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THE TTAB**

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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 The Enkeboll Co.

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Serial No. 77320532

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Kit M. Stetina of Stetina Brunda Garred & Brucker for The Enkeboll Co.

Amos Thomas Matthews, Trademark Examining Attorney, Law Office 117 (Loretta C. Beck, Managing Attorney).

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Before Walters, Bucher and Rogers, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

The Enkeboll Co. has filed an application to register on the Principal Register the standard character mark THE FINEST ARCHITECTURAL WOODCARVINGS IN THE WORLD for "advertising and promotional services pertaining to architectural woodcarving products," in International Class 35.<sup>1</sup>

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<sup>1</sup> Serial No. 77320532, filed November 2, 2007, based on an allegation of a bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the

average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

The examining attorney contends that the phrase "the finest in the world" is a common laudatory phrase; and he makes the following statement (brief, p. 3):

The term FINEST is a laudatory word which touts the quality of woodcarvings that are advertised and promoted, ARCHITECTURAL WOODCARVINGS identifies the items and the term WORLD indicates the scope of the services. As such consumers would immediately view it as attributing excellence or superior quality to the architectural woodcarving products that applicant advertises and promotes through its services.

The examining attorney submitted definitions from [www.answers.com](http://www.answers.com) of the individual terms comprising the mark, of which we note the definition of "finest" as "surpassing in quality." Additionally, we take judicial notice of the definition in Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> ed. 2003) of "fine" as meaning, in relevant part, "4. superior in kind, quality or appearance: 'excellent.'"

The examining attorney also submitted approximately twenty use-based third-party registrations for marks that include either the phrase "WORLD'S FINEST" or the substantially equivalent phrase "Finest ... in the World," registered either on the Supplemental Register or on the Principal Register

under Section 2(f) and/or with a disclaimer of such phrases. The following are representative examples:

- THE WORLD'S FINEST WALKING SHOES registered on the Supplemental Register for "retail shoe store services" in International Class 35 (Registration No. 2,350,950).
- THE WORLD'S FINEST APPLES registered on the Principal Register under Section 2(f) with regard to WORLD'S FINEST and disclaimer of APPLE for "fresh apples" in International Class 31 and "association services, namely, promoting public awareness of the benefit of consuming apples" in International Class 42 (Registration No. 2,240,052).
- WORLD'S FINEST FUND RAISING PROGRAMS registered on the Supplemental Register for "promoting the fund raising efforts of others by providing candy products customized to the specifications of fund raisers, and providing sales record keeping forms customized to the specifications of fundraisers for use by fundraisers" (Registration No. 2,619,091).
- SIMPLY THE FINEST CUSTOM COUTURE CLEANER IN THE WORLD registered on the Principal Register under Section 2(f) for "stain removal kit for fabric and garments, namely, kits comprised primarily of a cleaning formula, rinse solution, stain guide and absorbent material" in International Class 16 and "fabric and garment cleaning, preservation and restoration services" in International Class 37 (Registration No. 3,172,800).
- THE WORLDS FINEST CRYSTAL registered on the Principal Register under Section 2(f) for "catalog in the field of crystal" in International Class 16 and "retail stores, online retail store services and catalog ordering services Featuring crystal" in International Class 35 (Registration No. 3,116,790).
- THE FINEST ICE CREAM IN THE WORLD registered on the Principal Register under Section 2(f) for "ice cream" in International Class 30 (Registration No. 1,615,913).
- THE FINEST BERRIES IN THE WORLD registered on the Principal Register under Section 2(f) for "fresh strawberries, raspberries, blueberries and

blackberries" in International Class 31. (Registration No. 2,116,219).

