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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Travelpro International, Inc.

Serial No. 76/030,904

Jennifer P. Rabin of Akerman, Senterfitt & Eidson for
Travelpro International, Inc.

Curtis French, Trademark Examining Attorney, Law Office 115
(Thomas Vlcek, Managing Attorney).

Before Simms, Rogers and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

Travelpro International, Inc. (applicant) filed a
trademark application to register the mark FLIGHT CREW (in
typed form) on the Principal Register for "luggage" in
International Class 18.¹

¹ Serial No. 76/030,904, filed April 19, 2000, based on an
assertion of a bona fide intent to use the mark in commerce. An
amendment to allege use was filed on August 16, 2002, claiming
first use dates of November 30, 2000.

The examining attorney refused to register the mark on the ground that the mark, when used in association with the goods, is merely descriptive. 15 U.S.C. § 1052(e)(1). After the examining attorney made the refusal final, this appeal followed. Both applicant and the examining attorney have filed briefs.

We affirm.

Preliminarily, we must address a procedural matter. The examining attorney objected to Exhibit J submitted with applicant's appeal brief, consisting of TESS print-outs of Registration No. 2,393,632 and Application Serial No. 76/178,624, as being untimely. Examining Attorney's Br. at 2. The examining attorney correctly pointed out that the evidentiary record in an application should be complete prior to the filing of an ex parte appeal to the Board. Additional evidence filed after appeal normally will be given no consideration by the Board. See Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); see also In re Juleigh Jeans Sportswear, Inc., 24 USPQ2d 1694, 1696 (TTAB 1992); In re Pennzoil Products Co., 20 USPQ2d 1753, 1756 n. 9 (TTAB 1991).

Because the TESS print-out of Application Serial No. 76/178,624 was not submitted until after the appeal was filed, the examining attorney's objection is well taken and

the TESS information regarding Application Serial No. 76/178,624 has not been considered.² As noted by applicant, however, a reprint of information on Registration No. 2,393,632, retrieved from the Office's X-SEARCH system, was already made of record by the examining attorney as an attachment to the final refusal issued on September 25, 2001. The TESS printout submitted by applicant is merely a functional equivalent of this item already of record.

This brings us to the substantive issue involved in this appeal.

The examining attorney's position is that the term "flight crew" is merely descriptive of applicant's goods, namely, a small soft-sided suitcase with built-in wheels and a long handle for pulling that has been popularized by airline flight crews and known in the relevant industry as a flight crew bag or case. Br. at 3. The examining attorney also argues that the term is descriptive of an intended class of users of the luggage, namely, flight crew members. Br. at 5.

² Applicant argues that it introduced Application Serial No. 76/178,624 to rebut what applicant asserts is the examining attorney's mistaken belief, based on an Internet printout, that applicant operates a website on which the proposed mark is used descriptively. Our opinion does not rely on this website evidence.

The examining attorney submitted copies of excerpts from seven articles retrieved from the NEXIS publication database that show use of the term "flight crew" in connection with luggage³, including the following:

A lot of people tried solving this problem by using the small airline-type luggage used by **flight crews**.

Chicago Daily Herald, May 7, 2000.

As travel picks up, so does the popularity of **flight-crew** bags those soft-sided suitcases with built-in wheels and a long handle for pulling.

Atlanta Constitution, June 27, 1996.

Here are some basic facts about **flight-crew** luggage: Size. They were designed originally to be used as carry-on luggage.

Orange County Register, March 29, 1996.

Better-equipped travelers cruise easily down the concourse pulling a **flight-crew** bag, the biggest innovation in luggage in years. Airline personnel first used these rolling suitcases; an ex-pilot designed the prototype, introduced as the Travelpro. Today, nearly every luggage manufacturer offers at least one model. **Flight-crew** bags, which can hold what you need for a three-day trip, are more mobile and versatile than their predecessors... And the information below can help you evaluate any **flight-crew** bag you see in the stores. Size. Flight-crew bags were designed originally to be used as carry-on luggage.

