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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re William E. Gridley

Serial No. 85127536

William Monty Simmons of Simmons Patents for William E. Gridley.

James W. Stein, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

Before Quinn, Holtzman and Kuczma, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

William E. Gridley (applicant) has filed an application to register on the Principal Register the standard character mark BOAT VENT for "ventilators for covers, namely, vehicle covers, tarps, canopies, umbrellas" in Class 11.¹ The word BOAT is disclaimed.²

¹ Application Serial No. 85127536, filed September 11, 2010, based on a claim of first use and first use in commerce on August 31, 2002.

² In response to the examining attorney's rejection of applicant's improper disclaimer of the entire mark ("vent or boat") in the original application, applicant amended the application to disclaim only the term BOAT.

The trademark examining attorney has refused registration on the ground that the mark is merely descriptive of the goods under Section 2(e)(1) of the Trademark Act.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, characteristic, function, feature, purpose or use of the goods or services with which it is used. In *re* Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). The question of whether a particular term is merely descriptive must be determined not in the abstract or on the basis of guesswork, but by considering the mark in relation to the goods or services for which registration is sought, the context in which the term is used, and the possible significance that the term is likely to have to the average purchaser as he encounters the goods or services in the marketplace. See *In re* Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986).

We consider first the meaning of the individual words BOAT and VENT in the mark to determine whether their combination results in a term which as a whole immediately conveys information regarding applicant's "ventilators for covers, namely, vehicle covers, tarps, canopies, umbrellas." See *In re* Hester Industries, Inc., 230 USPQ 797, 798 n.5 (TTAB 1986) ("It

is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof...provided that the ultimate determination is made on the basis of the mark in its entirety.").

The examining attorney submitted a definition of "boat" as "a small vessel for travel on water" and "vent" as "an opening for the escape of a gas or liquid or for the relief of pressure."³ In addition, we take judicial notice of the following definitions of those terms.⁴

BOAT: A vehicle for traveling on water, esp. one that is not very large.⁵

VENT: (n) An opening that allows air, smoke, or gas to escape or enter an enclosed space.⁶

(v) Provide with an outlet for air, gas, or liquid: *clothes dryers must be vented to the outside.*⁷

The examining attorney has also submitted a number of third-party registrations for goods comprising "ventilators" wherein the term "VENT" is disclaimed or the marks are registered either with a Section 2(f) claim or on the Supplemental Register. The registrations include: Reg. No. 1507995 for the mark ROLL

³ Merriam-Webster (merriam-webster.com).

⁴ The Board may take judicial notice of dictionaries, *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries which exist in printed format. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

⁵ Cambridge Academic Content Dictionary (dictionary.cambridge.org).

⁶ Id.

⁷ Oxford Dictionaries (oxforddictionaries.com).

VENT and design (VENT disclaimed) for "ventilators in the nature of screens for use on structures"; Reg. No. 2518867 for the mark XTRACTOR VENT (Supplemental Register; VENT disclaimed) for "roof ridge ventilators"; and Reg. No. 3259130 for the mark ULTIMA VENT (VENT disclaimed) for "kitchen exhaust hoods and kitchen ventilators." Third-party registrations may be used, in the same way a dictionary is used, to show that a commonly registered a term has a meaning for particular goods. See *Tektronix, Inc. v. Daktronics, Inc.*, 187 USPQ 588 (TTAB 1975), *aff'd*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976). In this case, the third-party registrations tend to show that "vent" and "ventilator" have equivalent or closely associated meanings.⁸

In addition, both applicant and the examining attorney submitted printouts of applicant's product brochure from his website, boatvent.com, which states:

We supply boat cover support and venting systems to boat manufacturers, marine distributors, and canvas upholstery shops. Our Patented Boat Vent II and Cam-Lock Support poles provide ventilation and tenting for mooring covers, travel covers, and storage covers. The purpose of the vent and pole is to

⁸ Applicant, for his part, submitted a list of four third-party registrations for marks that include the term VENT in an attempt to show that his mark is only suggestive of the goods. The examining attorney did not object to the improper form of this evidence, and we therefore have considered the listing of record for what it shows on its face. However, inasmuch as the listing does not include the actual identifications of goods/services, or any information about the register or disclaimers in the registrations, this evidence is of no probative value. Moreover, the word VENT may be viewed in all four registrations as part of composite, unitary marks, where no disclaimer was necessary.

exhaust moist air and heat without letting any rain or moisture in. This aids in preventing mildew fungus, and harmful bacteria from growing rampant in unvented boat interiors. ... It is extremely important that a vented well fit cover be tied down tightly, by using tie downs such as our Quickie Ties.

