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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Maplegate Media Group, Inc.¹

Serial No. 78814834

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LLP for Maplegate Media Group, Inc.

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111 (Craig D. Taylor, Managing Attorney).

Before Walters, Zervas and Walsh, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

Maplegate Media Group, Inc. is the owner of an
application (Serial No. 78814834) filed on February 14,
2006 to register WWW.BOTMAG.COM ROBOT (in standard
character form) for services ultimately identified as
"journals and magazines for hobbyists of robots, robotics,
and computers" in International Class 16. Applicant has

¹ On December 19, 2006, the Assignment Branch of the United
States Patent and Trademark Office recorded an assignment of the
application involved in this appeal from Hobby Products

claimed use of its mark anywhere on June 20, 2005 and use of its mark in commerce on September 30, 2005 pursuant to Trademark Act §1(a), 15 U.S.C. §1051(a). Applicant has also disclaimed the word ROBOT.

The examining attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's proposed mark, if applied to applicant's goods, would be merely descriptive of them. When the refusal was made final, applicant filed this appeal and requested reconsideration. The examining attorney denied the request for reconsideration and the appeal was resumed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). See also *In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). To be merely descriptive, a term need only describe a single significant

International Holdings, Inc., the original applicant, to Maplegate Media Group, Inc. See Reel No. 3447, Frame No. 0661.

quality or property of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Also, "[t]he perception of the relevant purchasing public sets the standard for determining descriptiveness. Thus, a mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service. On the other hand, if a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services, then the mark is suggestive." *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (citations and internal quotation marks omitted).

In arguing that BOTMAG is merely descriptive, the examining attorney relies on entries for "bot" and "mag" from various online sources. She has made of record an entry from abbreviations.com providing that "bot" is an abbreviation for "robot" and on entries from acronyms.thefreedictionary.com, dictionary.com and *Merriam-Webster Online Dictionary* at m-w.com providing that "mag" is an abbreviation for "magazine." Applicant has also submitted a definition of "bot" with its request for reconsideration from the *American Heritage Dictionary* (located at dictionary.reference.com) that identifies "bot" as "short for robot." This evidence establishes that in

the context of applicant's goods, i.e., "journals and magazines for hobbyists of robots, robotics and computers," both "bot" and "mag" are generally recognized and have meaning. The combination of these two abbreviations, BOTMAG, simply communicates to purchasers that the subject matter of applicant's magazines is robots, or robotics.²

Applicant, in arguing that BOTMAG is at most merely suggestive, points out that its two-page list of search results from the Google search engine for "bot mag" made of record with its request for reconsideration demonstrates that "BOTMAG is not a recognized abbreviation or contraction for 'robot magazine'"; and that applicant's "evidence in the nature of printouts from several online dictionaries [shows] not only is 'botmag' ... not listed among the entries, the term 'bot' is either not listed, or is listed as having a variety of meanings, and where it does refer to an etymology from the word 'robot,' it specifically refers to software robots"; and that "[s]uch negative dictionary evidence demonstrates that 'bot' is not a generally-recognized abbreviation for 'robot'" Brief at unnumbered p. 6. For the following reasons, we do not find applicant's arguments persuasive. First, that BOTMAG

² Applicant's specimen of use, the cover of applicant's premier issue of its magazine, states that "Robot" magazine is "The

is not identified in any dictionary or that there are no other third-party uses of BOTMAG is not significant; even if applicant were the only user of BOTMAG in connection with journals and magazines for hobbyists of robots, robotics and computers, that fact would not require reversal of the refusal to register. "[A] word need not be in common use in an industry to be descriptive, and the mere fact that an applicant is the first to use a descriptive term in connection with its goods, does not imbue the term with source-identifying significance." *In re Hunter Fan Co.*, 78 USPQ2d 1474, 1476 (TTAB 2006). See also *In re Ruffin Gaming LLC*, 66 USPQ2d 1924 (TTAB 2002). Second, the fact that a term has significance in a second field or in a different context is not controlling on the issue of mere descriptiveness inasmuch as a term may properly be considered to be merely descriptive so long as any one of its meanings is descriptive. See, e.g., *In re Chopper Industries*, 222 USPQ 258 (TTAB 1984); *In re Champion International Corp.*, 183 USPQ 318 (TTAB 1974).

