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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brett W. Holm

Serial No. 76661768

John Bartz of Bartz & Bartz, P.A. for Brett W. Holm.

Anne Gustason, Trademark Examining Attorney, Law Office 117
(Loretta C. Beck, Managing Attorney).

Before Seeherman, Bergsman and Ritchie de Larena,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Brett W. Holm ("applicant") filed an intent-to-use application for the mark SPICE SHOT, in standard character format, for goods ultimately identified as "ammunition for firearms," in Class 13. Applicant disclaimed the exclusive right to use the word "shot."

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that the mark SPICE SHOT is merely descriptive. The Examining Attorney contends that applicant's ammunition, or shot, contains spices, and

therefore the mark directly imparts information regarding the nature of the product. To support her refusal, the Examining Attorney submitted the following evidence:

1. A definition of the word "spice" from the "WordSmyth.com" website as "any of various edible vegetable substances with a distinctive aroma or taste, such as pepper or ginger, that are used to flavor or preserve food and drink";¹

2. A definition of the word "shot" from the "WordSmyth.com" website as "a lead pellet that is used with others to form the charge of a shotgun cartridge, or such pellets collectively";² and,

3. Excerpts from applicant's "Seasonshot.com" website that promotes a product called "Season Shot."³ On the homepage applicant uses the tagline "Ammo with flavor." The product is described as "Seasoning used as shot." "Season Shot" comes in Cajun, lemon pepper, garlic, teriyaki, and honey mustard flavors. In the "How It Works" page, the "Season Shot" product is described as follows:

¹ October 4, 2006 Office Action.

² *Id.*

³ *Id.* and the May 30, 2007 Office Action. Although there is nothing to associate the "SeasonShot.com" website with applicant on the face of the website, applicant references the website in his brief. Accordingly, we will consider applicant to be the owner of the "SeasonShot.com" website and give it whatever probative value to which it is entitled.

Season Shot is made of tightly packed seasoning bound by a fully biogradable food product. The seasoning is actually injected into the bird on impact seasoning the meat on impact from the inside out. When the bird is cooked the seasoning pellets melt into the meat spreading the flavor to the entire bird. Forget worrying about shot breaking your teeth and start wondering about which flavor shot to use!

In the "Why Season Shot?" page, applicant states that "Our ammo has flavor."

Opposer argues, in essence, that the words "spice" and "shot" have many different meanings, and therefore thought and perception must be used to associate the mark SPICE SHOT with ammunition. For example, opposer asserts that the word "spice" means "(1) a small portion, quantity or admixture, (2) something that gives zest or relish, and (3) a pungent or fragrant odor,"⁴ and that the word "shot" means (1) a home run in baseball, (2) a photographic exposure, (3) a medical or narcotics injection, (4) a photographic

⁴ Webster's Ninth New Collegiate Dictionary p. 1135 attached to applicant's April 3, 2007 Response. We note that the precise dictionary definition reads as follows:

1. any of various aromatic vegetable products (as pepper or nutmeg) used to season or flavor foods.
2. a *archaic*: a small portion, quantity or admixture: DASH
- b. something that gives zest or relish . .
- . 3. a pungent or fragrant odor.

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exposure, and (5) a small serving of undiluted liquor.”⁵ Applicant concludes that because the words “spice” and “shot” have so many different meanings, the mark SPICE SHOT does not directly convey information about the nature of applicant’s product.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the products for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is not whether someone presented only 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. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark*

⁵ *Id* at 1090. This same source also defines the word “shot” as including “something propelled by shooting: esp small lead or steel pellets esp. forming a charge for a shotgun.”

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Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978). See also, *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

Accordingly, we start our analysis of the registrability of SPICE SHOT by inquiring whether that term describes a characteristic, quality, function or purpose of ammunition, not whether we can guess what the products are by looking at the mark. In this case, however, the problem with this approach is that neither the applicant, nor the Examining Attorney, has provided any background information regarding ammunition, such as whether all shot is made of lead or steel. Thus, we have very little factual background on which to formulate how relevant purchasers would perceive the composite mark SPICE SHOT when it is applied to ammunition. Based on this record, we know that

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"shot" has been defined as something propelled by shooting, especially lead or steel pellets,⁶ and that applicant sells shot made of seasonings.

In the abstract, the word "Spice" appears to have little, if any, significance when used in connection with ammunition. However, the evidence shows that applicant makes ammunition that is comprised of seasoning (or spice) pellets (or shot). In fact, the website indicates that his SEASON SHOT ammunition is shot (pellets) made of spice: that is, spice shot. Accordingly, purchasers of applicant's product will immediately understand the mark SPICE SHOT as describing the fact that the ammunition is made of spice. They will not have to undertake a multiple step reasoning process to understand from the mark something about the product. The term SPICE SHOT tells consumers exactly what the product is.

Applicant's argument that the relevant purchasers would think of other possible meanings for the word "spice" (e.g., "a small portion," "something that gives zest or

⁶ The definition submitted by the Examining Attorney states that "shot" is made of a "lead pellet," but the definition submitted by applicant is not so limited.

relish," or "a pungent fragrant odor") and the word "shot" (e.g., "a home run in baseball," "a photographic exposure," or "a medical or narcotics injection") would require considering the applied-for mark in a vacuum. These meanings would clearly not come to mind when the term is viewed in connection with ammunition. As a result, we are not persuaded that purchasers would go through the following technical mental exercise put forth by applicant:

Are SPICE SHOT goods medical or narcotics injections having fragrant odors? Are applicant's goods photographic exposures of scandalous material? ARE SPICE SHOT goods small servings of undiluted liquor?⁷

Moreover, in the composite mark SPICE SHOT, the words "spice" and "shot" retain their ordinary meanings and do not form a unique or incongruous meaning.

We recognize that determining whether a mark is suggestive or descriptive often requires the drawing of fine lines and the exercise of subjective judgment. Indeed, this is such a case because, in our experience, we find that applicant's goods are unusual. However, the fact that applicant may be the first or only manufacturer of ammunition made of spices does not justify registration when, as here, the mark projects only merely descriptive

⁷ Applicant's Brief, p. 2.

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significance. *Cf. In re National Shooting Sports Foundation*, 219 USPQ 1018, 1020 (TTAB 1983) (that applicant may be the first and only user of a descriptive designation does not justify registration).

In view of the foregoing, we find that applicant's mark SPICE SHOT in connection with "ammunition for firearms" is merely descriptive.

Decision: The refusal to register is affirmed.