

Hearing:
May 3, 2012

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
August 13, 2012
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re InterDesign, Inc.

Serial No. 77906060

D. Peter Hochberg of D. Peter Hochberg Co. LPA for
InterDesign, Inc.

Amy L. Kertgate, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Bucher, Bergsman and Wellington, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant originally sought registration on the
Principal Register of the mark **FRIDGE BINZ!** (*in standard
character format*) for "plastic storage containers for domestic
use; plastic storage containers for use within refrigerators
and freezers" in International Class 21.¹

The Trademark Examining Attorney initially refused
registration on the ground that the term is merely
descriptive under Section 2(e)(1) of the Trademark Act,

¹ Application Serial No. 77906060 was filed on January 6, 2010, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. On May 6, 2010, applicant filed its Amendment to Allege Use (AAU), and on June 1, 2010, amended to an application on the Supplemental Register.

15 U.S.C. § 1052(e)(1). In response, applicant amended to an application on the Supplemental Register. The Trademark Examining Attorney then refused issuance on the Supplemental Register on the ground that the term is generic and thus incapable of distinguishing applicant's goods under Section 23 of the Trademark Act, 15 U.S.C. § 1091. After the Trademark Examining Attorney made the refusal final, applicant appealed to this Board.

We affirm the refusal to register.

When a proposed mark is refused registration as generic, the Trademark Examining Attorney has the burden of proving genericness by "clear evidence" thereof. See *In re Hotels.com*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); and *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987).

The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods in question. *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992).

Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *Ginn*, 228 USPQ at 530.

Evidence of the public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. See *Merrill Lynch*, 4 USPQ2d at 1143; *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

We begin by finding that the genus of goods at issue in this case is adequately defined by applicant's identification of goods, namely, "plastic storage containers for domestic use; plastic storage containers for use within refrigerators and freezers." See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) ("[A] proper genericness inquiry focuses on the description of [goods or] services set forth in the [application or] certificate of registration").

While the broadest category of goods in the present case may be plastic storage containers for domestic use, we are focusing on a narrower category of containers for domestic use, namely, plastic storage containers for use

within refrigerators. See *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019 (TTAB 2010) ("electric candle" is a generic term for a type of lighting fixture); *In re Reed Elsevier Properties, Inc.*, 77 USPQ2d 1649, 1656 (TTAB 2005), *aff'd* 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007) ("the genus of services is providing a website with a database of information covering the identified topics of law, legal news and legal services and that includes information about lawyers and information from lawyers"); *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002) (**BONDS.COM** is generic for "providing information regarding financial products and services via a global computer network and providing electronic commerce services via a global computer network ... with respect to taxable and tax exempt debt instruments" because the services encompass information about bonds); *In re Web Communications*, 49 USPQ2d 1478, 1479 (TTAB 1998) (consulting services include assisting customers in communications through the Internet); *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (unpublished) (registration is properly refused if the subject matter for registration is generic of any one of the goods for which registration is sought); *Cf. In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed.

Cir. 2005), *quoting, Application of Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 48 (CCPA 1975) ("Our predecessor court ... has stated that registration should be refused if the mark is descriptive of any of the goods for which registration is sought.")

Turning to the second inquiry, namely, the public's understanding of the term, the relevant public consists of the ordinary consumer interested in purchasing plastic storage containers for use within refrigerators. As noted above, the evidentiary burden of establishing that a term is generic rests with the United States Patent and Trademark Office and the showing must be based on clear evidence. *Merrill Lynch*, 4 USPQ2d at 1143. Based on the record described below, we find that there is clear evidence to support a finding that the relevant public, when it considers **FRIDGE BINZ!** in connection with plastic storage containers for use within refrigerators, would readily understand the term to identify refrigerator bins.

The Trademark Examining Attorney has put together an impressive record of web blogs and online discussion forums, advertisements, newspaper articles and dictionary definitions.

