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Mailed: January 30, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tom Miranda Outdoors Inc.

Serial No. 77704628

Gregory Golla of Merchant & Gould PC for Tom Miranda Outdoors Inc.

Verna B. Ririe, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Bucher, Cataldo and Wolfson,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Tom Miranda Outdoors Inc. has applied to register on the Principal Register the mark DOMINANT BUCKS in standard characters for

DVDs, videotapes, audiotapes, downloadable video and audio files all in the field of hunting; Archery equipment, namely, telescopic bow sights; Hunting binoculars,

in International Class 9;

Hunting and archery equipment, namely quivers; Archery and hunting bows; Archery and hunting arm guards; Archery and hunting arrow fletching devices; Archery and hunting arrow points;

Archery and hunting arrows; Archery and hunting bow cases; Archery and hunting bow strings; Archery and hunting non-telescopic bow sights and open bow sights; Archery and hunting targets; Camouflage netting used in hunting; Hunting blinds; Hunting decoy bags; Hunting stands; Hunting game calls; Tree stands for hunting; hunting decoys; Archery broadheads,

in International Class 28; and

Entertainment services, namely, a series in the field of hunting provided through satellite television, television broadcast, cable television; Providing information in the field of hunting and fishing via the Internet,

in International Class 41.¹

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of a quality or feature of applicant's goods and services. When the refusal was made final as to

DVDs, videotapes, audiotapes, downloadable video and audio files all in the field of hunting,

in Class 9 and all of the services recited above in Class 41, applicant appealed. Applicant and the examining attorney submitted briefs on the merits of the refusal to register.

Issue on Appeal

¹ Application Serial No. 77704628 was filed on April 1, 2009, based on applicant's assertion of a bona fide intent to use the mark in commerce in connection with the recited goods and services.

As noted above, the issue on appeal in this case is whether applicant's mark, DOMINANT BUCKS, merely describes a function, feature or characteristic of the goods specified above in Class 9 and the services in Class 41. In coming to our determination on this issue, we have considered all of the arguments and evidence presented by applicant and the examining attorney, including any arguments and evidence not specifically discussed herein.

The examining attorney maintains that the mark merely describes a feature or quality of the goods and services by describing the subject matter thereof, namely, large, mature male deer known as "dominant bucks." In support of the refusal, the examining attorney has made of record articles and advertisements retrieved from Internet webpages. The following examples are illustrative (emphasis added):

T.R.'s Tips: What Call For Which Deer
Determining what call to use when you are hunting White-tailed Deer is not a matter of which rut phase you are hunting, but which sex and age class of deer you want to attract. ...
There are basically four different techniques for calling deer that can be used anytime during the rut. The fourth technique is not so effective during the Rest Phase and Post Rut because the bucks are exhausted, not as aggressive, and not as interested in breeding.

1. Distress Call or Fawn Bawl for does and young bucks.
2. Social Grunt or Low Grunt for any deer.
3. Social/Low/Tending Grunt for all bucks.

4. Social/Low/Tending grunt or Grunt Snort for
dominant bucks. ...
(www.outdoorscentral.com);

Primos Big Buck Bag
Rattle in those **dominant bucks** during the rut.
Sounds like small bucks sparring or a **dominant buck** fight. The compact design provides easy carrying and one-handed operation while the "Power-Tines™" and Camonet™ bag increases volume and flexibility. This call is 100% waterproof.
(www.mysimon.com);

Whitetail Rut Phase Hunting Tactics
By T.R. Michels, Trinity Mountain Outdoors
As an outfitter, guide, and game researcher I'm always trying to figure out how the activities of game animals change throughout the hunting season; if and how different ages and sexes of animals act; and the best hunting techniques to use during the different activity periods of the animals. ...
During my studies I found that it was difficult to distinguish when these phases start and end, because their activities overlap, and because **dominant** and subordinate **bucks** are on different time schedules. I also learned that some often-talked about hunting tactics should be used only on older/**dominant bucks**, because they may scare off younger/subordinate bucks. ...
However, subordinate bucks may create fresh rubs and scrapes because the **dominant bucks** are more interested in does than making rubs and scrapes or exerting dominance over the subordinates. ...
I seldom see **dominant bucks** outside their core areas during this phase. ...
(www.whitetailfanatic.net);

Will **Dominant Bucks** Dominate the Breeding?
... These are all valid questions and ones I am sure most hunters have heard or thought about at some point. The premise behind these questions is the belief that a small number of **dominant**

bucks breed the majority of does and thus sire the majority of fawns. ...
Dominant bucks don't monopolize the breeding, and they don't even sire all of the fawns from each doe they breed. ...
(www.qdma.com);

