

**This Opinion is Not a
Precedent of the TTAB**

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United States Patent and Trademark Office
Trademark Trial and Appeal Board

In re Casio Keisanki Kabushiki Kaisha, DBA Casio Computer Co., Ltd.

Serial No. 77884436

John E. Lyhus of Fitch Even Tabin & Flannery for Casio Keisanki Kabushiki Kaisha, DBA Casio Computer Co., Ltd.

Rebecca J. Povarchuk, Trademark Examining Attorney, Law Office 115 (John Lincoski, Managing Attorney).

Before Bucher, Ritchie and Lykos, Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Casio Keisanki Kabushiki Kaisha, DBA Casio Computer Co., Ltd. (“applicant”) filed an application to register the mark PREMIUM AUTO in standard character format for, as amended, “digital cameras; batteries; AC adaptors” in International Class 9.¹ During ex parte prosecution of the application, applicant disclaimed the term PREMIUM but solely as to the goods of “batteries” and “AC adaptors.”

The Trademark Examining Attorney has refused registration of the mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the

¹ Application Serial No. 77884436, filed December 2, 2009, alleging a bona fide intent to use the mark in commerce pursuant to Section 1(b) of the Trademark Act.

ground that PREMIUM AUTO is merely descriptive of applicant's goods identified as "digital cameras."

Upon final refusal of registration,² applicant filed a timely appeal. Both applicant and the examining attorney filed briefs. For the reasons discussed herein, the Board affirms the refusal to register.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. *In re Gyulay*, 3 USPQ2d at 1009-10. Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other mean-

² The final refusal to register applies solely to the goods of "digital cameras."

ings in different contexts is not controlling. *Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

The examining attorney submitted dictionary definitions in support of her argument that the term “premium auto” is merely descriptive of the applied-for “digital cameras.” The word “premium,” when used as an adjective, is defined as “**high-quality**: of very high quality.”³ The term “auto” is a well-recognized abbreviation for the word “automatic” which is defined as “**starting or functioning by itself**: started, operated, or regulated by a process or mechanism without human intervention.”⁴

The record further reflects that the majority of digital cameras are “highly automated” with various self-functioning features such as “automatic exposure control,” “autofocus,” and “autoflash” making the camera user-friendly for the consumer.⁵ Indeed, applicant’s own website advertising its goods touts the superior automatic features of applicant’s digital cameras:

Premium Auto enables the camera to automatically analyze the scene being photographed - including distinguishing night scenes, back lighting, a blue sky, green trees or a sunset - as well as sensing whether there is a face in the frame, the movement and position of the subject, and whether a tripod is being used.⁶

³ Encarta.msn.com (definition of “premium”) attached to March 8, 2010 Office Action.

⁴ Encarta.msn.com (definitions of the abbreviation “auto” and word “automatic”) attached to March 8, 2010 Office Action.

⁵ See excerpt from www.consumerreports.org website (“Digital Cameras”) attached to March 8, 2010 Office Action. See also excerpt from www.forumscnet.com (“Digital cameras: which is the best and fast digital camera with auto features”) attached to March 8, 2010 Office Action.

⁶ www.casio.com (“EX-H15 Special Features”) attached to March 8, 2010 Office Action.

In addition, the evidence obtained by the examining attorney from third-party digital camera brand websites supports a finding that applicant's mark is merely descriptive. Below are representative samples showing that in the digital camera industry "auto" is a well-recognized term of art to denote automatic features or functions of the camera:

Exposure modes: Digital Vari-Program (Auto, Auto [Flash-off]....).⁷

Pentax has announced the X70 superzoom with 24x optical zoom. With a 26mm - 624mm (35mm equiv.) zoom range this superzoom camera sports a 12 MP sensor, 2.7 inch LCD and includes manual and auto features such as Image Stabilization, Auto Picture Mode, HD video recording and P/A/S/M exposure modes.⁸

Auto bracketing of up to 15 shots ideal for HDR images, interior shots and product photography; DSLR Remote as a very flexible auto bracketing function which is ideal for high dynamic range images....⁹

First, here is our demo: Beyond Auto Mode: Using your camera's manual controls.¹⁰

Samsung WB500...To name a few, it has a powerful manual mode, a brilliant night mode, great macro performance, perfect auto-white balance, and vivid color reproduction.¹¹

All consumer digital cameras have an auto ISO mode. The camera automatically selects the sensitivity, known as ISO, according to the level of light in a scene.¹²

⁷ <http://imaging.nikon.com> ("Digital SRL Cameras: Nikon D-40) attached to March 8, 2010 Office Action.

