

The trademark APPESTAT is not merely descriptive.

The Trademark Examiner has refused registration of the mark APPESTAT under Section 2(e)(1) citing one dictionary listing and two websites that have used the term.

The evidence of the definition is incorrect as the true definition of the term is a hypothetical region in the hypothalamus that may control appetite. See attached dictionary.com and Merriam-Webster definitions. The term is not well known and is not commonly used in the field as it has not been proven to exist.

Further, the evidence submitted of use is insufficient as both webpages are old and neither of the products is available currently. The David Kirsch Wellness page shows all products out of stock and the latest post to the page was almost two years ago. (See attached evidence.) Further and more importantly, this page uses the mark in a trademark sense.

The Watkins Health page is dated 2001 and a search of the current website reveals no such product (TheraTrim) and no use of the term APPESTAT anywhere on the website (see attached evidence). Further, and again more importantly, the page provided as evidence also uses the term in a trademark manner.

The term is not merely descriptive since it is a double entendre. It is meant to make the consumer think that it can help consumers stop (as in static) their appetites. This is opposed to the use of “stat” as in thermostat that refers to a hypothetical brain regulator of appetite.

Neither of these usages is obvious at first glance as both terms are abbreviations and consumers are required to take a mental step to arrive at them. This is the classic situation of a suggestive mark. *In re Paul Leonhardt*, 109 U.S.P.Q.2d 2091, 1098, 2008 (T.T.A.B. 2008) (“A mark encompassing a double entendre will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the involved goods or services.”) *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 U.S.P.Q. 382 (C.C.P.A. 1968). See also *In re National Tea Co.*, 144 U.S.P.Q. 286, 1965 (T.T.A.B. 1965) (NO BONES ABOUT IT was not descriptive of fresh pre-cooked ham, noting the “double connotation.”); *Sweetarts v. Sunline, Inc.*, 380 F.2d 923, 154 U.S.P.Q. 459 (8th Cir. 1967) (SWEETARTS candy held nondescriptive); *In re Delaware Punch Company*, 186 U.S.P.Q. 63, 1975 WL 20822 (T.T.A.B. 1975) (THE SOFT PUNCH for non-alcoholic soft drinks was not descriptive.); *In re Tea and Sympathy, Inc.*, 88 U.S.P.Q.2d 1062, 2008 WL 2515086 (T.T.A.B. 2008) (THE FARMACY for stores services selling natural herbs is not merely descriptive because it is a double entendre play on “the pharmacy” and “the farm.”).

For the above reasons, the Applicant respectfully requests that the objection to registration is withdrawn and the application be allowed to proceed to publication.