

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Stephan Blass

Serial No. 85001985

Mark D. Schneider of Gifford, Krass, Sprinkle, Anderson & Citkowski, P.C. for
Stephan Blass.

Allison P. Schrody, Trademark Examining Attorney, Law Office 115 (John Lincoski,
Managing Attorney).

Before Zervas, Ritchie and Kuczma, Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Stephan Blass (“applicant”) filed an application under §§ 1(b) and 44(d) of the
Trademark Act, 15 U.S.C. §§ 1051(b) and 1126(d), seeking registration of the mark:

LightLight

in standard character form for the following goods, as amended:

Metal fastening anchors for securing lighting apparatus;
spacer brackets of metal for use with lighting apparatus
in Class 6;

Mechanical winders and machines for forming coils of rope used in connection with lighting apparatus in Class 7;

Electric connectors, namely, L-connectors, T-connectors and cross connectors, connectors, and electric couplings, all for use with lighting apparatus in Class 9;

Lighting apparatus, namely, lighting fixtures, lighting tracks, track lighting, spots for lighting tracks, floodlights for lighting tracks, luminaries with LED light machines for track lighting; Lamps, namely, table lamps, floor lamps, wall lamps, ceiling lamps for indoor use; Special-purpose lamps, namely, object and/or picture lights; Lighting devices for showcases, namely, contact rails for lights, including being picture rails; Accessories for the aforesaid goods, namely, light diffusers being structural parts of lighting fixtures; Accessories for the aforesaid goods, in particular glass elements with lights, namely, LED and OLED light machines, LED and OLED luminaries, LED and OLED engines in Class 11; and

Non-metal fastening anchors for securing lighting apparatus in Class 20.¹

¹ Application Serial No. 85001985, filed on March 30, 2010, claiming priority under § 44(d) of the Trademark Act, based on Community Trade Mark Application Serial No. 008625139 filed on September 30, 2009. In his December 29, 2010 Response to Office Action, applicant submitted a copy of Community Registration No. 008625139 which issued on July 13, 2010, and amended his application to identify § 44(e) as the basis for registration.

In support of the registrability of its mark in the U.S., applicant argues that its mark was registered as a Community Trademark “without incident.” (Applicant’s Appeal Brief p.10, Reply Brief p. 3). Although an applicant for U.S. registration based on a foreign registration need not allege use in interstate or foreign commerce, the Trademark Act provides that the mark is registrable only “if eligible” and this statutory requisite has been interpreted to render § 44(e) applications subject to all the recognized statutory bars to U.S. registration on the Principal Register. *In re Vsesoyuzny Ordena Trudovogo Krasnogo Znameni Nauchnoissledovatel'sky Gorno-Metallurgichesky Institut Tsvetnykh Mettalov “Vnitsvetmet,”* 219 USPQ 69, 70 (TTAB 1983). Therefore, applicant’s ownership of a foreign registration, i.e., a Community Trademark registration issued by the Office for Harmonization in the Internal Market, offers no support to overcome the descriptiveness refusal under § 2(e) of the Trademark Act.

The examining attorney issued a final refusal to register the applied-for mark pursuant to § 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the applied-for mark is merely descriptive of the identified goods. Applicant has appealed the final refusal to the Board. Applicant and the examining attorney submitted briefs and applicant filed a reply brief. For the reasons set forth below, the refusal to register is affirmed.

A. Descriptiveness

Applicant's applied-for mark was refused registration in the five Classes set forth above on the ground that it describes features or characteristics of the goods, namely, that the goods are lights and installation apparatus for lights which also feature a "light" or minimal design,² or alternatively, that the repeating term **LightLight** would be understood by consumers to refer to a merely descriptive feature of applicant's lighting products. Applicant contends that the applied-for mark is not descriptive because it is a double entendre conveying a dual meaning that relates not only to the actual lighting products, but also suggests the weight, style and unobtrusiveness of the goods, which would be understood by the relevant public.³

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act § 2(e)(1), if it immediately conveys knowledge of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services with which it is used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675

² Examining Attorney's Appeal Brief p. 3.

³ Applicant's Appeal Brief p. 8.

F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) and *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). The determination of whether a mark is merely descriptive is not made in the abstract; it must be considered in relation to the identified goods, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007). 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 merely descriptive; it is enough 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); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

In addition to applicant's admission that the primary meaning of his applied-for mark is descriptive of lighting products,⁴ the following definitions of light submitted by the examining attorney confirm that the word "light" is descriptive of applicant's goods which include lamps and other lighting devices, and installation apparatus for such lighting devices, namely, fastening anchors and spacer brackets, mechanical winders and machines for forming coils of rope, electric connectors and couplings, lighting tracks, track lighting, spots for lighting tracks, floodlights for lighting tracks, luminaries with LED light machines for track lighting; lighting

⁴ See Applicant's Appeal Brief pp. 8-9.

devices for showcases, namely, contact rails for lights, including being picture rails, and lighting apparatus accessories:

Definitions of Light⁵

5. a source of light, as the sun, a lamp, a light bulb, etc.

www.yourdictionary.com/light from Webster's New World College Dictionary. Copyright © 2010 by Wiley Publishing, Inc.