Dictionary entries from Encarta® World English Dictionary and The Free Dictionary by Farlex define the word "fridge" as follows:

fridge: noun (informal) same as refrigerator

This large record is replete with hundreds of references taken from a wide variety of online sources where it is clear that the word "fridge" is widely used as an informal shorthand for "refrigerator." Here are some examples drawn from printed publications:

steals + deals

... But since **refrigerators** work harder in the summer, now is a good time to see if your **fridge** is limping along, [Carla Warner, director of sales at Warners' Stellian] said.²

... If your office doesn't already have a cleaning schedule, come up with one and post it on the **fridge**. I recommend deputizing the most persnickety worker in the office, someone who's likely to hector people about cleanliness even without the official title.

"A general rule of thumb for **refrigerator** storage for cooked leftovers is four days," the site says.

Keep an opened box of baking soda in the **fridge**....³

BUTTERY, FLAKY & LEMONY

Cover the rolls with a towel and let them rise for an hour or until puffy and nearly doubled. (Or cover the pan tightly with plastic wrap, and place it in the **refrigerator** for up to 24 hours. When you are ready to bake the rolls, remove the pan from the **fridge**, and let them rise for an hour.)⁴

FROM OVERWEIGHT TO MARATHON FINISHERS

I keep a picture on my **refrigerator**, so every time I go into the **fridge**, I see how fat I was.⁵

Protection plans might not always be worth the expense

Bottom line: It's your call, but consider all the options carefully. Look at the product -- say, a new **refrigerator** -- and try to recall how many times an expensive repair was required during the life of the **fridge** it's replacing.⁶

² *Star Tribune* (Minneapolis, MN), May 5, 2011.

³ *Orange County Register* (CA), May 4, 2011.

⁴ *The Virginian-Pilot* (Norfolk, VA), May 4, 2011.

⁵ *The Oklahoman* (Oklahoma City, OK), May 2, 2011.

Foraged wild foods make meals special

When I mentioned to my husband that I was writing about foraging, he quipped as in foraging around the **refrigerator?**" I often find him kneeling on the floor in front of the **fridge**, door flung wide, digging around taking inventory....⁷

Ms. Cheap: Keep refrigerator door closed during power outages

Pat Whitaker, the UT extension agent for family and consumer sciences in Rutherford County, says the first rule is to keep from opening the door of the **fridge** or the freezer.

"If the power goes out, just don't open that door," she says. "The **refrigerator** can keep food safe for four hours if it is not opened. A full freezer can retain its temperature for 48 hours if the door stays closed, and for 24 hours if it is half full and not opened."

Whitaker says she gets a lot of calls about food safety and notes that because you can't see, taste or smell botulism it's important to have some guidelines. She says the best source for knowing what to do with individual items is

www.foodsafety.gov.

Just click on "keep food safe" and then on "in an emergency," and "preparedness." where you will find a comprehensive item-by-item guide of freezer and **refrigerator** foods and what to discard and what is safe to keep.

The site says that if certain foods are left in temperatures above 40 degrees (the optimum **fridge** temp) for over two hours, they should be discarded.⁸

Eggs for Easter – I'll take poached

Eggs have a prominent place in my **refrigerator** and no, I don't take them out of their cartons and arrange them in those egg racks in the **fridge** door.⁹

Easy does it on Easter

... You thaw it overnight in the **fridge**, then bring it to cool room temperature before using. Keep in mind that any more than, say, 36 hours in the **refrigerator** and the neat bag of dough becomes Breadzilla ...¹⁰

Royal wedding is just our cup of tea

... After the ingredients are melted and mixed, the "cake" is put in the **refrigerator** to chill and set, hence its nickname, the **fridge** cake....¹¹

What A Great Idea! Award Nominee: Freeaire Refrigeration finds energy-saving refrigeration innovations

Suddenly the compressor in a large **refrigerator** clicked on and rattled so loud that people could barely hear the conversation.

⁶ Pittsburgh Tribune Review, May 1, 2011.

⁷ Times-Picayune (New Orleans), May 1, 2011.

⁸ The Daily News Journal (Murfreesboro, TN), April 25, 2011.

⁹ The Detroit News (Michigan), April 21, 2011.

¹⁰ The Oregonian (Portland OR), April 19, 2011.

