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December 6, 2007

This Opinion is Not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Coding Technologies GmbH
v.
American Audio Components Inc.

Opposition No. 91156766
to application Serial No. 76028493
filed on April 17, 2000

Michael K. Hendershot, Joseph V. Norvell and Jennifer A. Prioleau of Brinks Hofer Gilson & Lione for Coding Technologies GmbH.

Richard M. Johnson of The Johnson IP Group for American Audio Components Inc.

Before Rogers, Drost and Walsh,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

American Audio Components Inc. (applicant) seeks registration of the mark AAC in typed form¹ for goods identified as "audio products and parts therefor, namely, speakers, dynamic handset receivers that convert electronic

¹ Subsequent to the filing of this application, the Office has begun referring to marks without claim to a particular font or stylization as marks in "standard character form."

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signals into sound, electric buzzers, piezo buzzers containing a piezoelectric ceramic element, electro-magnetic transducers that convert magnetic energy into sound, and microphones." The application is based on applicant's claim of use of the mark in commerce, with January 1997 asserted as the date of first use and first use of the mark in commerce.

Opposer's Claims

Coding Technologies GmbH (opposer) opposes issuance of a registration to applicant on various grounds. In its main brief on the case, opposer asserts that this case involves the questions of whether applicant's mark is unregistrable as a descriptive term, a deceptively misdescriptive term, or as a generic term. Brief, pp. 6-8. Applicant does not dispute that opposer has pleaded alternative claims of descriptiveness and genericness, but applicant does dispute the contention that the notice of opposition includes a claim of deceptive misdescriptiveness. Brief, p. 32. Opposer, although maintaining that its reference to Section 2(e)(1) of the Trademark Act in its notice of opposition was sufficient to plead a claim of deceptive misdescriptiveness, moved to "amplify allegations already included in" the original notice of opposition and proffered an amended pleading. Reply brief, p. 18; motion to amend notice of opposition, p. 3. However, in an order issued after the

parties had briefed the case but prior to oral arguments, the Board interlocutory attorney denied opposer's motion to amend the notice of opposition to the extent it was based on Fed. R. Civ. P. 15(a). That order left to disposition at final hearing any question of amendment under Fed. R. Civ. P. 15(b) due to trial of unpleaded claims by the express or implied consent of the parties. Further, that order did not specifically address opposer's contention that no amendment was necessary because the original notice of opposition specifically referenced Section 2(e)(1), which provides for refusal of registration of a proposed mark which is "merely descriptive or deceptively misdescriptive." Reply brief, p. 18, motion to amend, p. 3. We now address both these issues.

In essence, opposer is contending that it pleaded a claim of deceptive misdescriptiveness merely by referencing the section of the Trademark Act that provides for refusing registration of a mark on that basis, even though that section provides two alternative bases for refusal. Opposer, however, cites no authority in support of the contention. Moreover, there are numerous examples illustrating that citation to a section of the statute, although encouraged and often helpful in clarifying the nature of a set of allegations in a pleading, may not be sufficient to plead a claim under that section or place a

defendant on proper notice of the extent of the claim. For example, although the Trademark Act provides that dilution under Section 43(c) may be asserted as a claim in a Board proceeding, mere reference to that section of the Trademark Act is insufficient to plead a dilution claim, as proper pleading of the claim also requires an allegation as to when the claimant's mark became famous. See *Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540, 1542 (TTAB 2001). Also, Section 2(a) of the Trademark Act encompasses numerous possible claims and mere reference to the section would not constitute a sufficient pleading. Cf. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1214 (TTAB 2006) (Board construed pleading as intended to set forth one or more claims under Section 2(a) but could not "discern any properly pleaded claim"). In addition, in cases brought under Section 2(d), the plaintiff must specifically plead any registrations on which it is relying and may not rely at trial on unpleaded registrations. See, e.g., *B.V.D. Licensing Corp. v. Rodriguez*, 83 USPQ2d 1500, 1503 (TTAB 2007) ("In its brief, opposer listed a seventh registration, but it was not pleaded and a copy was not made of record by notice of reliance (NOR) or through testimony, so it has not been considered.").

