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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Homeland Security Strategies, Inc.

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Serial No. 78590586

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Brian Gibbons for Homeland Security Strategies, Inc.

William H. Dawe, III, Trademark Examining Attorney, Law  
Office 108 (Andrew Lawrence, Managing Attorney).

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Before Walters, Holtzman and Wellington, Administrative  
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Homeland Security Strategies, Inc. has filed an  
application to register the mark BOMBJAMMER (in standard  
character format) for goods ultimately identified as  
"instruments comprised of transmitters and other electronic  
devices for use as countermeasures against radio-linked  
explosives" in International Class 9.<sup>1</sup>

The application was initially filed for registration  
on the Principal Register under Section 1(b) alleging an

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<sup>1</sup> Application Serial No. 78590586, filed October 31, 2002.

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intention to use the mark in commerce. Registration was refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the mark is merely descriptive of applicant's goods. After the descriptiveness refusal was made "final," applicant filed an allegation of use and requested to amend the application to seek registration on the Supplemental Register. The examining attorney accepted the amendment to allege use, but refused amendment to the Supplemental Register for the mark under Section 23 of the Trademark Act, 15 U.S.C. § 1091, on the ground that it is incapable of identifying applicant's goods because it is generic.

When the genericness refusal was made final, the Board resumed the appeal, which has been fully briefed.

As a preliminary matter, we note that the examining attorney has argued both that applicant's mark is descriptive (and thus should be refused registration on the Principal Register) and that it is generic (and thus should be refused registration on the Supplemental Register). However, although applicant initially sought registration of its mark on the Principal Register, it clearly and unequivocally amended the application to seek registration on the Supplemental Register. In addition, applicant only addresses the issue of genericness in its appeal brief. In

view thereof, the only issue we must determine on appeal is whether applicant's mark is generic for the identified goods.

To be registrable on the Supplemental Register, the matter sought to be registered must be "capable of distinguishing applicant's goods or services." Trademark Act Section 23(a), 23(c). "Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold. They are by definition incapable of indicating a particular source of the goods or services." *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (citations omitted). Because they are incapable of identifying source, generic terms are not registrable on the Supplemental Register.

When a proposed mark is refused registration as generic, the examining attorney has the burden of proving genericness by "clear evidence" thereof. See *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); see also *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987). The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods or services in question.

*H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *Ginn, supra*, 228 USPQ at 530.

In this case, the genus of goods is adequately defined by applicant's identification of goods, namely, "instruments comprised of transmitters and other electronic devices for use as countermeasures against radio-linked explosives." Applicant also offers that the "proper genus of its products are 'IED [improvised explosive devices] jamming devices" or "RF [radio frequency] jamming devices."

The next question we must address is whether the relevant purchasers for applicant's identified goods would understand BOMBJAMMER to primarily refer to the genus. As to the evidence of the public's understanding of a term, this may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. See *Merrill Lynch, supra*, 4 USPQ2d at 1143 (Fed. Cir. 1987), and *In re*

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*Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

We find that the examining attorney has submitted clear evidence that the relevant purchasing public would understand that BOMBJAMMER primarily refers to instruments for use as countermeasures against radio-linked explosives or IED jamming devices. Specifically, the examining attorney submitted dictionary definitions for the terms "BOMB" and "JAMMER":

Bomb: An explosive weapon detonated by impact, proximity to an object, a timing mechanism, or other means;

and

Jammer Electronics. To interfere with or prevent the clear reception of (broadcast signals) by electronic means.

Both definitions taken from *The American Heritage<sup>®</sup> Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company.

The examining attorney also submitted several article excerpts from the LexisNexis database showing usage of the phrase "bomb jammer" (or those individual terms in proximity to one another) in connection with the identified genus of goods. These excerpts include (emphasis added)<sup>2</sup>:

Much of the money added by lawmakers would be spent on equipment to safeguard troops, from armored Humvees to helicopters, **bomb jammers** to

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<sup>2</sup> Attached to Office action dated May 19, 2006.

ammunition... (Defense News and Army Times Publishing Co., May 10, 2004);

...by developing top level security and countermeasure equipment, from advanced voice logging and management systems to voice & data interceptor and **bomb jammers**. It also disseminates knowledge and expertise via... (Business Wire, Inc., May 3, 2004);

Terrorism is a recurring theme at this year's exhibit, with several inventions addressing both prevention and intervention, including various **bomb jammers**, a portable explosive detector, ... (Associated Press Worldstream, March 31, 2004);

HSRC also suggested that anti-wireless remote control detonation triggers - or **bomb jammers** - could block bomb activation by cell phone or radio, although they might also interfere with passengers cell phone use... (Aviation Weeks Homeland Security & Defense, March 24, 2004);

For ambassadors, oil executives, heads of state and, increasingly, U.S. Troops, the list of essential security gear now includes a **bomb jammer**. New models small enough to fit into a briefcase or a back pack... (Defense News and Army Times Publishing Co., March 22, 2004);

...to design and assemble equipment that will protect military forces with a **jammer** to prevent **bombs** from being triggered remotely by cell phones, bringing... (Business Wire, May 1, 2004); and

...the Army only had a small ordinance disposal **jammers** that needed to be placed next to a **bomb** to work...we didn't have a requirement for **jammers**... (Inside the Army, April 26, 2004).

