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods identified in the application, and the possible significance that the term would have to the average purchaser of the goods because of the manner of use or intended use. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

When two or more merely descriptive terms are combined, we must determine whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, then the resulting combination is also merely descriptive. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers).

I. The Descriptiveness Refusal

Applicant argues that CRUSH & BLEND is not merely descriptive of its goods because, "CRUSH & BLEND are not the normal way of referring to blenders and food processors." Applicant's Brief at 1. Applicant also argues that CRUSH & BLEND have several meanings, citing as

an example, "One can say he picked a tie that blended with the jacket." *Id.*

We do not find applicant's arguments persuasive. In fact, during the prosecution of the application, applicant stated, "We would like to point out that the marks (sic) Crush and Blend are descriptive of only one of the goods (blenders). The application covers also other product, food processors (sic)." Applicant's response, dated April 7, 2006.

Here, applicant has effectively conceded that the mark merely describes one of the products in the identification of goods. We must affirm a refusal if the mark is merely descriptive of any of the goods in the identification of goods. *In re Canron, Inc.*, 219 USPQ 820, 821 (TTAB 1983).

Furthermore, the Examining Attorney has provided evidence which shows that CRUSH & BLEND is merely descriptive, not only of blenders, but also of food processors. In both instances, the mark refers to two features or functions of the goods. Both blenders and food processors crush and/or blend ingredients.

For example, an item from the philips.com web page entitled "Compare Selected Products" states, "Food processors are real hard workers... All kinds of foods can be chopped and blended by food processors... Food processors

can do lots of things. They can crush ice, knead dough, cut up herbs." Examining Attorney's Office Action No. 2, Attachment. The *Spokane Spokesman-Review*, dated June 28, 2006, includes a recipe which states, "Put all the ingredients in an electric blender or food processor and blend until the ice is crushed and the liquid is frothy." Examining Attorney's Final Act, Attachment. Another article from the *Orlando Sentinel*, dated April 11, 2006, states, "Use a food processor to crush cornflakes to a fine crumb coating." *Id.* Another article from *Consumer Reports*, dated December 2005, states, "Blenders excel at crushing ice and fruit for smoothies and such." *Id.* Lastly, an excerpt from the inspiredliving.com web page discusses the Vita-Mix 5000 blender stating, "The powerful motor enables Vita-Mix to chop six cups of ice cubes in just a few seconds. Vegetables, fruits, hard ice cubes, blend fast and completely, with no residue. Crushes a half-gallon of ice cream in just 3 seconds." *Id.*

This evidence establishes that both blenders and food processors function to "crush" and "blend" ingredients. The identification of goods itself, which identifies two of the three items of goods as "blenders," lends further confirmation that "BLEND" is merely descriptive of the identified goods.

The fact that the terms which make up the mark may have a different meaning in a different context, for example in the clothing realm, is not relevant here. We must determine whether the terms in the mark are merely descriptive, not in the abstract, but in relation to the goods identified in this application. *In re Bright-Crest, Ltd.*, 204 USPQ at 593.

Furthermore, we find nothing in the combination of the terms "CRUSH" and "BLEND" which is new and unique. The combination is the mere sum of the parts which merely describes two functions of the goods. *In re Tower Tech, Inc.*, 64 USPQ2d at 1317.

Finally, based on the evidence of record we conclude that CRUSH & BLEND is merely descriptive of "electric food blenders, electric food processors, and electric food blenders for making smoothies."

II. The Requirement for Information

In the second office action the Examining Attorney formally required applicant to submit "... samples of advertisements or promotional materials for the goods or services, or if unavailable, for goods or services of the same type." The requirement further stated, "If such materials on the specific goods described in the application are not available, the applicant must describe

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the nature, purpose, prospective purchasers, and channels of trade of the goods identified in the application.”

Examining Attorney's Office Action No. 2. The Examining Attorney explained further that failure to comply with this requirement was grounds for refusal. *Id.*

Applicant did not respond to this requirement in its response to this Office Action 2. The Examining Attorney made the requirement final in the subsequent Final Office Action. Applicant has not addressed this requirement in its brief. In the absence of any response or explanation related to this requirement, we affirm the refusal on the additional ground that applicant failed to comply with the requirement. *See In re DTI Partnership, L.L.P.*, 67 USPQ2d 1699, 1701 (TTAB 2003).

Decision: The refusal to register on the ground that the mark is merely descriptive under Trademark Act Section 2(e)(1) and on the ground that applicant failed to comply with the Examining Attorney's requirement under 37 C.F.R. § 2.61(b) is affirmed.