In view of the foregoing, even though the evidence applicant has submitted into the record from dictionary.reference.com does not indicate that that "botmag" has any English language meaning, "botmag," in the

latest in hobby, science and consumer robotics."

context of applicant's goods, would be immediately perceived by consumers without imagination, thought and perception, as an abbreviation for "robot magazine," or that the goods are magazines about robots or robotics.³

We next consider the www. and ".com" portions of applicant's proposed mark. BOTMAG is the only element of WWW.BOTMAG.COM which provides any source identifying information; the "www" and ".com" portions of applicant's proposed mark have no trademark significance. Top-level Internet domain names ("TLD") (e.g., ".com," ".org," ".edu") function to indicate an address on the World Wide Web, and therefore generally serve no source-indicating function. Because TLDs generally serve no source-indicating function, their addition to an otherwise unregistrable mark typically cannot render it registrable. *See In re Reed Elsevier Properties Inc.*, 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007) (LAWYERS.COM generic for "providing an online interactive database featuring information exchange in the fields of law, legal news and legal services"); *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely

³ Applicant's evidence from the Google search engine that "bot mag" refers to "botanical magazine" is of limited probative value. "Bot," in the context of a journal regarding robots or bots, would not be construed as an abbreviation for "botanical."

descriptive of computer software for managing a database of records and for tracking the status of the records by means of the Internet). See also 1 J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 7:17.50 (4th ed. 2008) (footnotes omitted):

The author agrees that a top level domain designation has no ability to distinguish one source from another and thus, has no trademark significance. Such a top level domain indicator has no source indicating significance and cannot serve any trademark purpose. The same is true of other nondistinctive modifiers used in domain names, such as "http://www" and "html." ... The average person that uses the Internet is aware of the standard format for a domain name and knows that the designations "http," "www," and a TLD like ".com" are a part of every Internet domain name and identifier. Thus, the TLD ".com" functions in the world of cyberspace much like the generic indicators "Inc.," "Co.," or "Ltd." placed after the name of a company.

We find, therefore, that the Internet address WWW.BOTMAG.COM immediately identifies a feature of applicant's goods.

Turning next to the word ROBOT, as mentioned earlier in this decision, applicant has disclaimed the term. It has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term, as applied to the goods or services in connection with which it is used, and an acknowledgment of the lack of an exclusive right therein at the time of the

disclaimer. See *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361 (CCPA 1972). See also *In re Interco Inc.*, 29 USPQ2d 2037 (TTAB 1993).

Applicant has argued that "[t]he mark is WWW.BOTMAG.COM ROBOT, not BOT MAG nor ROBOT MAGAZINE, and must be analyzed in its entirety. Any descriptive connotation that may be conveyed by each term on its own is obviated by combining the terms in a unitary fashion in the compound term WWW.BOTMAG.COM ROBOT." Brief at unnumbered p. 5. However, when descriptive terms are combined, a suggestive term may be formed only if the compound mark in its entirety evokes a new and unique commercial impression that is not merely descriptive. If each component of the compound mark retains its merely descriptive significance in relation to the goods, without creating a unique or incongruous meaning, then the resulting combination is also merely descriptive. *In re Tower Tech., Inc.*, 64 USPQ2d 1314 (TTAB 2002); *In re Disc Jockeys Inc.*, 23 USPQ2d 1715 (TTAB 1992). In applicant's mark, each component retains its merely descriptive significance in relation to the goods and does not create a unique or incongruous meaning. Also, applicant's mark is merely a combination of applicant's internet address, with BOTMAG providing information about applicant's goods, and the term ROBOT,

which is at a minimum descriptive of applicant's goods, and, as evidenced by applicant's specimen and the first entry in the Google search results, appears to be the name opposer uses for its magazine. We see nothing in applicant's mark - including the combination of BOT and MAG - that makes it a unitary combination of terms, and applicant has not indicated why it is unitary.

Applicant has also argued that its mark is suggestive "owing to the multi-step reasoning process necessary to come to any descriptive meaning of the elements of the mark." Reply brief at unnumbered p. 2. We are not persuaded by applicant's argument because consumers will consider WWW.BOTMAG.COM ROBOT in the context of applicant's goods, which include magazines about robots. "Bot" and "mag" are not obscure abbreviations for "robot" and "mag." Consumers of applicant's goods would immediately recognize the meaning of the terms in the mark.

In view of the above, we find that the examining attorney has established prima facie that applicant's mark is merely descriptive of a feature of applicant's goods and that applicant has not rebutted the examining attorney's prima facie case. Additionally, we find that the combination of WWW.BOTMAG.COM and ROBOT does not evoke a unique commercial impression, and is not incongruous or

bizarre as applied to the goods. Accordingly, we find that applicant's mark is merely descriptive of a significant feature of "journals and magazines for hobbyists or robots, robotics, and computers," and that applicant's mark is unregistrable under Section 2(e)(1).

Decision: The refusal to register under Section 2(e)(1) is affirmed.