¹¹ Great Falls Tribune (Montana), April 13, 2011.

Travers, now 63, said he wondered why the **fridge** couldn't just use the ample supply of cold air just outside the building's door, instead of relying on a rattling compressor, to keep the food cold....¹²

The power to cut electric bills is in your hands

... My first test subject was the **refrigerator**, typically the highest-consuming appliance. I plugged the **fridge** in through the Kill A Watt overnight and found it was using 0.0775 kW for each hour. At our rate of 11 cents per kWh, the **fridge** and freezer was costing us about \$6.14 a month. Energy Star says replacing **refrigerators** made before 2000 can yield savings, but ours is newer....¹³

Dictionary entries from Encarta® World English

Dictionary and The Free Dictionary by Farlex define the word "bin" as follows:

bin: noun (plural bins) a large storage container
--

Similarly, the record shows that a storage container for (or a component of) a refrigerator is frequently referred to as a "bin."

5 QUESTIONS THAT CAN HELP YOU BUY THE RIGHT FRIDGE

... Side-by-side refrigerators ... come with big **fridge** spaces Some refrigerators may have door **bins** that are too narrow for [gallons of milk].¹⁴

We have seen that both words "fridge" and "bins" are generic in connection with applicant's goods. The evidence of record also shows that the term "fridge bins" maintains its genericness when these words are combined, inasmuch as this is simply another name for storage containers for use within refrigerators:

FALL TO-DO LIST: ... But it only takes a touch of ethylene to negatively affect your flower bulbs. So don't put them in the same **fridge bin** - or even in the same room - with apples, to be on the safe side....¹⁵

¹² *The Burlington Free Press* (Vermont), April 10, 2011.

¹³ *Chicago Tribune*, April 10, 2011.

¹⁴ *USA TODAY*, May 6, 2011.

¹⁵ *The Capital Times* (Madison, WI), September 22, 2007.

WHAT'S IN THE KITCHEN THIS WEEK

Fridge mat:

* Why you want it: If you're sick of the scuzz that manages to accumulate in the **fridge bins**, then you'll want this mat. It not only cushions fruits and veggies but helps reduce moisture buildup.¹⁶

Fridges – French Doors vs. side-by-side?

... But not all side-by-aides are created equal. Our model is 25.4 cu. ft. loaded with features, so we have ... digital temp controls, gallon-sized **fridge bins**, tilt out freezer bins¹⁷

Amana Refrigerator Manuals: Member Discussion

... I have taken out things that would come out (like the support for the bottom of the **fridge bins**) and now can't recall how to put some of them back.¹⁸

Recent Thrift Scores

... There were two **fridge bins**, so I used the other one with my metro shelving....¹⁹

Fried Chickpeas

... A few wayward vegetables loitered in the **fridge bins**....²⁰

Food Thought of the Day

... We've tried paper towels, ventilated bags, plastic boxes, and the **fridge bins**, among other things....²¹

How to Organize and Store Fruit

... Place all the fruits that must be refrigerated and place them in the two **fridge bins**....²²

How to Adjust the Temperature on a Hotpoint Fridge

... Adjust temperatures and humidity levels in the same manner on **fridge bins**....²³

Best Tips on Buying Fridges

¹⁶ The Arizona Daily Star (Tucson, AZ), August 8, 2007.

¹⁷ <http://www.windsorpeak.com/> as accessed by the Trademark Examining Attorney on April 3, 2010.

¹⁸ <http://www.manualsonline.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

¹⁹ <http://www.backgarage.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

²⁰ <http://celinabean.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

²¹ <http://exploreandeat.wordpress.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

²² <http://www.wikiHow.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

²³ <http://www.ehow.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

... and **fridge bins** with transparent doors will help you view things from outside....²⁴

Mason 54' Sailboat - \$475,000 (San Diego)

... Galley includes propane gas stove ... freezer bin and separate **fridge bin**, microwave and ice maker....²⁵

Accordingly, we have no doubt but that the term "fridge bins" is generic for at least some of applicant's listed goods.