⁸ <http://www.dpreview.com/news/2009/03/03/> ("Pentax 70 Superzoom") attached to March 8, 2010 Office Action.

⁹ <http://www.breezesys.com> ("DSLR Remote Pro") attached to March 8, 2010 Office Action.

¹⁰ <http://expressioncenter.wetpaint.com> ("Using Your Camera's Manual Features, attached to March 8, 2010 Office Action.

¹¹ <http://tech2.in.com> ("Find your compact camera") attached to March 8, 2010 Office Action.

Furthermore, the record evidence establishes that third-parties in the digital camera industry use the term “premium” to emphasize the high quality of their own respective brand’s features, including “auto” features. See for example the following excerpts from third-party websites:

Sony T110 is a compact camera that has many premium features that can be used to capture a variety of user important moment.¹³

The new sensors use a technology called backside illumination, and chipmakers including Sony and Samsung are leading the charge to build them into a variety of cameras. And though it’s a premium feature today, it’s spreading rapidly across the market.¹⁴

The NX200 compact system camera expands the capabilities of the first-generation NX compact interchangeable lens cameras with a 20.3-megapixel APS-C CMOS sensor and other premium features such as high-speed continuous shooting (7fps (max) with 100ms Advanced Auto Focus), wide range ISO (100-12,800), Full HD movie recording, and Samsung’s i-Function lens.¹⁵

Panasonic’s Lumix DMC-FZ100 is a super-zoom camera with a premium feature-set.¹⁶

Carrying on the heritage of their film predecessors, the Stylus Digital cameras incorporate premium features and design elements that are trademarks of the Stylus name.¹⁷

¹² <http://www.digicamhelp.com/camera-features/camera-modes/auto-iso/> attached to March 8, 2010 Office Action.

¹³ <http://gadgetphotoreview.com> (“User friendly camera has advanced features: Sony T110”) attached to November 8, 2011 Denial of Request for Reconsideration.

¹⁴ <http://www.image-sensors.com> (“Camera market flipping to new sensor technology”) attached to November 8, 2011 Denial of Request for Reconsideration.

¹⁵ <http://www.twice.com> (“Samsung Unveils Camera Tria at IFA Show”) attached to November 8, 2011 Denial of Request for Reconsideration.

¹⁶ <http://digitalcamera.reviewintrend.com> (“Panasonic Lumix DMC-FZ 100”) attached to November 8, 2011 Denial of Request for Reconsideration.

¹⁷ www.olympusamerica.com, attached to November 8, 2011 Denial of Request for Reconsideration.

As illustrated by the evidence discussed above, it appears that when shopping for digital cameras, consumers specifically look for superior quality automated features when making purchasing decisions.

In arguing against the refusal, on the other hand, applicant relies on prior case law where the term SUPER was found to be suggestive because the term connotes only a “vague desirable characteristic or quality.” See Applicant’s Brief, p. 7, citing *In re Ralston Purina Company*, 191 USPQ 237 (TTAB 1976). Aside from the fact that each case must be decided upon its own record, the case law regarding prior treatment of the term SUPER is of no persuasive value here since it is a different word and has been used in different contexts.

In addition, applicant has submitted numerous third-party registrations in an attempt to show that the term PREMIUM has not been treated as descriptive on the register. None of the third-party registrations, however, pertain to digital cameras, the goods at issue here in this appeal. As such, applicant’s evidence is of no probative value.

In fact, it is well established that laudatory words or phrases that attribute quality or excellence to goods are considered merely descriptive. See *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (holding THE ULTIMATE BIKE RACK a laudatory, descriptive phrase that touts the superiority of applicant’s bicycle racks). Here as well, based on the evidence of record, we find that applicant's mark, PREMIUM AUTO, when considered

in relation to “digital cameras,” immediately informs prospective purchasers that applicant’s products include automated or “auto” self-functioning features which are “premium” or high quality in nature. Competitors in this field should be free to use the descriptive language “premium auto” when describing their own digital cameras to the public in advertising and marketing materials. *See In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

In sum, we find that the examining attorney has met her burden of proof that applicant’s mark PREMIUM AUTO, when used in connection with “digital cameras,” is merely descriptive.

Decision: The refusal to register under Section 2(e)(1) as to “digital cameras” is affirmed. The application will proceed to registration solely for the goods of “batteries” and “AC adaptors” with a disclaimer of the word PREMIUM.