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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Monster Cable Products, Inc.

Serial No. 78348832

Matthew A. Powelson of LaRiviere Grubman & Payne LLP for
Monster Cable Products, Inc.

Steven W. Jackson, Trademark Examining Attorney, Law Office
107 (J. Leslie Bishop, Managing Attorney).

Before Seeherman, Zervas and Bergsman,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Monster Cable Products, Inc. ("applicant") filed an
intent-to-use application to register the mark MONSTER, in
standard character form, for the goods, as amended, set
forth below.

Automotive and marine accessories,
namely, automotive bed mats, automotive
bug shields, bumpers, automotive
organizers, automotive cargo management
systems, automotive fender flares,
automotive grab handles, automotive
grille, grille guards, automotive light
bars, rear view mirrors, roll bars,

running boards, automotive seats, seat covers, side bars, side skirts, skid plates, spoilers, visors, truck steps, shock absorbers, tail gate protectors, tail gates, side guards, truck cargo nets, tonneau covers, truck boxes, window covers, window deflectors, automotive battery accessories, automobile bug shields, automobile covers, automotive carpets, dash board covers, floor mats, front end masks, headliners, license plate frames, splash guard, steering wheel covers, steering wheels, sun covers, automobile window shades, window covers, window deflectors, shift knobs, hoods, automotive batteries, spark plugs, suspension struts, air intake manifolds, truck bed liners, in Class 12 (hereinafter "truck accessories").

The Trademark Examining Attorney refused registration on the ground that MONSTER when used in connection with truck accessories is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C.

§1052(e)(1). The examining attorney contends that because the term "monster truck" means a very large pickup truck, the use of the mark MONSTER in connection with truck accessories identifies products for monster trucks.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality,

characteristic, feature, function, purpose or use of the goods or services. *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 or services in order to be considered to be merely descriptive; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); *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 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 meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). In other words, the question is not whether someone presented with only the mark could guess what the goods are. Rather, the question is whether someone who knows what the goods are will immediately understand the mark as directly conveying information about them (*i.e.*, whether someone familiar with

applicant's truck accessories will understand MONSTER to convey information about the goods). *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); *see also In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

The examining attorney submitted the following evidence to prove that MONSTER is merely descriptive when used in connection with truck accessories:¹

¹ We do not give any consideration to the Australian online retail website *ewreckers.au* because the examining attorney did not submit any evidence to indicate that U.S. consumers encounter this website.

1. The definition of the term "monster truck" meaning "a very large pickup truck with oversized tires, often used in races and exhibitions"² and "a large truck designed specifically to perform in monster truck shows, typically based on a lifted pickup truck with oversized wheels and modified suspension."³

2. The *Wikipedia* entry for "Monster truck" defining that term as "an automobile, typically styled after pickup trucks, modified of purposely built with extremely large wheels and suspension."⁴ The entry also provides that "Bob George, one of the owners of a motorsport promotion company named Truck-a-rama, is said to have coined the phrase 'Monster Truck' when referring to BIGFOOT [one of the first big trucks to garner attention]. The term 'monster truck' became the generic name for all trucks with oversized terra tires." In addition, the *Wikipedia* entry described some of the features of "monster trucks" as follows:

a combination of coil springs and shock absorbers as the main source of suspension;

a four-link suspension system and large coilover shock absorbers; and

² From *Dictionary.com* attached to the July 16, 2009 Office Action.

³ *Allwords.com* attached to the February 3, 2010 Office Action.

⁴ July 16, 2009 Office Action.

full tubular chassis and a long-travel suspension using cantilevers and nitrogen shock absorbers to control the suspension.

4. Excerpts from nine websites promoting the sale of monster truck parts.⁵ Those parts include roll cage kits, roof racks, nitrogen shock absorbers, floor mats, battery cable kits and parts, windscreens, windshields, and canopies.