Applicant's goods are promoted online by a number of resellers, and some are careful to use the exact form of the source-identifier that applicant has adopted - using upper case, initial letters, spelling "Bins" with a terminal letter "Z," and occasionally including the exclamation point. On the other hand, applicant argues that other advertisements that the Trademark Examining Attorney placed into the record should not be used to support a finding of genericness inasmuch as these particular vendors are actually selling applicant's goods. However, even though the following online advertisers may well be marketing applicant's products, it does not help applicant's case that these resellers all clearly promoted applicant's goods online using the generic term, "fridge bin[s]," spelled correctly:

²⁴ <http://www.articlecontentprovider.com/> as accessed by the Trademark Examining Attorney on June 22, 2010.

²⁵ <http://sandiego.craigslist.org/boa/1672266123.html> as accessed by the Trademark Examining Attorney on April 3, 2010.

ORGANIZE-IT
Your Storage & Organization Resource

HOME CLOSEOUT WHAT'S NEW HELP TRACK ORDER
(800) 210-7712 keyword or item #
Your Cart Contains: 0 item(s)
Sub-Total: \$0.00

Closet Kitchen Storage Garage Laundry Bath Shelving Office Decor Travel

Easter Sale take **15% OFF** any purchase. use code **WS43EAS** at checkout

Home >> Kitchen >> Cabinet Shelves

Stacking Refrigerator Bin - 12 Inch x 14 Inch

Price: \$12.99
Item No: 081492703303 Status: In Stock

Qty:

Description
Dimensions Item Info

Keep it inside of your refrigerator neat and organized with these stacking Refrigerator Organizer Bins by InterDesign. These refrigerator bins provide a great way to separate meats from other foods in the fridge or make compartments for sandwiches and salads more easily accessible. These plastic **fridge bins** are constructed from durable, easy to clean plastic, and their modular design allows you to make the most out of the available space in your refrigerator.

InterDesign Plastic Refrigerator Organizer Bins Features

- Great for organizing beverages, condiments, meats, and more.
- Helps keep fridges clean by collecting juices from meats or spilled beverages.
- Durable plastic construction provides years of reliable use.
- Modular stacking design helps you maximize the space in your fridge.
- Convenient pull handle allows you to use this fridge organizer as a tray.
- Stack this fridge organizer with our matching Medium Stacking Refrigerator Organizer as well as our Small Stacking Refrigerator Organizer to create even more customized storage in your fridge.
- Easy to clean.

[Zoom - View Larger Image](#)

Have you used this product? Be the first to [Write a Review](#)

Product Reviews

Have you used this product? Be the first to [Write a Review](#)

powered by RatePoint

You may also like:

Center Mount Pottery Rot Out Storage System
Price: \$99.99

Progressive Collapsible Salad Spinner
Price: \$29.99

Stacking Refrigerator Bin - 3 inch x 14 inch
Price: \$12.99

Stacking Refrigerator Bin - 4 inch x 14 inch
Price: \$9.99

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Deep Clear **Fridge Bin**

Price: \$12.32

[Details](#)

This deep clear **fridge bin** is great for keeping all of those loose items in your fridge organized. It can hold multiple items such as: soda, boxed juices, mayonaise, pickles, and so much more. It will keep everything in your fridge neat and organized. It is made of a strong durable clear plastic and is lightweight. It is easy to clean and looks good in any fridge.

Measurements: 8" x 14.5" x 4"

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²⁶ <http://www.organizeit.com/> as accessed by the Trademark Examining Attorney on April 3, 2010.

²⁷ <http://www.organizeworld.com/> as accessed by the Trademark Examining Attorney on May 6, 2011.



Small Fridge Bin

[Be the first to review this product](#)

Availability: In stock

\$9.95

Qty: **Add to Cart**

.....


Features:

- Modular and stackable
- Clear resipreme construction

Dimensions:	14.5" L x 4" W x 4" H
Item	26977


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Apartment Essentials

search 

Fridge Bin 8x2

You are here: [Shop Home](#) >> [Categories](#) >> [Kitchen](#) >> **Fridge Bin 8x2**



Product Features

- Modular slide-and-stack design organizes food for easy selection
- Maximize space and minimize waste storing food by similarity, size or frequent usage and quickly find any item you need
- Collect drips and liquids to keep refrigerator shelves clean
- Clear durable ridged plastic construction
- Handle for convenient slide-out accessibility

8" x 14.5" x 2" H

29

²⁸ <http://www.storables.com/> as accessed by the Trademark Examining Attorney on May 6, 2011.