Keeping the interior of the boat dry when not in use is an essential part of boat maintenance. ... Proper venting of the boat interior keeps it free of mildew, mold, and bacteria. Reducing heat and removing the moist air will also help prevent discoloration of upholstery and carpet, helping to keep the interior looking and smelling new for years to come.

There is no question that the term BOAT is descriptive of applicant's goods. Applicant has disclaimed this term, and moreover the identification of goods encompasses ventilators used on covers for boats, as a type of vehicle. It is also clear that the term VENT is essentially the name of applicant's product, i.e., a ventilator. As stated in applicant's brochure, applicant's goods are "venting systems" that provide "ventilation" for boat covers.

Furthermore, the individual words BOAT and VENT retain their descriptive meaning in combination. When viewed in connection with applicant's ventilators for boat covers, the term BOAT VENT as a whole directly and immediately informs a purchaser of the nature of applicant's goods, i.e., that the product is a vent for a covered boat, or a significant function or purpose of the goods which serve to vent a covered boat.

Applicant argues that the mark as a whole is only suggestive and involves a multi-stage reasoning process to discern the meaning of the mark. In particular, applicant contends that although his goods "may be associated with a cover used to cover a boat, Applicant's goods do not vent a boat." Applicant maintains that the term VENT "refers to the venting of covers ... not the items associated with such covers, directly." However, applicant specifically refers in his brochure to vented and unvented boats, noting the problems associated with "unvented boat interiors" and stating that "Proper venting of the boat interior keeps it free of mildew, mold, and bacteria."⁹ Applicant's own use of the individual words in a descriptive manner is strong evidence that the combined term is descriptive. See, e.g., *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) ("[applicant's] own submissions provided the most damaging evidence that [the word SCREENWIPE is generic]"); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) ("Evidence of the context in which a mark is used ... in advertising material ... is probative of the reaction

⁹ While acknowledging that the brochure makes such statements, applicant argues that "the interior of a properly designed and uncovered boat is naturally vented by design; and that "[a]ssociating a vented cover over such interior does not vent such interior." However, the issue is not whether an uncovered boat requires venting. Applicant's brochure is referring to the venting of a covered boat. As stated in the brochure, the purpose of the vent "and pole," which provides support for the cover, is to "exhaust moist air and heat without letting any rain or moisture in."

of prospective purchasers to the mark"); In re Educational Communications, Inc., 231 USPQ 787, 790 (TTAB 1986) ("applicant's own highly descriptive usages of the components of its asserted mark ... is strong evidence of its generic nature").

Furthermore, applicant's BOAT VENT product is a vent for the cover of the boat, which applicant acknowledges, and we find that this meaning is descriptive as well. Although the mark BOAT VENT does not include the word "cover," when viewed in connection with applicant's ventilators for boat covers, BOAT VENT would be readily perceived and understood as a shorthand reference to a "boat cover vent." This impression is clearly conveyed by applicant's brochure which refers to the product as a "boat cover ... venting system[]." See e.g., Abcor Development Corp., 200 USPQ at 219 (Rich, J., concurring) (GASBADGE as a shortened form of the name "gas monitoring badge" is merely descriptive of a badge which monitors gaseous pollutants; "the users of language have a universal habit of shortening full names--from haste or laziness or just economy of words" and therefore it is "inevitable that a gas monitoring badge will be called a gas badge as the name of the goods to the same extent as gas monitoring badge is the name" of the goods) (emphasis in original); DeWalt, Inc. v. Magna Power Tool Corp., 289 F.2d 656, 129 USPQ 275 (CCPA 1961) (POWER SHOP is a short form of "power workshop," and thus, is merely descriptive of woodworking saws).

See also Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990) (TRAVEL CARE is a short form of travel personal care products, notwithstanding the omission of "personal" and "products," and thus is merely descriptive of personal care products for travelers).

In view of the foregoing, we find that purchasers of applicant's ventilators for vehicle covers, would, without any guesswork or the exercise of any imagination, immediately understand the descriptive meaning of BOAT VENT as applied to those goods.

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