In the case at hand, opposer's pleading of a claim under Section 2(e)(1) was only sufficient to put applicant

on notice that opposer would pursue claims of descriptiveness and genericness. See notice of opposition, ¶ 10 ("The term AAC ... is merely descriptive or generic under Section 2(e)(1) of the Trademark Act ..."). The notice of opposition provided no notice to applicant that deceptive misdescriptiveness would be pursued at trial. Further, while the distinction between descriptiveness and genericness is often a matter of degree², the distinction between descriptiveness and deceptive misdescriptiveness is that the two claims involve proof of contrary facts (description and misdescription) and the latter claim also requires proof of an additional element. Specifically, proof of deceptive misdescriptiveness requires evidence that consumers would believe a misdescription. Thus, a pleading that adequately puts a defendant on notice that alternative claims differing only in degree may be pursued is very different from a pleading that puts a defendant on notice that alternative claims involving contrary proofs and differing elements may be pursued. Accordingly, we do not find opposer's reliance in its notice of opposition on Section 2(e)(1) of the Trademark Act to involve an alternative pleading of deceptive misdescriptiveness.

² *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986) ("The generic name of a thing is in fact the ultimate in descriptiveness.").

We also do not find deceptive misdescriptiveness to have been tried by express or implied consent of the parties and therefore do not find the pleadings to have been amended under Fed. R. Civ. P. 15(b). At a minimum, amendment of the notice of opposition under Rule 15(b) would require trial of the claim opposer would have us deem the pleadings amended to reflect. As noted, however, one element of the claim of deceptive misdescriptiveness is proof that consumers would believe a misdescription. Opposer has offered no evidence to provide such proof, and therefore has not tried the claim. Further, we do not find opposer's activities at trial to have included any indication to applicant that deceptive misdescriptiveness was being tried as a claim. We consider, therefore, only whether opposer has proven AAC to be either descriptive or generic.

The Record and Objections to Evidence

The record developed at trial includes a testimony deposition from each party and two notices of reliance filed by opposer, one during its main testimony period and one during rebuttal.

Opposer took the testimony deposition of Tracey L. Giertz (Giertz dep.), a paralegal in the law firm of opposer's counsel. The testimony was used to introduce 36 exhibits consisting of articles or web pages "relating to the term AAC used in connection with the audio industry

and/or the term advanced audio coding." Giertz dep. pp. 9-10. The testimony is somewhat unclear as to the particular search terms used by the witness to obtain the exhibits (compare Giertz dep. pp. 149-51, 215, and 217-18) but the witness did not search for use of AAC outside the audio industry. Giertz dep. p. 218.

Applicant's counsel objected to every exhibit except web page reprints from applicant's web site (Giertz exh. 30).³ In its brief, applicant maintained these objections insofar as it asserts that we "should evaluate the inadmissibility of these documents surgically in accordance with the Rules of Evidence and the Rules of this Board." Brief p. 15. Applicant also appears to argue that because the Giertz exhibits, as well as all other documents introduced by opposer's two notices of reliance, have been impermissibly relied on by opposer for the truth of the matters asserted in the documents, none of them should be considered at all and opposer's case should be dismissed as unsupported by evidence. Brief, pp. 15-16 and 20-21. In

³ Counsel for applicant declined requests from counsel for opposer to make a running objection to all the exhibits and insisted on objecting to each as it was introduced. Similarly, counsel for opposer declined a request from counsel for applicant to have the witness provide general testimony about the search for the exhibits, as opposed to detailing each step in searching for and printing out each exhibit. Under circumstances such as these, the Board would have preferred that opposer take such general testimony and applicant make a running objection. Such an approach would have been more efficient and less costly to the parties.

addition, applicant argues that all documents introduced by opposer "were obviously obtainable" prior to trial and should have been produced in response to applicant's discovery requests or in supplemental responses to those requests. Thus, for this reason, too, applicant asserts that all of opposer's documents should be excluded. Brief, p. 17. Finally, applicant argues that certain documents introduced by opposer's main notice of reliance (exhibits 31 and 33-36) are not the types of documents that may be submitted by notice of reliance and should not be considered. Brief, pp. 21-22. Applicant argues in the alternative that if we consider any of opposer's documents, our consideration should be limited to what these documents show on their face and that they not be considered as establishing the truth of the matters stated therein. Brief, pp. 18-20.

We reject applicant's exhortation to surgically probe each document submitted by opposer. Such an approach to the consideration of evidence is unwarranted by the claims and facts of this case, and, in any event, is to be avoided by the Board. See *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1104 (TTAB 2007) ("Thus, we see no compelling reason to painstakingly go through all of the objections one by one except insofar as they relate to the outcome determinative testimony and evidence.") See also, *West*

Florida Seafood Inc. v. Jet Restaurants Inc., 31 F.3d 1122,
31 USPQ2d 1660, 1663 (Fed. Cir. 1994):

However, whether a particular piece of evidence by itself establishes prior use is not necessarily dispositive as to whether a party has established prior use by a preponderance. Rather, one should look at the evidence as a whole, as if each piece of evidence were part of a puzzle which, when fitted together, establishes prior use. The TTAB failed to appreciate this. Instead, the TTAB dissected the evidence to the point that it refused to recognize, or at least it overlooked, the clear interrelationships existing between the several pieces of evidence submitted.

