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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Williams

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Serial No. 77100894

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John S. Egbert of Egbert Law Offices, PLLC for Kevin Williams.

Jay C. Besch, Trademark Examining Attorney, Law Office 108 (Andrew Lawrence, Managing Attorney).

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Before Zervas, Walsh and Ritchie, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Kevin Williams (Applicant) has applied to register the mark HYBRID HEAVE in standard characters for goods identified as "energy storage and recovery system for active heave comprised primarily of a machine flywheel and a motor-generator for generating electricity" in International Class 7.[1]

[1] Serial No. 77100894, filed February 2, 2007, based on applicant's statement of his bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

The Examining Attorney has finally refused registration on the ground that the mark merely describes the goods under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Applicant has appealed. Both applicant and the Examining Attorney have filed briefs.

We reverse.

A term is merely descriptive of goods within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *See*, *e.g.*, *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods. *See In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods identified in the application, and the possible significance that the term would have to the average purchaser of the goods. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB

1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The question whether a mark is merely descriptive is *not* determined by asking whether one can guess from the mark what the goods are, but rather by asking, when the mark is seen on or in connection with the goods, whether it immediately conveys information about their nature. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998).

The Examining Attorney argues that HYBRID is merely descriptive of the identified goods because the goods combine two or more technologies. With regard to HEAVE the Examining Attorney argues, "… the term 'HEAVE' is merely descriptive of the environment that the goods are used in and/or utilized in, and the identification of goods clearly indicates this environmental limitation as a feature and/or characteristic of the goods." Examining Attorney's Brief at 3. The Examining Attorney argues further, "Consumers who purchase the goods will know that the goods are limited to environments in which the ocean is moving up and down, and the mark immediately conveys this feature/characteristic of the goods…" *Id.* The Examining Attorney also notes that the copy of the patent application for the relevant goods, which applicant provided, contains numerous references to HEAVE. Finally, the Examining

Attorney argues, "The terms 'HYBRID' and 'HEAVE' are not incongruous and are not nonsensical when combined, because the terms both convey significant features of the identified goods when the mark as a whole is viewed in connection with the identified goods… Specifically, applicant's mark immediately conveys that the goods feature the combination of two or more technologies for use in environments where the ocean rises and falls." *Id.* at 4.

On the other hand, Applicant argues, "… the mark is incongruous, susceptible to multiple connotations, or requires imagination, cogitation, or gathering of further information in order for the relevant public to perceive any significance of the mark as it relates to a significant aspect of Applicant's goods." Applicant's Brief at 4. Applicant acknowledges that, "the word 'hybrid' refers to a myriad of products that contain two or more different technologies." *Id.* Applicant argues further, "Applicant's goods are simply not typical of the types of goods on which the word 'hybrid' is found." *Id.* at 5. Applicant also argues that HEAVE does not describe a feature or purpose of its goods. Applicant states that HEAVE merely suggests the identified goods are "only useful is an environment where the ocean is actively moving up and down." *Id.* at 6. However, Applicant's most compelling arguments address the

combination of HYBRID and HEAVE in the mark. Applicant argues that the combination is not only incongruous, but nonsensical. That is, the use of HYBRID as an adjective modifying HEAVE makes no sense. Applicant states, "… it is possible that a consumer may perceive the mark as a good that combines or mixes two different types of heaving motions… [or] the mark could possibly elicit thoughts of a combination of two types of ocean heaves or thoughts about clean energy that is somehow elated to ocean heave." *Id.* at 7. Applicant wraps up its argument by stating, "Since the 'HYBRID HEAVE' mark will at most elicit thoughts of clean energy at sea, and does not immediately convey to the consumer the thought of the Applicant's goods, it is suggestive and does not, as a whole, describe an ingredient, quality, characteristic, function, feature, purpose or use of the goods." *Id.* at 8 (citations omitted).

Other than dictionary definitions, the only significant evidence of record is the patent application related to the identified goods which we referenced above. The patent is helpful in understanding the general type of goods at issue here and applicant's goods, in particular.