Whitetails: Using the Right Scent
... The forehead glands are located between the top of the eyes and the antlers, and are most active during the rut. The activity of these glands has been positively correlated with age and probable social status, they are most active in older, **dominant bucks**. ... The oil is transferred to rubbed trees and the overhanging branch at scrapes when the head of the buck comes in contact with the tree, and is used by **dominant bucks** to advertise their presence to both sexes.
...
(www.worldrecordwhitetaildeer.com); and

... Most **dominant bucks** are larger, older males, the ones with the best genes. In herds with fairly balanced buck:doe ratios, **dominant bucks** do most of the mating. This is nature's way of ensuring that future generations acquire the strongest genes.
(www.huntingnet.com).

It is well-settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, feature or characteristic thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. See Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. See also *In re Abcor*

Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. *See In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

In the instant case, the evidence made of record by the examining attorney supports a finding that, as applied to applicant's involved goods and services, the term DOMINANT BUCKS would immediately describe, without conjecture or speculation, a significant characteristic or feature of such goods and services, namely, that they feature information about older, larger male deer known as "dominant bucks." The Internet articles and advertisements submitted by the examining attorney establish that "dominant bucks" are prized by deer hunters who study their habits and purchase a variety of goods including scents,

calls, and informational materials to increase their chances of successfully hunting them.

Applicant's DOMINANT BUCKS mark merely describes the subject matter of its "videotapes, audiotapes, downloadable video and audio files all in the field of hunting," namely, the habits of older male deer known as "dominant bucks" and techniques for hunting them. Similarly, DOMINANT BUCKS merely describes the subject matter of applicant's "entertainment services, namely, a series in the field of hunting provided through satellite television, television broadcast, cable television; providing information in the field of hunting and fishing via the Internet," namely, the habits of "dominant bucks" and techniques for hunting them. The Internet materials made of record by the examining attorney further establish that DOMINANT BUCKS is used not as a trademark, but as a merely descriptive term as applied to these older male deer. Material obtained from the Internet is acceptable in *ex parte* proceedings as evidence of potential public exposure to a term. See *In re Fitch IBCA, Inc.*, 64 USPQ2d 1058 (TTAB 2002).

The term DOMINANT BUCKS, therefore, means older, larger male deer. Applicant's goods and services provide information on the subject of such deer. Accordingly, we find that the term DOMINANT BUCKS, when used in connection

with applicant's above-listed goods in Class 9 and services in Class 41, immediately informs the purchaser, without any need for a multistep reasoning process, that such goods and services feature information that may be used by hunters to study and hunt "dominant bucks." As a result, we find that DOMINANT BUCKS merely describes a feature or characteristic of the involved goods and services.

We are not persuaded by applicant's argument that the components of the Applicant's mark, "DOMINANT" and "BUCKS," are broad, general terms that would be perceived by consumers to mean a multitude of things and do not immediately convey applicant's goods and services related to entertainment in the nature of video and television and hunting equipment.²

Applicant appears to argue that because the terms comprising its mark may have a number of meanings in a number of contexts, such terms are not merely descriptive when combined into DOMINANT BUCKS. However, the evidence made of record by the examining attorney demonstrates that, regardless of any other meanings DOMINANT and BUCKS may individually possess, the mark DOMINANT BUCKS merely describes a central characteristic of applicant's goods and services. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204

² Applicant's brief, unnumbered page 3.

USPQ at 593.

In view of the foregoing, we find that applicant's mark is merely descriptive as contemplated by Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed as to the goods and services subject to the refusal to register, namely:

DVDs, videotapes, audiotapes, downloadable video and audio files all in the field of hunting;

in International Class 9; and

Entertainment services, namely, a series in the field of hunting provided through satellite television, television broadcast, cable television; Providing information in the field of hunting and fishing via the Internet

in International Class 41.

The application will be forwarded in due course for publication as to the goods not subject to the refusal to register, namely:

Archery equipment, namely, telescopic bow sights; Hunting binoculars

in International Class 9; and

Hunting and archery equipment, namely quivers; Archery and hunting bows; Archery and hunting arm guards; Archery and hunting arrow fletching devices; Archery and hunting arrow points; Archery and hunting arrows; Archery and hunting bow cases; Archery and hunting bow strings; Archery and hunting non-telescopic bow sights and open bow sights; Archery and hunting targets; Camouflage netting used in hunting; Hunting

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blinds; Hunting decoy bags; Hunting stands;
Hunting game calls; Tree stands for hunting;
hunting decoys; Archery broadheads

in International Class 28.