Applicant's objection to all of opposer's documents on the ground that they "were obviously obtainable" during discovery but not secured and produced is overruled. See *Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1500 (TTAB 2005).⁴ We also overrule applicant's more specific objection to exhibits 31 and 33-36 to opposer's notice of reliance. We agree with opposer's contention that these exhibits would be available to the segment of the public that is relevant to this proceeding. That public, construing it broadly, would include audio engineers and technicians and other professionals that deal with computerized or digital audio compression technologies

⁴ We add that under new Trademark Rules that will become effective for Board cases filed on or after November 1, 2007, though a party will have to make pretrial disclosures about the witnesses it plans to call and provide general summaries of the subjects of expected testimony and types of exhibits to be introduced, the Board will not require a detailed listing of exhibits in advance of trial and will not require any pre-trial

for manufacturers of products or devices that include such technology. Based on the record in this case, discussed in more detail infra, and based on applicant's identification of goods, the products applicant sells under its mark are sold to, among others, such manufacturers. The probative value of this evidence is another matter entirely and is discussed infra. We note, however, that lengthy technical papers presented at conferences or offered by subscription from abroad, including these five exhibits, may be much less widely disseminated among the relevant public than articles appearing in other publications. The Board is entirely capable of considering such circumstances in the weighing of evidence.

Turning to the question of whether opposer relies on the documents introduced into evidence by the Giertz testimony and its notices of reliance for the truth of the statements contained in the documents, we agree with opposer's characterization of the documents as offered to show that members of the relevant public either use AAC as an initialism meaning Advanced Audio Coding or are routinely exposed to articles and publications which employ such use. Indeed, applicant has admitted that the documents at least show that "some persons define the letters 'AAC' as meaning 'advanced audio coding' or 'advanced audio compression' and

disclosure of plans to file notices of reliance. Current rules

that some products," not including those identified in applicant's application, "utilize compression technology."⁵ We have considered the documents for what they show on their face.

As for opposer's objections to evidence, it has maintained only one in its brief. We sustain opposer's objection to the introduction of exhibit 8 to the testimony deposition of Wilfredo Maglonso (Maglonso dep.), an engineer who is involved in testing of applicant's products. This draft proposed settlement agreement should not have been offered by applicant during the deposition of its witness. Apart from this exhibit, we have considered the entire testimony of applicant's witness. However, we have not found the testimony particularly helpful. Applicant presented a witness who had difficulty understanding and responding to questions. "I don't know," "I'm not sure" and "Maybe" were frequent responses. The essence of the testimony of this witness was that applicant uses AAC on its identified products or packaging therefor because those are the initials of applicant's company name, that these products do not employ AAC technology, and AAC, as a

applicable to this case certainly do not require this.

⁵ During the Giertz deposition, counsel for applicant regularly objected to the documents being introduced as irrelevant because they did not show use of AAC in conjunction with the products identified in applicant's involved application. Applicant did not maintain this objection in its brief. In any event, we find the documents relevant, even if not particularly probative.

designation of such technology, does not describe in any way applicant's products.⁶

Before considering what the record shows in regard to the claims in this case, we add to the record the following definition from the Barron's Business Guides Dictionary of Computer and Internet Terms (9th ed. 2006) (boldface and italics in original): "**AAC** **Advanced Audio Coding**, an audio compression format newer and more efficient than MP3. See www.mpeg.org/MPEG/aac.html." ⁷ Consistent with this definition is the following from Webopedia.com (www.webopedia.com/TERM/A/AAC.html) (italics and underscoring in original):

Short for *Advanced Audio Coding*, one of the audio compression formats defined by the MPEG-2 standard. AAC is sometimes referred to as MPEG-2 NBC (not backwards compatible) because it is not compatible with the MPEG-1 coding scheme. AAC boasts higher quality audio reproduction than MP3 and requires 30% less data to do so.⁸

⁶ Though counsel for applicant failed to establish that the witness actually understood the difference between AAC and other forms of audio compression technology, and on cross-examination it became clear the witness did not understand the differences, we find the witness to have understood the general concept of audio compression technology and find his testimony to be, in effect, that applicant's products do not employ such technology.