Consumer Reports, December 1995.

That's because ASU's primary consumers are airline **flight crews**, and the airport is a

³ Two of the excerpted articles from the NEXIS database are from foreign publications, and thus are of very limited probative value as to consumer perception of the term in the United States. See In re Urbano, 51 USPQ2d 1776, 1778 n. 3 (TTAB 1999); In re Men's International Professional Tennis Council, 1 USPQ2d 1917, 1918 (TTAB 1987).

convenient place to find them. ASU specializes in the wheeled luggage that **flight crews** have used for years and which more of us are buying. Small wonder that wheeled luggage is so popular. *Houston Chronicle*, October 24, 1995.

In addition, the examining attorney submitted several excerpts from Internet web sites that allegedly showed use of the term in a descriptive manner⁴, including the following:

C-130 **Flight Crew Bag** (Military Flight Crews) ...
Especially made for Military Flight Crews"
www.cencal.com - Cencal Aviation Products
[advertising a product identified as "flight crew bag" for military flight crews].

The story I've seen in Travelpro's ads is that the inventor of the Rollaboard is a former airline employee who combined a piece of carry-on luggage with a luggage cart. For years, these rolling uprights were the exclusive domain of airline personnel, who had you thinking that it was a status symbol... Don't know what to look for when choosing a rolling upright? Read "**Flight-crew** luggage" from *Consumer Reports* (December 1, 1995 v 60 n 12).
www.travelite.org/luggage/roller.html, -- The Travellite FAQ: Your source for travel packing tips.

⁴ The examining attorney's print-outs of the results of Internet searches by the YAHOO and GOOGLE search engine are of little probative value, largely because insufficient text is available to determine the nature of the information and, thus, its relevance.

Supported by this evidence, the examining attorney submits that the proposed mark is merely descriptive for the identified goods.

Applicant, on the other hand, maintains that the term "flight crew" is at most suggestive because the term (1) is not understood by customers and the relevant industry to refer to a particular type of luggage, but rather refers to flight attendants and airline pilots; (2) does not identify the exclusive user of the goods; and (3) is not needed by competitors. Applicant argues that soft-sided luggage with built in wheels and handles are known not by the term "flight crew" but by such terms as "rolling luggage," "rolling uprights," "carry-on luggage" or "wheelies." Br. at 3.

In support of its assertion, applicant submitted excerpts from various websites indicating such luggage is referred to by other designations; a listing of manufacturers by product category from a travel goods show; and declarations including those from senior buyers for an airline, the purchasing coordinator of an airline company store and an advisory consultant to a luggage industry association in support of its position.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of

the goods or if it conveys information regarding a function, purpose, or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959).

After considering the arguments and the evidence, we agree with the examining attorney that the term FLIGHT CREW is merely descriptive for applicant's luggage and therefore affirm the examining attorney's refusal to register the mark under Section 2(e)(1) of the Trademark Act.

There is ample evidence in the record to support the conclusion that the term FLIGHT CREW describes a characteristic or feature of applicant's luggage, namely, luggage with the array of features favored by professional airline flight crew members. See, e.g., *Chicago Daily Herald*, May 7, 2000 ("small airline-type luggage used by flight crews"); *Atlanta Constitution*, June 27, 1996 ("popularity of flight-crew bags those soft-sided suitcases with built-in wheels and a long handle for pulling");

Orange County Register, March 29, 1996 ("Here are some basic facts about flight-crew luggage"); *Consumer Reports*, December 1995 ("Better equipped travelers cruise easily down the concourse pulling a flight-crew bag ... Flight-crew bags ... are more mobile and versatile than their predecessors ... And the information below can help you evaluate any flight-crew bag you see in the stores."); *Houston Chronicle*, October 24, 1995 ("ASU specializes in the wheeled luggage that flight crews have used for years and which more of us are buying."); www.cencal.com website (advertising luggage product identified as "flight crew bag" for military flight crews).

