



TTAB Affirms USPTO's Refusal of 'Deceptively Misdescriptive' Applications for the Word 'Clear'

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This article explores a recent Trademark Trial and Appeal Board (TTAB) ruling that illustrates how identifying a deceptively misdescriptive mark is not always clear and offers guidance to applicants attempting to overcome descriptiveness refusals.

In July 2019, Dolce Vita Footwear Inc. (Dolce Vita) filed two trademark applications with the US Patent and Trademark Office (USPTO) for its mark 'CLEAR,' which covers footwear, apparel, bags and accessories. The USPTO refused to register both applications based on the fact that the proposed mark was merely descriptive of the identified goods, relying on the definition of 'clear' as "easily seen through; transparent."

In April 2021, the TTAB issued two precedential rulings that upheld the USPTO's refusal of both of Dolce Vita's applications as too "deceptively misdescriptive" to be registered under the Trademark Act. First, the TTAB found that by restricting its identification of goods to non-transparent or non-clear goods, Dolce Vita had sufficiently shown that its 'CLEAR' mark misdescribed a feature of the goods, since the applications covered items that did not possess the characteristic of being 'clear.' Furthermore, the TTAB rejected Dolce Vita's argument that its 'CLEAR' mark did not describe a plausible feature of its goods.

Second, the TTAB held that not all consumers would have been able to visually inspect Dolce Vita's goods before purchasing them and that Dolce Vita likely engaged in pre-sale discussion and promotion that deceived consumers.

[TTAB affirms USPTO's refusal of 'deceptively misdescriptive' applications for the word 'clear.'](#)

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