Additionally, the examining attorney submitted excerpts of a significant number of the 100 articles retrieved in a search of "the finest in the world" in the Lexis/Nexis database, including the following representative examples:

- *Los Angeles Times*, November 6, 1987: "'Our nation's air transit system is the **finest in the world**, it's the safest in the world, it's the most efficient in the world,' McArtor said."
- *Los Angeles Times*, December 6, 1986: "Widely acknowledged as one of the **finest in the world**, the San Diego Zoo is a beautifully landscaped tropical garden within beautifully landscaped Balboa Park."
- *Memphis Flyer* (Tennessee), September 28, 2006: October 4, 2006: "As befitting a man of his reach and means, his set of antique decoys is among the **finest in the world.**"
- *The Boston Herald*, December 25, 2007: "'The instrument here is one of the **finest in the world**,' says Mary Kennedy, who has been playing the bells at St. Stephens for more than 30 years."
- *The Tennessee Tribune* (Nashville), September 29, 2005: "'Our soldiers and veterans are the **finest in the world**,' said [Lamar Alexander]."
- *The Virginian-Pilot* (Norfolk, VA), July 5, 1997: "Mr. Ruehlmann took exception to the comments Mr. Heston made about the American public school system having previously been considered to be the **finest in the world.**"
- *The Washington Post*, September 4, 1999: "Director Louis J. Freeh, at the groundbreaking of the \$ 130 million complex in

Quantico, called the FBI's crime lab 'the **finest . . . in the world.'**"

The evidence establishes that "the finest in the world" or "the finest [*fill in product/service/noun*] in the world" are commonly-used phrases that are clearly laudatory. These phrases convey the sentiment that, essentially, "this product/service/noun is the very best of its kind."

The examining attorney has submitted definitions of the individual terms "architectural" and "woodcarving," and applicant does not dispute that there is a category of products known as "architectural woodcarvings." We do not agree with the examining attorney that "the world" describes the scope of applicant's services. Rather, the laudatory and, thus, the merely descriptive nature of the phrase is evident when, as noted herein, the phrase is read in its entirety. The phrase THE FINEST ARCHITECTURAL WOODCARVINGS IN THE WORLD is mere puffery as to the assertedly superior quality of the architectural woodcarvings.

Applicant has made several arguments that are not well taken. First, applicant argues that the proposed mark is not merely descriptive because the alleged puffery in the mark pertains to architectural woodcarvings, not to applicant's advertising or promotional services. However, applicant's identified advertising and promotional services are rendered specifically in connection with "architectural woodcarving products." We do not consider the mark in the

abstract, nor do we consider the identified advertising and promotional services without reference to the object of that activity.

Second, applicant argues that, in the context of the entire mark, the word "finest" refers to architectural woodcarvings and, thus, is not laudatory because it means "delicately fashioned."<sup>2</sup> As previously stated, we must consider the mark in its entirety and in the context of the identified services. As such, the evidence supports the conclusion that "finest," when considered as part of the phrase "The finest ... in the World," connotes "superior in kind, quality or appearance: 'excellent.'"

Finally, applicant argues that the third-party registrations are inapposite because the laudatory language in those registrations relates directly to the identified goods or services, e.g., THE FINEST ICE CREAM IN THE WORLD for "ice cream," whereas in the proposed mark, the allegedly laudatory language pertains to the woodcarvings, not to the identified services. While some of the registered marks in evidence refer directly to the product or service identified, several of the registered marks are analogous to

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<sup>2</sup> Applicant submitted this definition of "fine" with its brief and the source is identified as "Dictionary.com Unabridged (v 1.1) based on the Random House Unabridged Dictionary (2006)." We take judicial notice of this definition because the Board may take judicial notice of online reference works which exist in printed format or have regular fixed editions. *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB 2008). See also *In re Red Bull GmbH*, 78 USPQ2d 1375 (TTAB 2006).

the mark in this case in that they refer to the object of the identified services. As noted above, this does not render the mark any less descriptive.

Considering the record and all of applicant's arguments relating thereto, including those arguments not specifically addressed herein, we conclude that when considered in connection with applicant's services, the phrase THE FINEST ARCHITECTURAL WOODCARVINGS IN THE WORLD immediately describes, without the need to engage in conjecture or speculation, a significant feature or function of applicant's services, namely, that the architectural woodcarving products, which are the focus of applicant's advertising and promotional services, are of allegedly superior quality. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective customers for applicant's services to readily perceive the merely descriptive significance of this phrase as it pertains to applicant's services.

*Decision:* The refusal under Section 2(e)(1) of the Act is affirmed.