

## Tickled Pink No More

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### Federal Circuit Affirms Cancellation of CeramTec's Trademarks for Pink Ceramic Hip Implants

January 16, 2025

Color trademarks have traditionally been difficult to obtain. Of the over 4 million trademark registrations, there were less than 1000 color trademarks as of 2019.[1] To be eligible for trademark registration, a color must have acquired distinctiveness and must not be functional. Recently, the Federal Circuit examined the functional component of the analysis and explained why it presents such a hurdle to registration—particularly when a party also obtains patent protection.

On January 3, 2025, the U.S. Court of Appeals for the Federal Circuit upheld the Trademark Trial and Appeal Board (TTAB) decision canceling trademarks claiming protection for the pink color of ceramic hip components.

CeramTec, a manufacturer of ceramic components for artificial hip implants, developed zirconia toughened alumina (ZTA) containing chromia, which imparts pink color and increased hardness. This material was protected under CeramTec's U.S. Patent No. 5,830,816, which expired in January 2013. In 2012, CeramTec sought trademark protection for the pink color of its ceramic components. CoorsTek, a competitor, successfully petitioned the TTAB to cancel the trademarks, arguing that the pink color was functional.

On appeal, the Federal Circuit affirmed the TTAB decision, emphasizing that trademarks are not registrable or enforceable if the design is functional. The court analyzed the TTAB's application of the *Morton–Norwich* factors to determine functionality:

1. the existence of a utility patent disclosing the utilitarian advantages of the design;
2. advertising materials in which the originator of the design touts the design's utilitarian advantages;
3. the availability to competitors of functionally equivalent designs; and
4. facts indicating that the design results in a comparatively simple or cheap method of manufacturing the product.

***CeramTec GmbH v. Coorstek Bioceramics LLC***, No. 2023-1502, 2025 WL 29252 (Fed. Cir. Jan. 3, 2025).

The court also considered *TraFFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23 (2001), which establishes that utility patents are strong evidence of functionality. The Federal Circuit noted that the functionality doctrine ensures the public is free to use innovations after a patent expires.

Based on these findings, the court affirmed that CeramTec's pink trademarks are functional and therefore ineligible for protection.

If you have any questions about the impact of these changes, please contact your Miller Canfield attorney or the authors of this alert.

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[1] Wang, Xiaoren, Should We Worry about Color Depletion? An Empirical Study of USPTO Single-color Trademark Registrations (January 18, 2022). Available at SSRN: <https://ssrn.com/abstract=4011677> or <http://dx.doi.org/10.2139/ssrn.4011677>