3. a. A source of light, especially a lamp, a lantern or an electric lighting fixture: *Turn out the lights when you leave.*

www.yourdictionary.com/light from The American Heritage® Dictionary of the English Language, 4th edition. Copyright © 2010 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.

Additional Definitions of Light⁶

- 1 a: having little weight: not heavy . . .
c: having relatively little weight in proportion to bulk

www.merriam-webster.com/dictionary/light . . .

14. Designed for ease and quickness of movement; having a relatively slim structure and little weight: *light aircraft.*

www.yourdictionary.com/light from The American Heritage® Dictionary of the English Language, 4th edition. Copyright © 2010 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.

⁵ See attachments to March 18, 2011 Office Action.

⁶ See attachments to May 4, 2012 Request for Reconsideration Denied and March 18, 2011 Office Action.

According to these definitions, even the second meaning urged by applicant—that his lights are “light” or discreet and unassuming in design—is merely descriptive of an admitted feature or characteristic of the goods.

The examining attorney also submitted portions of e-commerce websites showing common use of the word “light” to identify lighting fixtures for illuminating artwork and other displays that are similar to applicant’s lamps and lighting fixtures. In addition to identifying the offered products as “picture lights” “display lights,” and “lamps,” the websites included the following descriptions (emphasis added) reinforcing the significance of style and design for lighting devices:⁷

Picture Lights

Display your pictures and paintings by highlighting them with a picture **lights**. A picture light will draw . . . artwork. The **clean lines and simple designs** will ensure that your beautiful pictures will be the focal . . .

[www.csnlighting.com/Picture-Lights . . .](http://www.csnlighting.com/Picture-Lights...)

Picture Lights

Showcase your favorite artwork, collection or display with a **light** fixture designed to offer direct illumination **without obstructing** the object or objects you wish to highlight . . . Easily mounted on the wall, Picture Lights are a great way [to] shed lights on anything you wish to display . . .

[www.lighting universe.com/picture-lights . . .](http://www.lighting universe.com/picture-lights...)

Ore 8123 43” Metal 2 *Lights* Table Lamp-Antique Bronze

This fancy twin table lamp gives your home a **stylish** edge. . . .

[www.google.com/products/catalog . . .](http://www.google.com/products/catalog...)

⁷ See attachments to October 12, 2011 Office Action.

A proposed mark, such as applicant's **LightLight**, which is a simple repetition of a merely descriptive term, remains merely descriptive where no new or different commercial impression results from the repetition. *See In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, 1156 (TTAB 2009) (holding TIRES TIRES TIRES generic for retail tire store services); *In re Litehouse, Inc.*, 82 USPQ2d 1471, 1474 (TTAB 2007) (holding CAESAR! CAESAR! merely descriptive for salad dressing); *In re Disc Jockeys, Inc.*, 23 USPQ2d 1715, 1716 (TTAB 1992) (holding DJDJ merely descriptive for disc jockey services; “[n]othing new or different is imparted by the simple repetition of the descriptive expression DJ”); TMEP §1209.03(t) (October 2012).

The foregoing evidence submitted by the examining attorney shows that applicant's light fixtures and lamps are commonly referred to as “lights.” Upon seeing the applied-for mark **LightLight** in relation to applicant's particular lighting fixtures and lighting installation apparatus, customers would understand without deliberation or thought, that two key features of the goods, namely, that applicant's goods either are “lights,” or are used to install “lights.” Applicant's customers would therefore understand the term **LightLight** to refer to lights and lighting installation products and to merely constitute a repetition of the descriptive word “light.”

The critical factor in determining whether a term is a registrable term rather than merely a repeating word is that the two or more words serve to modify each other and enhance the meaning of the composite, which is something that does not

occur merely by repeating a word. *Tires Tires Tires*, 94 USPQ2d at 1156. Applicant contends that its applied-for **LightLight** mark is not merely a repetitive descriptive term because it conveys a dual meaning. Specifically, applicant argues that this term contains a double entendre; on the one hand the term refers to his goods which are lights, but on the other hand, the mark has another meaning promoted by applicant that suggests the weight, style and unobtrusiveness of the goods.⁸

To explain the alleged double entendre of **LightLight**, applicant points to the product images reproduced in its Appeal Brief contending that “[t]he delicate look of the products is carried over to the applied-for mark. More specifically, applicant asserts that the first ‘Light’ in **LightLight** is a direct play on the discreet and unassuming design of the goods.”⁹ In support of his position that his goods are promoted as having a discreet and unassuming product design, applicant points to the following statement in the promotional materials:¹⁰

Safety Through Long-Lasting Design

LightLight® design is logical and clear. It is unique and timeless and so discreet and unassuming that the eye will never tire of it.

