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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aero Industries, Inc.

Serial No. 78374039

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Before Grendel, Bergsman and Wellington, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Aero Industries, Inc. filed an application for the mark THE LID, in standard character format, for what has been ultimately identified as "mechanically-operated unfitted flexible covers and tarping systems, namely, flip tarp systems, primarily comprised of flexible covers, tarpaulins and drive mechanisms for cargo and refuse trailers and semi-trailers."¹ Registration was refused on

¹ Application Serial No. 78374039, filed February 25, 2004. Applicant claimed September 15, 2003 as its dates of first use anywhere and first use in commerce.

the ground that THE LID used in connection with "flexible covers and tarping systems" is merely descriptive. Section 2(e)(1) of the Lanham Act, 15 U.S.C. §1052(e)(1). When the refusal was made final, applicant appealed. Both applicant and the examining attorney filed briefs. We affirm the refusal.

The examining attorney contends that THE LID "merely describes the primary use or function of the goods, i.e., that they are hinged lids for truck trailers." (Brief, p. 3). In support of the refusal, the examining attorney relied on the following evidence:

1. Applicant's brochure submitted as the original specimen featuring a photograph of applicant's product and the phrase "Put a **lid** on it!" (Emphasis in the original). The photograph is shown below.



2. The definition of "lid" which means "a removable or hinged cover for a hollow receptacle or box. American Heritage Dictionary of the English Language (3rd ed. 1992); and,
3. Excerpts from websites with references to the word "lid" used in connection with truck covers. Representative examples of the websites include the following:

- A. Gaylord's Truck Bed Lids (gaylordslids.com) advertising covers for pickup trucks;
- B. An article in the "People" section of www.latinola.com regarding a new invention: "Local Latino develops revolutionary truck lid cover." The article provides the following information:

La Shade is the first hard truck lid cover that is dual-hinged, first on the front edge of the truck bed and then approximately 25" back, behind the front hinge and cab. This allows the truck lid to open in a vertical motion, leaving the opened truck lid cover in a horizontal position, approximately 25" above the top of the truck bed.

- C. Tony's Custom Truckware (custompickup.com) with the following discussion regarding "Hard Bed Covers":

Truck Lids are a hard version of the traditional soft tonneau cover, offering better security and easier access to the truck bed. A truck lid features greater visibility, is easily removed, and keeps prying eyes out of your truck bed.

- D. Frequently asked questions about the Sidewinder automatic transfer trailer covering system (Donovan-ent.com):

Does it cover peaked loads?

Yes! Because the Sidewinder tarp is pivoting at side mounted hinges, the tarp is being laid down rather than being rolled on or drug across the load. The one piece lid design allows Sidewinder

to cover peaked loads without
steel framing getting in the way.

- E. An article regarding 4-wheel drive vehicles
in about.com:

Cover It Up
Truck Bed Covers and Lids

* * *

Truck bed covers (often referred
to as tonneaus, tonnos and lids)
are attachments to a pickup
truck's bed that provide
protection from weather and
security from theft allowing you
to store items in the bed and keep
them out of sight and out of the
weather.

- F. A discussion in the AutoAnything website
(autoanything.com) regarding tonneau covers.

What's in a Name?

* * *

Other more descriptive names refer to
the same part: bed cover, bed lid,
truck bed lid and more.

- G. An article regarding "Truck Tents" in the
Industry Articles website (wordpress.com)
provides the following information:

Tonneau covers (also known as
truck bed covers, bed lids or
truck lids) have evolved from a
number of versions designed for a
variety of uses.

Applicant contends that THE LID is not merely
descriptive when used in connection with "flexible

tarpaulin cover systems for transfer trailers and the like”
for the following reasons:

1. The word “lid” is not typically used in the industry;
2. When used to describe applicant’s products, the word “lid” is incongruous; and
3. The article “the” adds a unique character to the mark.