⁷ The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *B.V.D. Licensing Corp. v. Rodriguez*, 83 USPQ2d 1500, 1505 n. 15 (TTAB 2007).

⁸ A reprint of the Webopedia definition was attached to opposer's notice of opposition and became part of the evidentiary record when applicant introduced the notice and its attachments as an exhibit to the Maglonso testimony deposition.

Genericness of AAC

In determining whether the primary significance of a term is generic, our primary reviewing court has stated:

...[D]etermining whether a mark is generic ... 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?

H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). See also *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999). The critical issue in genericness cases is, therefore, whether members of the relevant public primarily use or understand the term sought to be registered to refer to the genus or category of goods in question. *In re Montrachet S.A.*, 878 F.2d 375, 11 USPQ2d 1393, 1394 (Fed. Cir. 1989); *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); *Dan Robbins & Assocs., Inc. v. Questor Corp.*, 599 F.2d 1009, 202 USPQ 100, 105 (CCPA 1979); *Zimmerman V. National Assn. of Realtors, Inc.*, 70 USPQ2d 1425 (TTAB 2004).

Evidence of the public's understanding of a particular term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, listings in

dictionaries, trade journals, newspapers, and other publications. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *In re Merrill, Lynch*, supra; and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961 (Fed. Cir. 1985).

On the record present in this case, there can be no question that AAC is just as generic as the full phrase Advanced Audio Coding for an audio compression technology.⁹ On the other hand, opposer's evidence quite simply is not sufficient to establish that AAC is understood by the relevant public to primarily refer to the involved genus of goods. See *Eastman Kodak Co. v. Bell & Howell Document Management Products Co.*, 994 F.2d 1569, 26 USPQ2d 1912, 1918 (Fed. Cir. 1993) ("the challenger's burden of proof in both opposition and cancellation proceedings is a preponderance of the evidence") (internal citation omitted).

In some genericness cases, the specification of the genus of goods is a subject of dispute. See, e.g., *In re American Institute of Certified Public Accountants*, 65 USPQ2d 1972, 1981 (TTAB 2003). In the case at hand, we find the genus to be cogently specified by applicant's identification of goods. *In re Reed Elsevier Properties Inc.*, 77 USPQ2d 1649, 1654 (TTAB 2005) ("we consider applicant's identification as largely defining the genus of

services involved in this case"), aff'd 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007). We disagree with opposer's contention that the genus of goods involved in this case is specified by the more general and, we find, vague term "audio products."¹⁰ At most, we might consider the genus to be a bit broader than the identification and to also encompass electric, electronic or electro-magnetic audio products similar to those listed in the identification. We would not, however, consider the relevant genus of goods to include audio compression technologies employed in computerized devices, or to include components of those devices that employ such digital technology.

While we disagree with opposer's contention as to the genus of the involved goods, we agree with its contention that the relevant public includes manufacturers, distributors and consumers of the type of audio products identified in applicant's application. We also agree with opposer that under the case law a term may be generic even if it is not the name of a product, so long as it generic for a key ingredient, characteristic or feature of the goods, in other words a generic adjective rather than a

⁹ It is unnecessary to the resolution of this case to delve into the particulars of that technology.

¹⁰ See, e.g., opposer's argument at p. 43 of its brief that focuses only on the presence of the words "audio products" and "parts therefor" in applicant's identification. We cannot ignore, as opposer has, the qualifying word "namely" followed by

generic noun. See authorities collected in Opposer's Brief, p. 45. However, the record in this case does not support opposer's conclusion that the relevant public would perceive AAC as a generic adjective identifying a key ingredient, characteristic or feature of applicant's goods. There is nothing in the record that indicates that applicant's electronic or electro-magnetic goods utilize AAC technology or any audio compression technology, or even that compatibility of applicant's goods with such technology is an issue of concern for manufacturers of audio devices such as digital music players, cell phones, computers or other similar products that may utilize both the component parts produced by applicant and employ AAC technology.

Opposer likens this case to that of *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988)¹¹, wherein the Board found the term ANALOG DEVICES generic for "at least some of the goods" in the applicant's lengthy identification, including, for example, "analog to digital and digital to analog converters, analog computational circuits and analog multipliers/dividers." *Id.* at 1810. Opposer notes, in making this argument, that the instant applicant's identification includes "dynamic handset receivers that

a listing of specific items. The list largely defines the genus, not the more general words used to introduce the list.

¹¹ Affirmed at 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (not a citable decision).

convert electronic signals into sound" and asserts: "Just as ANALOG DEVICES is generic for converters utilizing analog technologies, AAC is generic for a converter capable of using, or being used as part of or in connection with, the latest electronic audio technologies." Brief, p. 45.