The examining attorney also submitted printouts from several third-party websites showing use of the "bomb jammer" in connection with a device used to jam wireless-

controlled explosives or bombs.<sup>3</sup> Applicant has taken exception to the examining attorney's reliance upon several of these websites for several reasons, such as the websites constitute foreign sources or the websites actually show use of applicant's mark via a licensee or they contain "quotes [from] Applicant's president." Notwithstanding these objections, we find several of the third-party websites to be relevant and persuasive in showing that the term "bomb jammer" is used a generic fashion in connection with devices used for jamming radio-controlled (or activated) explosives.

One website (www.lexdon.com), in describing the FOSE 2006 fair, makes several references to a "bomb jammer-equipped Hummer" vehicle (emphasis added):

Meganet Corporation of Los Angeles, California will present their **bomb jammer** VME Terminator H2 mounted on a Hummer. Improvised Explosive Devices (IEDs) claim casualties in Iraq every day, and the VME Terminator H2 high-power vehicle-mounted broadband **bomb jammer** puts IEDs out of commission. This website shows that the company, Meganet Corporation, produces a "VME Terminator H2" device that is being described generically as a "bomb jammer."

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<sup>3</sup> Attached to Office actions dated January 5 and August 3, 2007.

Another "Gadget Guide" website ([www.gizmodo.com](http://www.gizmodo.com)) describes a "Cellphone Bomb Jammer," that may be used in Iraq to defend against IED's. The lead-in paragraph on the website reads (emphasis added):

The world may never know if there are or aren't cell-phone **bomb jammers** out there, but DefenseTech has stumbled on a patent that may shed light on the subject.

Applicant has objected to any reliance on this website because "the product clearly does not exist" (Request for Reconsideration, p. 3). This objection is not well-taken. Regardless of whether the product being discussed in the website is in existence, the website indicates that products of this type are referred to generically as "bomb jammers."

In one other website, Smiths Detection, ([www.worldsecurity-index.com](http://www.worldsecurity-index.com)), a wide variety of security-related equipment is listed in categories. The list is: "Access Control, Alarms, ...Bomb Jammers, ...Camouflage, ...Vehicle Barriers."

Applicant argues that "there are certainly other terms available for use by [applicant's] competitors, and there exist many companies using many terms for the genus of these products other than "bombjammers." Brief, p. 4. In this regard, applicant provided a

list of such companies in its brief and attached copies of websites and "other supporting materials."<sup>4</sup>

A review of the materials submitted by applicant reveals that the companies identified by applicant often reference their products generically as "jammers" or "rf jammers." And, in at least one example given by applicant, the products are described as having been "converted...into dedicated, traveling **bomb jammers** implementing the most effective and reliable jamming technology available anywhere."<sup>5</sup> (emphasis supplied). Thus, even the evidence provided by applicant demonstrates that the generic term for applicant's goods is "bomb jammers." Moreover, contrary to the thrust of applicant's argument, the examining attorney need not establish that "bomb jammer" is the sole or most frequently used generic term for applicant's goods; rather, he need only show that such term is a generic term. The fact that other generic terms, e.g., jammers, rf jammers, IED jammers, etc., may also be used to reference the genus of

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<sup>4</sup> The website evidence and other materials attached to applicant's brief were previously submitted with its request for reconsideration (filed on February 4, 2008), and thus were timely submitted.

<sup>5</sup> Printout from [www.sesp.com](http://www.sesp.com) describing products sold under a JAMX trademark.

applicant's goods is immaterial. It is settled in this regard that (*italics in original*):

[A] product [or service] may have more than one generically descriptive name. ... *All* of the generic names for a product [or service] belong in the public domain.

*In re Sun Oil Co.*, 426 F.2d 401, 165 USPQ 718, 719 (CCPA 1970) (Rich, J., concurring). See also, *Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc.*, 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962) ("there is no legal foundation ... that a product has only one [generic or] common descriptive name"); *In re Eddie Z's Blinds & Drapery Inc.*, 74 USPQ2d 1037, 1042 (TTAB 2005) ("that there may be other generic terms that are functionally equivalent to [the term at issue] ... does not make that term any less generic").

As noted above, the evidentiary burden of establishing whether a term is generic rests with the Office and the showing must be based on clear evidence. Here, the evidence of record establishes that products which interfere with or jam radio signals for the purpose of preventing the detonation of radio-controlled explosives are called "bomb jammers." The examining attorney has therefore established a prima facie showing that applicant's

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proposed mark BOMBJAMMER is generic for applicant's goods, and this has not been rebutted by applicant.

**Decision:** The refusal to register BOMBJAMMER in application Serial No. 78590586 on the Supplemental Register based on genericness under Section 23 is affirmed.