According to applicant, “the relevant purchasing public includes owners or operators in the trucking or transfer trailer industry, and particularly purchasers of ‘cargo and refuse trailers and semi-trailers.’” Because the evidence submitted by the examining attorney references the word “lid” used in connection with pickup trucks, the evidence is not relevant to show how the word “lid” is necessary to describe applicant’s “flexible tarpaulin cover systems.” (Applicant’s Brief, pp. 6-7).

Applicant asserts that the word “lid” connotes a rigid structure as evidenced by the websites submitted by the examining attorney (e.g., Tony’s Custom Truckware website stating that “Truck Lids are a hard version of the traditional soft tonneau cover”). The word “lid” is, therefore, incongruous when used in connection with applicant’s flexible cover. (Applicant’s Brief, pp. 8-10).

Finally, applicant argues that the addition of the definite article "the" to the mark engenders the commercial impression that THE LID is unique: "THE, as a definite article, implies that the item has some unique or defining characteristics identifiable to the user. This character of uniqueness is also suggestive to the consumer."

(Applicant's Brief, pp. 10-11).

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the goods are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ 1314, 1316-1317 (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 UPSQ 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).

Thus, we start our analysis by inquiring whether applicant's mark - - THE LID - - describes "flexible tarpaulin cover systems for transfer trailers and the like," not whether we can guess what the product is by looking at the mark. Because applicant's product is, in essence, a cover, and because a "lid" is a cover, the mark THE LID directly conveys to potential consumers the nature of the product without the need for any thought, logic, or multi-stage reasoning. In this regard, we note that applicant itself describes its product as a lid. See applicant's brochure with the photograph of the product and the legend "Put a **lid** on it!" referenced above.

The other third-party materials provide evidence that the word "lid" is descriptive when used in connection with

pickup truck bed liners. While pickup trucks are different than "cargo and refuse trailers and semi-trailers," the reference to "lids" in connection with pickup trucks demonstrates the broad use of the term "lid" and a common understanding of that word when it is used to describe various covers.

The fact that applicant may be the first and possibly the only user of this designation does not alter the significance of THE LID and bestow upon applicant any proprietary rights. *In re Pharmaceutical Innovations, Inc.*, 217 USPQ 365, 367 (TTAB 1983); *In re Cosmetic Factory, Inc.*, 208 USPQ 443, 447 (TTAB 1980).

The only remaining consideration is whether the use of the definite article "the" converts the descriptive word "lid" into a registrable trademark. We have repeatedly rejected arguments that the use of the definite article "the" as a prefix in a mark is sufficient to convert a descriptive term into a suggestive term. The addition of the word "the" to a descriptive word does not add any source-indicating significance to the term sought to be registered. *See In re Weather Channel, Inc.*, 229 USPQ 854, 856 (TTAB 1985) (THE WEATHER CHANNEL for television programming services describes the class of users to which the services are directed); *In re Computer Store, Inc.*, 211

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USPQ 72, 74-75 (TTAB 1981) (THE COMPUTER STORE is the common descriptive name of a retail outlet that sells computers); *In re G. D. Searle & Co.*, 143 USPQ 220, 222-223 (TTAB 1964), *aff'd*, 149 USPQ 619 (CCPA 1966) (THE PILL for pharmaceutical preparations in tablet form is merely descriptive). The reasoning behind these cases provides that the registration of THE LID would deprive others from referring to their products by the designation "the lid" to indicate that their covers are trailer lids.

In view of the foregoing, we find that when used in connection with "mechanically-operated unfitted flexible covers and tarping systems, namely, flip tarp systems, primarily comprised of flexible covers, tarpaulins and drive mechanisms for cargo and refuse trailers and semi-trailers," relevant consumers will immediately understand the significance or meaning of the term "THE LID" without having to resort to thought, logic, or a multi-stage reasoning process, and that therefore the mark is merely descriptive.

Decision: The refusal to register is affirmed and registration to applicant is refused.