The specimen of record consisting of a hangtag also shows that the term FLIGHT CREW describes the goods as being of a type used by flight crew members:

Travelpro maintains steadfast in its mission to satisfy the ever changing needs of the traveling professional. That's why Travelpro's "Pilot Designed, Flight Crew Tested" styles are used by over 425,000 professional flight crew members worldwide.

We can consider the context in which an applicant uses the mark, including the labels and packaging for the goods and the advertising materials directed to the goods, to determine the reaction of prospective purchasers to the mark. Abcor, 200 USPQ at 218; see also In re

Pharmaceutical Innovations, Inc., 217 USPQ 365, 366 (TTAB 1983).

Applicant argues that the NEXIS articles submitted by the examining attorney are not evidence of consumers' current understanding of the term FLIGHT CREW because most date back to 1995 or 1996. Applicant's Brief at 4-5. The articles, however, are not so old that it would be reasonable, in the absence of evidence to the contrary, to assume that the meaning of the term has changed substantially. Applicant also argues that most of the articles refer back to the same 1995 Consumer Reports article. It is not clear how this fact supports applicant's case. The article shows that prior to applicant's adoption of its trademark, *Consumer Reports* used the term to describe a particular type of carry-on luggage. After the publication of the *Consumer Reports* article, other publications also used the term to refer to this type of luggage. Subsequently, applicant began to use the term as a trademark. The fact that applicant can trace the root of many of these references to the *Consumer Reports* article does not discredit the fact that writers have used the term FLIGHT CREW to refer to a particular type of luggage, prior to applicant's adoption of the same as a mark.

Consumers will therefore understand that the term FLIGHT CREW, as used on or in connection with the identified goods, describes luggage similar to luggage used by professional flight crew employees. See, e.g., In re Major League Umpires, 60 USPQ2d 1059, 1061 (TTAB 2001) (MAJOR LEAGUE UMPIRE describes clothing and equipment of the type used by major league umpires).

Applicant makes several unpersuasive points in arguing that its mark is not descriptive.

Applicant argues that the term FLIGHT CREW is at most suggestive because it refers to the pilots and flight attendants on an aircraft, and not a style of luggage. Br. at 9. Moreover, applicant argues that the term FLIGHT CREW has several different meanings (including flight crew on a space shuttle, medical and flight staff on a helicopter providing emergency medical care and transport, and flight staff on a military aircraft) and is not limited to use in connection with airline travel. Br. at 10. As such, applicant asserts that "[c]onsumers are not able to discern the nature of the product in question based on the limited information conveyed by the designation 'flight crew'." Br. at 9.

The fallacy of applicant's position is that the relevant definition of a term is the definition understood

by the purchasing public in relation to the involved goods or services. Abcor, 200 USPQ at 218; In re Polo International, Inc., 51 USPQ2d 1061, 1062 n. 2 (TTAB 1999). When applicant's mark is considered in connection with the identified goods, purchasers or prospective purchasers will immediately consider the luggage to have the features of luggage used by airline flight crews. There is nothing in the record to suggest that space shuttle, medical or military flight crews use luggage of the type that would also be offered to general consumers. Thus, there is no basis for concluding that such consumers would consider the alternative meanings suggested by applicant.

Furthermore, the question is not whether someone presented with the mark could guess what the goods are. Rather, the question is whether someone who knows what the goods are will understand the mark to convey information about them. See In re American Greeting Corp., 226 USPQ 365, 366 (TTAB 1985) ("whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test"). Here, in regard to luggage, consumers would understand the term FLIGHT CREW to refer to a specific type of the identified goods, namely, the type or style of luggage used by professional airline flight crews.

Applicant maintains that its competitors do not use the designation FLIGHT CREW to describe suitcases with built-in wheels and long handles and there are numerous alternative terms available to describe such luggage, including "rolling luggage" and "rolling carry-on." Br. at 13.

