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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Bollore

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Serial No. 79039545

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Lynn A. Sullivan of Leydig, Voit & Mayer, Ltd. for Bollore.

Debra Lee, Trademark Examining Attorney, Law Office 116  
(Michael W. Baird, Managing Attorney).

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Before Walsh, Cataldo and Bergsman,  
Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Bollore (applicant) has applied to register the mark  
BLUECAR in standard characters on the Principal Register  
for goods ultimately identified as:

vehicles and apparatus for locomotion  
by land, air and water namely,  
electrically powered land vehicles,  
electrically powered cycles namely  
motorcycles and bicycles, electrically  
powered scooters, electrically powered  
construction vehicles in the nature of  
concrete mixing vehicles, industrial  
trucks, electrically powered trolleys  
for conveying cleaning equipment, fork-  
lift trucks and vans, and electrically

powered boats; electro-motors and transmission assemblies designed for electrically powered vehicles namely, electrically powered land vehicles, electrically powered cycles namely motorcycles and bicycles, electrically powered scooters, electrically powered construction vehicles in the nature of concrete mixing vehicles, industrial trucks, electrically powered trolleys for conveying cleaning equipment, fork-lift trucks and vans, and electrically powered boats, in International Class 12.

The application is based on a request for extension of protection filed under Section 66(a) of the Trademark Act of 1946, 15 U.S.C. §1144f(a).<sup>1</sup>

The Examining Attorney has issued a final refusal to register the mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive. Applicant has appealed. Applicant and the Examining Attorney have filed briefs. We reverse.

According to the Examining Attorney, the mark BLUECAR is merely descriptive because applicant's description of goods may encompass blue colored electric cars.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic,

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<sup>1</sup> Applicant also sought to register the mark for goods identified in International Classes 7 and 9. However, the refusal to register at issue in this case is limited to the goods in International Class 12.

function, feature or purpose of the products and services it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods and services 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 USPQ2d 1222, 1224 (TTAB 2002).

To support the refusal the Examining Attorney submitted the following evidence:

1. The definition of the word "Blue" as, *inter alia*, the following:

1. the pure color of a clear sky; the primary color between green and violet in the visible spectrum;

\* \* \*

10. the blue,

- a. the sky.
- b. the sea.
- c. the remote distance: *They've vanished into the blue somewhere.*<sup>2</sup>

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<sup>2</sup> *Dictionary.com Abridged (v.1.1)* based on the *Random House Unabridged Dictionary* (2006). See also the results of the search "define: blue" on the Google search engine, including "blue sky: the sky as viewed during daylight; 'he shot an arrow into the blue.'"

2. The definition of the word "Car" as follows:

1. an automobile;
2. a vehicle running on rails, as a streetcar or railroad car.
3. the part of an elevator, balloon, modern airship, etc., that carries the passengers, freight, etc.<sup>3</sup>

3. The *Wikipedia* entry for "Bolloré Blue Car" describing the product as a "small electric car."

4. An article from the *Green Car Congress* website (greencarcongress.com) regarding applicant's BLUECAR (February 7, 2008). BLUECAR is described as a "lithium-ion electric city car" and "a concept-car designed around a battery." See also the *DWS Review.com* website (digi-help.com).

5. Applicant's explanation that the initial prototype of its car was blue, but when the cars are offered to the general public, they will be offered in a range of colors, including blue.<sup>4</sup>

Applicant argues that because BLUECAR is used in connection with applicant's environmentally friendly vehicles, the mark creates a double entendre.

Applicant notes that these electrically powered vehicles "would be considered

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<sup>3</sup> *Id.*

<sup>4</sup> Applicant's January 14, 2008 response.

environmentally friendly as they are powered by electricity ... instead of gasoline. Applicant's Mark was chosen to suggest the clean energy produced by Applicant's lithium ion batteries which run Applicant's vehicles and therefore the environmentally friendly nature of the vehicles themselves. The use of the word "blue" in "BLUECAR" is meant to evoke an image of cleaner, bluer skies. Driving applicant's vehicles, therefore, is a way for consumers to "live green" by reducing their carbon emissions and helping to make the skies cleaner and bluer. While it may be true that some of applicant's vehicles may be available in a shade of the color blue, they are also environmentally friendly. Consumers would easily recognize this second connotation or meaning through the use of the word "blue."<sup>5</sup>

To show that consumers recognize the word "blue" as meaning environmentally friendly, applicant submitted the following evidence:

1. An excerpt from the *Blue Moon Fund* website (bluemoonfund.org) a philanthropic organization "that helps improve the human relationship to the natural world."