Applicant's goods are used in offshore oil and gas drilling operations aboard ships specially designed to

perform drilling while anchored. In the patent application, **The Field of Invention** states, "… the present invention relates to offshore drawworks that include heave compensators so as to cause the drill string to move in relation to the heave of the vessel upon which the drawworks is located. Additionally, the present invention relates to flywheels that can be used for energy storage and used, in particular, in association with the cyclic loads." Attachment to Request for Reconsideration of June 2, 2008.

Applicant's goods are identified as, "energy storage and recovery system for active heave comprised primarily of a machine flywheel and a motor-generator for generating electricity." The identified goods function as an integral part of the complex drawworks to provide for an efficient and safe means to "pay in" or "pay out" the drill string which extends through the floor of the ship and which is supported by a wire rope connected to a sheave system. The system is necessary to maintain proper "weight-on-bit" during drilling. *Id.* In particular, it is necessary to pay out or pay in the drill string with the up and down movements of the ship as a result of waves impacting the ship. The drawworks is not only complex but massive in weight and size.

The process of paying in or paying out the drill string involves systems of drums, winches, brakes, multiple motors and other components, all involving significant energy-consuming actions. The operations also involve potential energy-producing actions, including, in some instances, the need to dissipate excess energy.

Applicant's system, and others, have substituted AC motors for DC motors to control the compensation activities. AC motors offer a number of advantages, including, greater torque, a fixed gearbox ratio and the elimination of the need for a clutch. The AC motors can also operate to perform a braking function and even to capture some of the braking energy. Applicant has added a flywheel to the system to convert electric energy into kinetic energy and for storing the kinetic energy.

We hasten to add that this explanation is oversimplified and incomplete, though sufficient for our purposes here. Our purpose in providing this much explanation is to illustrate that applicant's complex system, and all other systems serving the same purpose, employs multiple technologies. Therefore, while the term "hybrid" may well literally describe the system because it incorporate multiple technologies, it provides little, if any, useful information.

The explanation of the system also illustrates the nature of the relationship between the up and down movements, or active heave, of the waves and the ship on the one hand, and the energy storage and recovery system the application identifies on the other hand. We note that the Examining Attorney, quite understandably, struggles with this explanation, for example, in referring to "heave" as an "environmental limitation." We conclude that the relationship between HEAVE, as used in the mark, in relation to the identified goods is indirect at best.

More importantly, we conclude that the HYBRID HEAVE mark, when viewed in its entirety as applied to the identified goods, is suggestive, not merely descriptive. Under the circumstances, we find reasonable applicant's argument that potential purchasers would perceive HYBRID, as used here, as suggesting "clean energy at sea" or something similar, based on the general use of hybrid in relation to motor vehicles and other goods. Also, we likewise find reasonable applicant's argument that potential purchasers would find the combination of HYBRID and HEAVE in the mark incongruous, if not nonsensical. *The Firestone Tire & Rubber Company v. The Goodyear Tire & Rubber Company*, 186 USPQ 557 (TTAB 1975) (BIASTEEL held not merely descriptive of tires); *In re Wisconsin Tissue Mills*,

173 USPQ 319 (TTAB 1972) (POLYTISSUE held not merely descriptive of a combination paper and plastic table cover). HYBRID makes no sense as a modifier of HEAVE. Any attempt to make sense of the combination of terms in the mark would require a complex, multistage mental process.

The HYBRID HEAVE mark is conspicuously unlike other marks where the combination of terms makes immediate descriptive sense. *See*, *e.g.*, *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE held merely descriptive of facsimile terminals employing electrophoretic displays).

We also note that HYBRID HEAVE also involves an element of alliteration. *Cf. Safe-T Pacific Company v. Nabisco, Inc.*, 204 USPQ 307 (TTAB 1979). The alliteration, though not the necessary to our determination, provides further support for our conclusion that HYBRID HEAVE is distinctive.

Lastly, we note that in our consideration of this mark we have assumed that the potential purchasers of these expensive and sophisticated systems are themselves technically sophisticated. Indeed, as sophisticated

purchasers they are more likely to perceive the HYBRID HEAVE mark as incongruous or nonsensical.

Accordingly, we conclude that HYBRID HEAVE is not merely descriptive of "energy storage and recovery system for active heave comprised primarily of a machine flywheel and a motor-generator for generating electricity."

Decision: We reverse the refusal under Trademark Act Section 2(e)(1).