Opposer's analogy fails, however, because it has put nothing in the record to show that even this item in applicant's identification of goods would be expected by the relevant public to employ AAC technology. Nor is it sufficient to show that applicant's goods and other components that do use the technology might be incorporated by, for example, a cell phone manufacturer in a finished product.

We dismiss the opposition insofar as it asserts a claim that AAC is generic for one or more items in the involved application.

Descriptiveness of AAC

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 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 or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use or intended use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

Finally, we note that a mark need not describe all of the goods or services for which registration is sought. Registration must be refused if the mark is merely

descriptive of any of the goods or services for which registration is sought. See *In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980), *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998).

In cases involving claims that initials are descriptive, such as the case at hand, it must be shown not only that the initials represent words that are descriptive, but also the initials themselves "have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith." *Modern Optics, Inc. v. Univis Lens Co.*, 234 F.2d 504, 110 USPQ 293, 295 (CCPA 1956). See also, *Racine Industries Inc. v. Bane-Clene Corp.*, 35 USPQ2d 1832 (TTAB 1995). In the case at hand, although defendant's witness has testified that AAC is used by applicant as a mark because it represents the words American Audio Components, opposer does not claim that AAC is descriptive because it would be perceived as substantially synonymous with those words. Rather, as discussed in our consideration of opposer's genericness claim, opposer claims that AAC would be seen as substantially synonymous with the words Advanced Audio Coding. We agree with opposer that the record supports such a contention. However, for largely the same reasons we have discussed in our evaluation of opposer's claim of

genericness, particularly insofar as opposer argued that AAC should be refused registration as, essentially, a generic adjective, we find that opposer has failed to carry its burden as plaintiff in this proceeding and shown by a preponderance of the evidence that AAC would be perceived as descriptive of any of the goods identified in the application.

We do not doubt that many, if not most, individuals in the audio products industry would think of an audio compression technology when confronted with AAC in the abstract. Likewise, many individuals in other industries that may utilize this technology in finished products such as computers or the audio systems of motor vehicles also would be most likely to think of the technology when confronted by AAC in the abstract. However, as already noted, the descriptiveness of a term, whether words or initials, is not analyzed by considering the term in the abstract but is analyzed by considering the term in conjunction with the identified goods.

Opposer has shown that AAC would immediately convey information about an ingredient, quality, characteristic, or feature of finished products such as cell phones, digital music players, computers and even motor vehicles with advanced audio systems, to prospective purchasers or users of such products. Opposer has not, in contrast, shown that

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AAC would immediately convey information about applicant's identified goods to prospective purchasers thereof, who are a different class of customer than prospective purchasers of the finished products listed above.

Applicant's identified products are not finished products in and of themselves. They are components used in other products. Maglonso dep. p. 8. Thus, the primary purchasers of such products would be sophisticated manufacturers of cell phones, computers, motor vehicles and other finished products. An often-repeated contention in opposer's brief is that applicant's customers "will readily understand that Applicant's goods somehow support, enhance, or are merely just compatible with the AAC technology used in Applicant's customers' products." Brief, p. 19 (emphasis added). We find no support in the record for this contention. Sophisticated purchasers would be expected to know the difference between the many component parts that they purchase to manufacture finished products. We would not expect such purchasers to purchase components on the presumption that they "somehow" would support a technology being used in the finished product in which the component would be utilized. Opposer took no testimony from any prospective purchaser of applicant's products and has repeatedly advanced mere argument about what they might be

thinking when considering a purchase of applicant's products.

While there is nothing in the record to show that applicant's products would be sold to general consumers as opposed to manufacturers of end products, we note that applicant's identification does not limit applicant's channels of trade or classes of customers. We must, therefore, consider the possibility that applicant's products could be sold at retail in outlets that sell such electronic or electro-magnetic components and that general consumers who may wish to repair or modify products they have purchased might be included among applicant's possible customers. We conclude, however, that members of the general public skilled enough to attempt repairs or modifications of such items as cell phones, computers or car audio systems and would know how and where to find component parts they would need, would also be sophisticated purchasers. They would be no more likely than manufacturers to purchase applicant's products on the mere thought that they "somehow" would enhance or support a particular audio compression technology. Certainly, there is no evidence that they would.

Decision

The record is clear that AAC is a generic and descriptive term when used in connection with audio

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compression technology and devices employing the technology. Limited, however, to use in connection with applicant's list of electronic or electro-magnetic component parts, it has not been shown to be either generic or descriptive. The opposition is dismissed.