Even assuming these allegations to be true, the fact that an applicant may be the first and only user of a merely descriptive designation does not justify registration if the term is merely descriptive. See Clairol, Inc. v. Roux Distributing Co., 280 F.2d 863, 126 USPQ 397, 398 (CCPA 1960) (HAIR COLOR BATH, a novel way of describing liquid for hair coloring, held generic); In re Styleclick.com Inc., 57 USPQ2d 1445, 1448 (TTAB 2001) (the term E FASHION is merely descriptive of applicant's goods and services despite no evidence of even a single use of the term -- "That applicant may be the first and only entity using E FASHION is not dispositive"); Polo International, Inc., 51 USPQ2d at 1063 ("[T]he fact that applicant will be or intends to be the first (and/or only) entity to use the term DOC-CONTROL for computer software for document management is not dispositive where, as here, the term unquestionably projects a merely descriptive connotation."); In re Central Sprinkler Co., 49 USPQ2d

1194, 1199 (TTAB 1998) ("The fact that applicant may be the first or the only one using ATTIC in connection with sprinklers is not dispositive."); In re Eden Foods Inc., 24 USPQ2d 1757, 1761 (TTAB 1992) (the fact that applicant may be the first and/or only entity using a phrase not dispositive). Moreover, the Board has consistently stated, that for a designation to be merely descriptive, "it is not necessary that it be in common usage in the particular industry." Eden Foods, 24 USPQ2d at 1761; see also In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983).⁵

Furthermore, a descriptive term is not rendered registrable merely because there may be alternative descriptive terms also available for use. Cf. Roselux Chemical Co. v. Parsons Ammonia Co., 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962) (many terms may be descriptive of a product or service).

The Board has considered the affidavits submitted from applicant. These declarations state in almost the same language that customers do not understand or use the term

⁵ Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co., 186 USPQ 557 (TTAB 1975), cited by applicant, is distinguishable. In Firestone Tire, the Board found the two words "bias" and "steel" were combined into a unitary term that rendered the term suggestive. Here, there is no argument that the terms "FLIGHT" and "CREW," when combined, create a unitary term that is suggestive.

FLIGHT CREW to refer to rolling luggage or carry-on luggage and that luggage having wheels and a telescoping handle is referred to by many other terms. It is not clear on what basis the declarants came to their conclusions. The fact that applicant has introduced statements from seven individuals involved in the luggage industry⁶ to the effect that the term FLIGHT CREW is not commonly used in the retail luggage industry to refer to a particular type of luggage does not overcome the examining attorney's evidence that the term is merely descriptive. Also, while there are other words that may be commonly used to describe applicant's goods, this does not establish that applicant's term is not merely descriptive. In addition, the ultimate question in this case is not whether applicant's mark is generic but simply whether the term FLIGHT CREW describes applicant's goods. The evidence does support the examining attorney's position that FLIGHT CREW describes carry-on bags.

The Board also agrees with the examining attorney that the mark describes one category of intended users of the goods, namely, flight crew members. See In re Camel

⁶ Out of the seven declarants, it is noted that two of the declarants (Patricia A. Duffy and George Cassius) are employees or independent sales representatives of applicant.

Manufacturing Co., 222 USPQ 1031 (TTAB 1984) (a term is descriptive if it describes the "type of individuals to whom an appreciable number or all of a party's goods or services are directed."); Hunter Publishing Co. v. Caulfield Publishing Ltd., 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER descriptive of the readers of a magazine directed to computer users). Applicant argues that its goods are not exclusively marketed to airline personnel and that a substantial number of its consumers are the general public. Br. at 11. However, as indicated by applicant's specimen, its goods are "used by over 425,000 professional flight crew members worldwide." This appears to be an appreciable number of the class of consumers to whom applicant's goods have been directed. See Camel, 222 USPQ at 1022 ("there is no doubt that the group described by the term "MOUNTAIN CAMPER" is a category of purchaser to whom applicant specifically directs its camping equipment").

Decision: The examining attorney's refusal to register the term FLIGHT CREW on the ground that it is merely descriptive of the identified goods is affirmed.