Applicant also argues that third-party registrations suggest that applicant is not being treated fairly, i.e., in a manner consistent with earlier-filed applications, citing to the following third-party registrations:

PIN BIN	for "containers for push-pins and similar fastening devices" in International Class 16; ³⁰
SMART BIN	for "power-operated moveable floor containers for library books, library-like materials, parts therefor" in International Class 7; ³¹
SEALDBIN	for "coated fabric bags for transporting and storing dry materials" in International Class 22; ³²
MULTI-BINS	for "material handling container system comprising multi-purpose storage rack and plastic bins" in International Class 20; ³³ and
BINS	for "moving and storage services, namely, rental, storage, delivery and pick up of self-contained, movable storage units" in International Class 39. ³⁴

These previously-issued Supplemental Registrations have some characteristics similar to the instant case. But of course, the authority is legion that we cannot be bound by the actions of a Trademark Examining Attorney in a prior

²⁹ <http://www.apartmentessentials.net/> as accessed by the Trademark Examining Attorney on May 6, 2011.

³⁰ Registration No. 1610900 issued on the Supplemental Register on August 21, 1990; renewed.

³¹ Registration No. 2533125 issued on the Supplemental Register on January 22, 2002; renewed.

³² Registration No. 2593222 issued on the Supplemental Register on July 9, 2002; renewed.

³³ Registration No. 2633428 issued on the Supplemental Register on October 8, 2002; Section 8 affidavit accepted.

³⁴ Registration No. 3738320 issued on the Supplemental Register on January 12, 2010.

application, and that each case must be decided on its own set of facts, carefully assessing the likely perceptions of members of the general public when confronted with the alleged mark in question. Needless to say, the prosecution records for these registrations are not before us. Moreover, we note that on their faces, none of these marks seems analogous to the instant case, and hence they have substantially no persuasive value.

In fact, as noted by the Trademark Examining Attorney, it appears as if applicant has essentially conceded the genericness of the term "fridge bins" for some of the listed goods. Nonetheless, applicant argues that the result herein should be different because of applicant's unique presentation of its alleged mark, namely, the intentional misspelling of the word "Binz" and the addition of the exclamation point. We disagree, and find that neither the slight misspelling of the word "bins" nor the addition of an exclamation point alters the generic nature of the term "Fridge Binz!"

Our case law makes it clear that a novel spelling that is the phonetic equivalent of a generic term is also generic if purchasers would perceive the misspelling as the equivalent of the generic term. *See Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628, 1631 (TTAB 1998) (holding **MASSFLO** generic for mass flowmeters); *see also In re*

Stanbel, Inc., 16 USPQ2d 1469 (TTAB 1990) (holding **ICE PAK** generic for ice packs), *aff'd*, 20 USPQ2d 1319 (Fed. Cir. Jan. 24, 1991); *In re Hubbard Milling Co.*, 6 USPQ2d 1239 (TTAB 1987) (holding **MINERAL-LYX** generic for mineral licks for feeding livestock). Similarly, the addition of a punctuation mark generally will not change a generic designation into a non-generic term. *In re Samuel Moore & Co.*, 195 USPQ 237, 240 (TTAB 1977) (holding **SUPERHOSE!** merely descriptive of hydraulic hose, stating "[a]pplicant has not cited nor have we found any case where it was held that a common punctuation mark, such as an exclamation point, was sufficient to elevate an otherwise merely descriptive term to the status of a registrable trademark. We do not do so in this case.").

In view of the foregoing, we find that the Trademark Examining Attorney has met her burden of establishing that **FRIDGE BINZ!** is generic and thus incapable of distinguishing applicant's "plastic storage containers for use within refrigerators."

Decision: The refusal to register this term on the Supplemental Register is hereby affirmed.