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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re MVP Group International, Inc.

Serial No. 85074276

James P. Broder of Roeder & Broder LLP for MVP Group International, Inc.

Henry S. Zak, Trademark Examining Attorney, Law Office 117 (Brett Golden, Managing Attorney).

Before Zervas, Wolfson and Kuczma, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

MVP Group International, Inc. filed an application (Serial No. 85074276) on June 29, 2010 to register **FIREBRIX** (in standard character form) for goods ultimately identified as "Fire lighters; Solid fire starters" in International Class 4. Applicant has claimed a bona fide intention to use the mark in commerce under Trademark Act §1(b), 15 U.S.C. §1051(b).

The examining attorney 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, when applied to applicant's goods, would be merely descriptive of them.

Applicant appealed the final refusal. Both applicant and the examining attorney filed briefs. We reverse 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 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).

According to the examining attorney, the mark is composed of the word "fire" and a misspelling of the word "bricks," defined in *Merriam-Webster's Online Dictionary* (11<sup>th</sup> Ed. 2010) as "a rectangular compressed mass (as a brick of ice cream)." See definition of "brick" submitted with first Office action. A novel spelling that is the phonetic equivalent of a merely descriptive word or term is also merely descriptive, if purchasers would perceive the different spelling as an equivalent of the descriptive term or word. *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009). The examining attorney adds that the evidence establishes that relevant consumers would consider the mark as referring to material for making fires that are in brick-like form. Brief at unnumbered p. 5. His most pertinent evidence - in the context of materials for starting fires or "solid fire starters" - includes the following:

- free-press-release.com  
Fire Bricks Guarantee a Flaming Fire Every Time!  
Fire Bricks are a great way to start a fire no matter where you are. This patented, American made product ensures you will never have to mess with kindling, paper or single use fire starters again. Its patented space age material does not

burn and lasts a lifetime. The Fire King fire brick lights easily and continues to burn with a 10 inch high flame for approximately thirty minutes ....

- [firepitsource.net](http://firepitsource.net)

Reusable Fire Brick the easiest way to keep a fire lit!

Fire Pit Source offers FireKing Outdoor Grilling and Fireplace Fire Bricks. Our fire bricks are made from a patented space age material that will not burn and essential "Lasts a Lifetime."

- [americanchimneyva.com](http://americanchimneyva.com)

Liberty Fire Bricks

- [sunburst-sales.com](http://sunburst-sales.com)

Wood Fire Bricks, Wood Stove Fuel Of The Future Gren Wood Fire Bricks from Sunburst Sales LLC are a convenient cost effective wood fuel for use in your wood stove, wood furnace, wood burning boiler, fireplaces and camp fires. Wood Fire Bricks make a great campfire and are safe for campfire cooking, since they contain no additives.

- [armyshop.com](http://armyshop.com)

... These fuel bars are used by the military, campers and backpackers to start and maintain a fire and also to be used with a stove to cook. Thrioxane fuel bars are commonly known as fire starter bricks, fire bricks, bar fuel.

Also of record is the webpage from dirtworks.net offering "Compressed Sawdust Bricks" and referring to the goods for sale as "bricks."

Further, the examining attorney submitted websites which identify "fire starter bricks." Because the mark is FIREBRIX and not "fire starter bricks," this evidence has limited probative value. "Fire," when juxtaposed with

"starter," imparts more information to the purchaser about the goods than "fire bricks" or FIREBRIX and hence is not probative on the descriptiveness issue, which requires an immediate association with a quality or characteristic of the goods.

Applicant introduced four definitions of "fire brick" from dictionary.com and wikipedia.com, which it made of record. All of the definitions identify the same object. See, e.g., wikipedia.com definition ("A fire brick, firebrick, or refractory brick is a block of refractory ceramic material used in lining furnaces, kilns, fireboxes, and fireplaces."); and (ii) *Random House Dictionary* (2011) ("a refractory brick made of fire clay, used for lining furnaces, flues, etc."). In addition to these definitions of "fire brick," applicant relies on the discussion on forums.homestead.org, made of record by the examining attorney, set forth below in relevant part:

Homemade firebricks

You guys probably all know this already but a friend ask[ed] me how we make them so [I] thought {i} would share it here as well :)

Homemade Firebricks

Melt old candles and wax pieces in a big pot (not used for cooking), add saw dust, wood chips, dryer lint, cotton cloth scraps, shredded paper, anything else that will burn but not be to[o] toxic.

...

I thought you were talking about firebricks ...  
relatively impervious to heat ... Rather than  
firestarters [sic] ...

...

Me too [B]ruce. [K]nowing how to make homemade  
masonry fire bricks would be great too.

...

Sorry, it wouldn't let me change the title so  
maybe you guys can just delete it?

...

no [J]uli that is a fire brick too, very good  
info by the way[,] thank you.

This "conversation" exhibits confusion among the  
participants on what a "fire brick" is, with two  
individuals attributing the definition offered by applicant  
to the term. There is, however, an acknowledgement by one  
of the contributors to the discussion that a "fire brick"  
identifies both goods.

In our view, the dictionary definitions for  
"firebrick," which are more or less the same, and the  
statements in the discussion group regarding confusion as  
to the meaning of "fire brick," raise doubt as to whether  
purchasers would immediately and without hesitation  
understand the significance of "fire brick" as alleged by  
the examining attorney. The dictionary definition of

"brick" and the five webpages exhibiting use of "fire brick" or "fire bricks" alone (and not, e.g., "fire starter brick") simply are not persuasive of the mere descriptiveness of the mark in light of the countering evidence.

The examining attorney has argued that the definitions of "fire brick" supplied by applicant are not relevant because they do not pertain to fire starting materials such as applicant's goods ("solid fire starters") and in fact identify non-flammable material. He also argues that the definition from Wikipedia should not be given weight because Wikipedia is a collaborative website that permits anyone to edit the entries. We do not find the definition irrelevant as the examining attorney urges; the definitions in the dictionaries located at dictionary.com are essentially the same as the Wikipedia entry. Further, the defined "refractory brick" is an object which is used in a home environment in proximity to a fire, such as in a flue; and the individuals in the internet forum confused applicant's goods with the very same goods identified in the dictionary (not some other goods). In this situation, we have doubt as to the mere descriptiveness of the applied-for term, and resolve that doubt in applicant's favor. See *In re Aid Laboratories, Inc.*, 221 USPQ 1215

(TTAB 1983) (in deciding whether PEST PRUF for animal shampoo with insecticide is suggestive or merely descriptive, doubt is resolved in favor of applicant in holding the term merely suggestive of a possible end result of the use of applicant's goods); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972) (any doubt in determining the registrability of THE LONG ONE for bread is resolved in favor of applicant "on the theory that any person who believes that he would be damaged by the registration will have an opportunity . . . to oppose the registration of the mark and to present evidence, usually not present in the ex parte application, to that effect"), cited in *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987).

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