2. An excerpt from the *Blue Planet Foundation* website (blueplanetsummit.org) whose mission is "[t]o change our world's energy culture ... to implement clean, efficient, and renewable energy."

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<sup>5</sup> Applicant's July 28, 2008 Response.

3. An excerpt from the *Pure Blue* website (pureblueenergy.com) a "renewable energy company dedicated to delivering clean energy via wind, solar and other renewable energy sources."

4. An excerpt from the *blueEnergy* website (blueenergygroup.org) a nonprofit organization whose mission is "to provide sustainable, low-cost energy to communities in need."

5. An excerpt from the *Blue Square Energy* website (bluesquareenergy.com), a company that manufactures silicon solar cells.

6. An excerpt from the *Blue Sky Energy* website (blueskyenergyinc.com) a company that manufactures solar boost charge controllers.

Applicant asserts that these websites demonstrate that the word "blue" suggests an environmentally friendly product because consumers associate the word "blue" with a blue sky. In fact, several of the definitions that the Examining Attorney has made of record include references to blue skies.

The Examining Attorney fails to give appropriate consideration to the full context in which this mark will be used. *In re Remacle*, 66 USPQ2d at 1224. Potential purchasers of the identified goods, most importantly

electric-powered cars, would not perceive BLUECAR as merely descriptive of those goods. Applicant states that it intends to offer the goods in a range of colors, including blue. Therefore, potential purchasers of applicant's cars, and the other goods identified, will approach the purchase with the understanding that the cars are available in a range of colors. Indeed, any other understanding would contradict both logic and experience. It would be unconventional to say the least for applicant, or any other car company, to offer its cars in only one color. Therefore, potential purchasers will perceive BLUECAR, not as merely describing the cars, even the cars which may be blue. Rather potential purchasers will perceive BLUECAR either as an arbitrary mark, or perhaps as a mark suggesting a clean, blue sky, that is, that the electric-powered vehicles are environmentally friendly, as applicant argues. It would not make sense for potential purchasers who see the BLUECAR mark applied to cars of various colors to perceive BLUECAR as merely describing the color of some of those cars.

The Internet evidence submitted by applicant reinforces the conclusion that BLUECAR is not merely descriptive in this context. The cited dictionary

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definition also indicates that "blue" lends itself to varied meanings.

This is unlike cases where the color name at issue is merely descriptive of the color of all of the goods identified. In *re The Molson Industries Limited*, 192 USPQ 402, 403 (TTAB 1976) (requirement for disclaimer of GOLDEN ALE as applied to ale upheld). Nor is it like cases where a color name comes to describe something other than the color. Cf. *In re Manco Inc.*, 24 USPQ2d 1938, 1941 (TTAB 1992) (THINK GREEN does not function as a mark for mailing and shipping cardboard boxes, weatherstripping and other goods; it merely conveys a message of environmental awareness."). It is also unlike cases where the color itself is functional. In *re Orange Communications Inc.*, 41 USPQ2d 1036 (TTAB 1996) (orange and yellow, as applied to telephones and telephone booths, held functional). In fact, the Examining Attorney does not base the refusal on the grounds that "blue" is functional or that blue possesses some descriptive meaning, apart from color identification, in this context.

This is also not a case where we must find the mark merely descriptive because it merely describes one or more, but not all of the goods identified. In such a case, implicit in such a determination is the conclusion that



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relevant purchasers will perceive the mark as merely describing one or more of the distinct goods identified. That is not the case here. As we have stated, when we take into account the full context in which the goods are offered, we conclude that relevant purchasers will not perceive BLUECAR as merely describing the color of applicant's cars, even though blue may be among the colors offered. In this regard, we find that the Examining Attorney places undue emphasis on the fact that applicant states that it has produced a prototype of its car in the color blue. For our purposes, the application is based on applicant's intention to use the mark in the United States and applicant has indicated that it will offer the goods in a range of colors. We must consider the mark in that light.