5. A guide to buying parts for monster trucks at *ehow.com*.⁶

7. An excerpt from the Truck Accessories Store website (*the-accessories-store.com*) in which the retailer uses the word "Monster" to identify a type of truck: "From Ford, Dodge and Monster to Chevy, truck caps and tires."⁷ In addition, the website frames the **eBay** website and lists several trucks as "monster" and "monster truck." For example,

Chevrolet: Silverado 2500
MONSTER 2005 CHEVY SILVERADO
2500 LT DURAMAX TURBO DIESEL

* * *

Dodge: Ram 3500 dodge (sic) 3500
1997 dodge (sic) ram (sic) 3500 4x4 monster
truck semi wheels

⁵ July 16, 2009 and February 3, 2010 Office Actions.

⁶ February 3, 2010 Office Action.

⁷ February 3, 2010 Office Action.

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Ford: F-350 King Ranch 2006 F-
350 King Ranch Diesel Dually
Lifted MONSTER L@@K

* * *

Ford: F-350 F-350 MONSTER
TRUCK 12.5" TOTAL LIFT, 40"
SUPER SWAMPERS N/R!

* * *

Ford: F-350 XLT 2005 F-350 XLT
4x4 Diesel Lifted MONSTER Lambo
Doors

* * *

Ford: F-350 Lariat Monster 7.0L!
Big Lift! Price Reduced! Motivati
edSeller (sic)!

Applicant argues that the mark MONSTER when used in connection with automotive accessories is suggestive, if not arbitrary, for the following reasons:

1. Just because the record shows that there is a vehicle referred to as a "monster truck" does not mean that the word "monster" is descriptive of automotive accessories;

2. The word "monster" *per se* has no direct relationship with automotive accessories; and

3. Because the average consumer does not drive a monster truck, the word "Monster" does not directly describe automotive accessories.⁸

We start our analysis with the proposition that a mark need not describe all the goods listed in the description of goods to be merely descriptive. In this regard, it is a well settled legal principle that where a mark may be merely descriptive of one or more items of goods in an application but may be suggestive or even arbitrary as applied to other items, registration is properly refused if the subject matter for registration is descriptive of any of the goods for which registration is sought. *In re Delta and Pine Land Co.*, 26 USPQ2d 1157, 1158 (TTAB 1993); *In re Canron, Inc.*, 219 USPQ 820, 821 (TTAB 1983); *cf. In re Analog Devices*, 6 USPQ2d 1808, 1810 (TTAB), *aff'd* 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (registration is

⁸ Applicant attached to its brief "30 registrations or applications for marks including the term Monster in International Class 12" from the TESS database. The examining attorney objected to the evidence attached to applicant's brief on the ground that it was not timely filed. Trademark Rule 2.142(d) provides that "the record in the application should be complete prior to the filing of an appeal" and that if the applicant desires to submit additional evidence, it may request that the Board suspend the appeal and remand the application for further examination. Because the evidence attached to applicant's brief was not timely filed and because applicant did not request that the application be remanded for further examination, the objection to the evidence is sustained and it has not been given any consideration.

properly refused if the subject matter is generic of any one of the goods for which registration is sought).

One of the primary characteristics of a "monster truck" is its modified suspension. One of the products listed in the description of goods is "suspension struts." Consumers encountering MONSTER brand suspension struts will immediately perceive the products as being for monster trucks. Furthermore, the record shows that roll cage kits, roof racks, nitrogen shock absorbers, floor mats, battery cable kits and parts, windscreens, windshields, and canopies are sold for monster trucks. These products correspond with roll bars, automotive cargo management systems, floor mats, shock absorbers, automotive battery accessories, and window covers and deflectors listed in the description of goods. As indicated above, consumers encountering the MONSTER mark in connection with these products would likely perceive the products as being for monster trucks. Finally, a consumer encountering MONSTER for truck steps and truck bed liners would also understand, without any need for analysis, that the products were for monster trucks.

In view of the foregoing, we find that mark MONSTER used in connection with truck accessories to be merely descriptive.

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Decision: The refusal to register is affirmed.