According to applicant, this second meaning of “light” referring to his “discreet and unassuming lighting” is suggestive of his goods and provides a different commercial

⁸ Applicant’s Appeal Brief p. 8.

⁹ See Applicant’s Appeal Brief p. 8. While most of the images designated as Exhibit B on pages 6-8 of Applicant’s Appeal Brief were excerpts from the record, (although unfortunately, the images in the record are not of the quality contained in the Brief), the two images at the bottom of page 7 do not appear to be in the record. Because the record should be complete prior to the filing of an appeal, these two images have not been considered. See Trademark Rule 2.142 (d).

¹⁰ See Exhibit B to Applicant’s April 3, 2012 Request for Reconsideration.

impression that is distinctive from the impression engendered by the separate components of the term **LightLight**. As characterized by the examining attorney, applicant's argument is that his applied-for mark would be understood as "*light lights*,"¹¹ in other words, lighting devices that have a "delicate" design. However, there is nothing in the presentation of applicant's repetitive term **LightLight** that would signal the nuanced meaning asserted by applicant. Nor is there anything that enhances the meaning of the composite or otherwise negates the descriptiveness of the repetitive term.

A mark is deemed to be a double entendre only when both meanings are readily apparent from the mark itself. If the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of applicant's advertising materials, trade dress or other matter separate from the mark itself, then the mark is not a double entendre. *See In re The Place Inc.*, 76 USPQ2d 1467, 1471 (TTAB 2005) ("A mark is not a double entendre if the second meaning is grasped by purchasers only when the mark is used with 'other indicia,' even if that other indicia is itself not merely descriptive."). Because the asserted second meaning of "light" as relating to the design of the goods may only be appreciated after viewing the reference in the promotional materials to the "discreet and unassuming" design of the lights, the term **LightLight** does not constitute a double entendre.

¹¹ See Examining Attorney's Appeal Brief at pp. 6-7.

Moreover, simply because applicant's allegedly unique products are advertised as "discreet and unassuming" does not establish that purchasers would readily appreciate the second meaning asserted by applicant. This is particularly so where third-party lighting products having similar purposes are advertised as having "slim" and "simple" designs, which are highly desirable features because such designs are unobtrusive and do not detract from the display items to be illuminated.¹² The fact that such design features are common and not unique to applicant merely evidences the descriptiveness thereof, as argued by the examining attorney.

In short, even if both meanings of the term "light" are understood by consumers, this does not necessarily invoke a double entendre, because either way the significance of the overall term is descriptive. *See In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455, 1460 (TTAB 1998). Applicant admits that his applied-for mark is descriptive of lighting products.¹³ And although he contends that another meaning of "light" is suggestive of a simple or minimalist design feature of the products, the evidence shows that this second meaning is descriptive of a feature of applicant's lighting devices and installation apparatus. Inasmuch as both of the meanings asserted by applicant (a lighting device or a minimalist design lighting device) are descriptive of the goods, the applied-for mark does not possess a suggestive meaning and does not constitute a double entendre.

¹² See attachments to October 12, 2011 Office Action.

¹³ See Applicant's Appeal Brief pp. 8-9.

In further support of his position, applicant argues that the term **LightLight** is not found in the dictionary.¹⁴ However, it is not necessary that a term appear in a dictionary or a newspaper article in the exact manner in which it is depicted as an applied-for mark for it to be found merely descriptive. It is well recognized that joining two words which are merely descriptive of the goods into a single term by the deletion of a space does not avoid a finding of mere descriptiveness for the combined term. See, *In re SPX Corp.*, 63 USPQ2d 1592, 1596 (TTAB 2002) (E-AUTODIAGNOSTICS is merely descriptive of electronic engine analysis system); *In re BankAmerica Corp.*, 229 USPQ 852, 853-54 (TTAB 1986) (PERSONALINE is merely descriptive of consumer loan services in which a personal line of credit is provided); *In re United States Steel Corp.*, 225 USPQ 750, 751 (TTAB 1985) (SUPEROPE merely descriptive of wire rope); *In re Gagliardi Bros., Inc.*, 218 USPQ 181, 183-84 (TTAB 1983) (BEEFLAKES is merely descriptive of thinly sliced beef).

B. Conclusion

Descriptiveness of a mark, when applied to the goods or services involved, is to be determined from the standpoint of the average prospective purchaser. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). Based on the record before us, we find that applicant's customers would understand **LightLight** to be a repetitive descriptive term for applicant's lighting products or referring to his lighting installation apparatus. Any other meaning is not readily apparent from the term itself. Even if the second meaning urged by applicant

¹⁴ See Applicant's Appeal Brief p. 9.

relating to a minimalist design were appreciated by customers, that meaning also describes applicant's products. While applicant notes that any doubt as to the registrability of a mark is to be resolved in applicant's favor, here, we have no such doubt. The evidence demonstrates that customers would understand the term **LightLight** to describe the products sold by applicant.

Decision: The refusal to register the applied-for term **LightLight** under § 2(e)(1) is affirmed for each International Class.