Finally, if doubt exists as to whether a term is merely descriptive, it is the practice of this Board to resolve doubts in favor of the applicant and pass the application to publication. See *In re Gourmet Bakers Inc.*, 173 USPQ 565 (TTAB 1972). In this way, anyone who believes that the term is, in fact, descriptive, may oppose and present evidence on this issue to the Board.

**Decision:** We reverse the refusal to register the mark for the goods in International Class 12 under Section 2(e)(1).

Opinion by Bergsman, Administrative Trademark Judge, dissenting:

I respectfully dissent. Based on the evidence of record noted above, I find that the term BLUECAR when used in connection with the goods listed in the description of goods is merely descriptive because it immediately informs the purchaser, without any need for a multistep reasoning process, the products at issue include blue cars. The products in applicant's description of goods include "electrically powered land vehicles." Vehicles encompass cars that may be colored blue. Applicant's mark directly describes, without the need for any thoughtful analysis, applicant's product as a blue car.

Applicant argues to the contrary that because BLUECAR is used in connection with applicant's environmentally friendly vehicles, the mark creates a double entendre.

Applicant notes that these electrically powered vehicles "would be considered environmentally friendly as they are powered by electricity ... instead of gasoline. Applicant's Mark was chosen to suggest the clean energy produced by Applicant's lithium ion batteries which run Applicant's vehicles and therefore

the environmentally friendly nature of the vehicles themselves. The use of the word "blue" in "BLUECAR" is meant to evoke an image of cleaner, bluer skies. Driving applicant's vehicles, therefore, is a way for consumers to "live green" by reducing their carbon emissions and helping to make the skies cleaner and bluer. While it may be true that some of applicant's vehicles may be available in a shade of the color blue, they are also environmentally friendly. Consumers would easily recognize this second connotation or meaning through the use of the word "blue."<sup>6</sup>

To show that consumers recognize the word "blue" as meaning environmentally friendly, applicant submitted excerpts from six websites. Applicant asserts that these websites demonstrate that the word "blue" suggests an environmentally friendly product because consumers associate the word "blue" with a blue sky. Also, applicant points out that several of the definitions that the Examining Attorney made of record include references to blue skies. In this regard, the definition of the word "green" includes references to environmentally friendly policies, practices and products: "an environmentalist who belongs to the Green Party" and "concerned with or supporting or in conformity with the political principles

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<sup>6</sup> Applicant's July 28, 2008 Response.

of the Green Party."<sup>7</sup> Other sources define "green" as "concerned with or supporting environmentalism."<sup>8</sup> On the other hand, the definitions of the word "blue" do not include any references to environmentally friendly policies, practices or products. Thus, the word "green" has a recognized meaning in connection with environmentally friendly policies, practices and products whereas the word "blue" does not have such a meaning.

Furthermore, I am not persuaded that because six entities in the field of renewable energy use "blue" as part of their names that the word "blue" is synonymous with environmentally friendly products and services such that consumers encountering the word "blue" as part of a trademark would immediately associate the mark with environmentally friendly products or services. With respect to the six entities, there is no evidence regarding the extent of their advertising, sales or renown and, therefore, there is nothing to indicate the extent to which the public is aware of their use of the word "blue." Accordingly, the mark BLUECAR does not create a double entendre.

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<sup>7</sup> Google search for "define: green."

<sup>8</sup> Oxford English Dictionary at *askoxford.com*; *Merriam-Webster Online* (*Merriam-Webster.com*).

The majority hinges its decision on the unsupported conclusion that purchasers of electric-powered cars will not perceive BLUECAR as merely descriptive because the goods will be offered in a range of colors, including blue and, therefore, they will approach the purchase with the understanding that the cars are available in a range of colors. However, since there are no restrictions or limitations in the description of goods, we must presume that applicant's electric-powered cars may be sold unsophisticated consumers including consumers who merely want a blue car or for whom the color is the dominant feature.

Accordingly, I would affirm the refusal.