

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

Hearing: June 14, 2007

Mailed: September 13, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Madson Products, LLC

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Serial No. 78565462

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Craig J. Madson of Madson & Metcalf for Madson Products,  
LLC.

Brian Pino, Trademark Examining Attorney, Law Office 114 (K.  
Margaret Le, Managing Attorney).

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Before Walters, Holtzman and Kuhlke, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Madson Products, LLC has filed an application to  
register on the Principal Register the mark YAK SAK for  
"fluid-tight paper or plastic utility bags used for motion  
sickness and disposal of unpleasant matter," in  
International Class 16.<sup>1</sup>

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<sup>1</sup> Serial No. 78565462, filed February 11, 2005, based on an allegation  
of a bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its goods.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We reverse the refusal to register.

The examining attorney contends that the mark is merely descriptive of the identified goods because YAK SAK immediately tells prospective purchasers that the goods are a sack that holds yack; that yack is an American slang term meaning "vomit," which is clearly "unpleasant matter," referring to the identification of goods; and that the novel spelling of the merely descriptive terms "yack" and "sack" does not diminish the merely descriptive nature of the mark if purchasers would perceive the different spelling as the equivalent of the descriptive term, as is the case here, citing *Andrew J. McPartland, Inc. v. Montgomery Ward & Co., Inc.*, 164 F.2d 603, 76 USPQ 97 (C.C.P.A. 1947), *cert. denied*, 333 U.S. 875, 77 USPQ 676 (S. Ct. 1948).

The examining attorney submitted the following definitions in support of the refusal:

*Macquaire Dictionary Book of Slang* -  
[www.macquairedictionary.com.au](http://www.macquairedictionary.com.au)<sup>2</sup>:

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<sup>2</sup> This definition appears to be from an Australia-based website and, as such, is insufficient to establish the definition of the slang term "yack" or "yak" in the United States. However, we find the additional

**yack** - verb - 1. to vomit. 2. to talk or chatter.  
*noun* 1. an instance of vomiting 2. to chat.  
**yak** - essentially same definition.

*American Heritage Dictionary of the English Language* 4<sup>th</sup> ed. 2000 - www.bartleby.com:

**sack** - *noun* 1.a. a large bag of coarse material for holding objects in bulk. b. a similar container of paper or plastic. c. the amount that such a container can hold.

*NTC's Dictionary of Slang and Colloquial Expressions* 3<sup>rd</sup> ed. Richard Spears 2000:

**yack** - 1. a foolish person 2. idle chatter  
**yak** - 1. to talk. 2. a chat. 3. a joke. 4. a laugh from a joke. 5. to vomit.

*Slang American Style* (same author and publisher) 1997 and essentially same definitions

*The Slangman Guide to Dirty English - Dangerous Expressions Americans Use Every Day* - David Burke - 2003:

**yak** - *used with friends* - to vomit

Applicant contends that its mark is, at most, suggestive, requiring a multistep reasoning process, and applicant describes its goods as a versatile, foldable, utility bag that can be used for disposal of any unpleasant material, e.g., diapers, dog excrement, etc., available for emergency situations. Applicant states that airplane sickness bags are most similar to its goods; that its goods are the subject of a pending patent application; and that airplane sickness bags are usually available only on airplanes, not in stores.

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definitions sufficient to find that the term is similarly used in American slang, along with applicant's concession, in its response of March 17, 2006, that the term is so defined.

Applicant also claims that its mark is a double entendre chosen for its dual meanings. Applicant states that the "yak" portion of the mark is not a misspelling; rather, applicant chose the term "yak" so that the purchaser will think, first, of the so-named pack animal, "suggesting that the product is tough, rugged and durable ... in essence, strong like a yak" (brief, p. 11). Applicant argues, further, that the mark as a whole, YAK SAK, will be similarly perceived as suggesting the toughness and ruggedness of the sack, similar to "sacks" used on "yaks"; and, equally, to those familiar with the slang meaning of the term "yak," the mark will be perceived as suggesting a sack used to hold vomit. Applicant also suggests that the other slang definitions of "yak," such as "to chat" could be relevant, for example, the definition of "yak" as "to chat" could suggest that applicant's "sack" "has a talk or buzz about it" (brief, p. 12).

Applicant argues that competitors do not need to use the mark YAK SAK to describe similar goods, noting in this regard, without evidence, that the only other use of the term as a whole is the well known dry bags used with kayaks and bicycles called yak saks. Applicant's argument is not well taken. It is well established that a word need not be in common use in an industry to be descriptive, and the mere fact that an applicant may be the first to use a descriptive

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term in connection with its goods or services does not imbue the term with source-identifying significance. *In re Hunter Fan Co.*, 78 USPQ2d 1474 (TTAB 2006). *See also, In re National Shooting Sports Foundation, Inc.*, 210 USPQ 1018 (TTAB 1983).

Finally, applicant requests that the Board resolve any doubt on the issue of descriptiveness in applicant's favor.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the

average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We agree with the examining attorney that, when considered in connection with the identified goods, YAK SAK, merely describes a sack or bag that is used to hold vomit, which is certainly an unpleasant material. The examining attorney has clearly established that one meaning of "yack" is "vomit," and "yak" will be perceived as a mere misspelling of "yack." We are not persuaded by applicant's subsequent arguments that, because "yack" is a slang term, we should not conclude prospective purchasers will be aware of this meaning of "yack" or attribute that meaning to the term "yak" in the mark YAK SAK. Applicant conceded that this is one meaning of the term and that this meaning is part of the intended double entendre effect of its chosen mark.

However, we also agree with applicant that its mark is likely to be understood as a double entendre in connection with the identified goods. "Yak" is equally likely to be perceived as indicating the so-named animal. In this case, YAK SAK is likely to be understood as suggesting the toughness of the sack. In this context, the mark is, at most, suggestive of the identified goods and the examining attorney has not contended or established otherwise. A double entendre is "an ambiguity of meaning arising from

language that lends itself to more than one interpretation." *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005). As in *The Place, supra*, both meanings of the mark in the case before us are readily apparent from the mark itself without reference to other indicia. *See also In re Grand Metropolitan Foodservice, Inc.*, 30 USPQ2d 1974 (TTAB 1994).

We do not find that the double entendre extends to other slang meanings of the term "yak," as those terms are not relevant in the context of the identified goods, despite applicant's contentions to the contrary.

In conclusion, the mark YAK SAK is a double entendre when considered in connection with "fluid-tight paper or plastic utility bags used for motion sickness and disposal of unpleasant matter," and only one of the two likely meanings, discussed *supra*, of the mark YAK SAK is merely descriptive in connection with applicant's goods. Thus, the examining attorney has not established that the mark as a whole is merely descriptive in connection with the identified goods.

*Decision:* The refusal under Section 2(e)(1) of the Act is reversed.