

THIS OPINION IS A NOT  
PRECEDENT OF THE TTAB

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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 WGI Innovations, Ltd.*

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Serial No. 85245646

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Geoffrey A. Mantooth of Decker Jones McMackin McClane Hall & Bates PC for WGI Innovations, Ltd.

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Before Kuhlke, Wolfson and Masiello, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, WGI Innovations, Ltd. filed an application to register on the Principal Register the mark LIVEVIEW in standard characters for goods identified as “game scouting cameras” in International Class 9.<sup>1</sup>

Registration has been refused on the ground that LIVEVIEW is merely descriptive of applicant’s goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

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<sup>1</sup> Application Serial No. 85245646, filed on February 18, 2011, based on an allegation of a bona fide intention to use the proposed mark in commerce, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

“A mark is merely descriptive if it ‘consist[s] merely of words descriptive of the qualities, ingredients or characteristics of’ the goods or services related to the mark.” In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, Estate of P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 543 (1920). See also In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought. In re Chamber of Commerce of the U.S., 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. In re Associated Theatre Clubs Co., 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its merely descriptive significance in relation to the goods or services, the

combination results in a composite that is itself merely descriptive. In *re Oppedahl & Larson LLP*, 71 USPQ2d at 1371. However, a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. See *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968); *In re Shutts*, 217 USPQ 363 (TTAB 1983); and TMEP § 1209.03(d).

A mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. See, e.g., *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., *In re Atavio*, 25 USPQ2d 1361 (TTAB 1992) and *In re TMS Corp. of the Americas*, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See *In re George Weston Ltd.*, 228 USPQ 57, 58 (TTAB 1985). Finally, when the question is mere descriptiveness to the extent we have doubt we resolve that doubt in favor of applicant. *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

We begin by noting that applicant’s “game scouting cameras” are “cameras that are mounted to trees, posts, etc.” App. Br. p. 3. As applicant explains further in its brief:

A user sets up the camera near game trails, water (for example ponds), feeders, etc. After setting up the camera, the user leaves so as to avoid scaring off wildlife. The camera has a sensor that activates when an animal is nearby and in front of the camera lens. The object of course is to take pictures of wildlife in their natural environment. Traditionally, game scouting cameras store the pictures on onboard memory such as memory cards. The user returns to the camera after a few days or weeks and downloads the pictures from the camera in order to view the pictures.

Id.

It is the examining attorney’s position that LIVEVIEW is merely descriptive of “game scouting cameras,” because applicant’s mark is a compound word consisting of the words LIVE and VIEW which are each merely descriptive of applicant’s goods and when combined retain their descriptive significance. In support of her position, the examining attorney relies on the following dictionary definitions:

LIVE

3. characterized by or indicating the presence of living creatures: *the live sounds of the forest.*

...

11. broadcast while happening or being performed; not prerecorded or taped: a live telecast.

...

15. moving or imparting motion ...

...

1. (*prenominal*) showing the characteristics of life.

2. (*usually prenominal*) of, relating to, or abounding in life: *the live weight of an animal.*

...

4. actual; *a real live cowboy*.<sup>2</sup>

VIEW

1. an instance of seeing or beholding; visual inspection.
2. sight; vision.
4. a sight or prospect of a landscape, the sea, etc.: *His apartment affords a view of the park.*
10. a sight afforded of something from a position stated or qualified: *a bird's-eye view.*
11. a sight of a hunted animal before or during the chase.
18. (tr) to examine or inspect carefully: *to view the accounts*.<sup>3</sup>

The examining attorney argues that these definitions “demonstrate that LIVE describes the presence of living creatures, moving and imparting motion, and VIEW describes vision and the sight afforded by virtue of applicant’s cameras. Together, LIVEVIEW describes a feature, characteristic, or function of applicant’s goods in that use of [the] camera affords the user to capture live images or views of actual, real live animals on film in their natural environment, and the images may be viewed, examined, or inspected carefully at a later time. E.A. Br. p. 5.

The examining attorney explains that:

The goods are game scouting cameras. Applicant’s mark is LIVEVIEW. Based simply on those two facts, a consumer may reasonably understand that applicant’s goods provide a method of viewing live animals. Whether the consumer is able to view the animals by live feed or by a taped recording of live (i.e., living) animals available for viewing at a later time does not alter the “merely descriptive” analysis in this instance. Either interpretation supports the fact that this mark is merely descriptive of the goods.

E.A. Br. p. 11.

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<sup>2</sup> App. Req. for Recon. (June 19, 2012) Exh. 14.

<sup>3</sup> Req. for Recon., Exh. 15.

She concludes that “[w]hen applied to the goods, LIVEVIEW merely describes the fact that the user of the camera has the ability to VIEW film that was shot LIVE (i.e., while happening or being performed) of LIVE (i.e., the presence of living creatures) animals.” E.A. Br. p. 6.

Applicant argues that its proposed mark LIVEVIEW only “suggests the viewing of live animals.” App. Br. p. 3. In addition, applicant argues that the term “live view” has many different meanings, including in relation to cameras.<sup>4</sup>

This record shows that “live view” typically refers to either the function of preview framing a picture on a camera’s LCD before shooting the picture, or the function of providing real time streaming of the “live view” from a camera. See, e.g. Final Office Action (December 2, 2011) p. 2, (www.nikonusa.com “Live View Shooting Mode is almost exactly what it says: you’re seeing what the camera’s lens is seeing, but you’re seeing it on the camera’s LCD”) and Denial of Recon. (July 9, 2012) (Daily Press, Newport News, VA “By contrast, VDOT’s 276 highway cameras do not record, but simply provide a live view of the interstates”). Applicant’s game scouting cameras do not provide real time streaming and the preview framing function would be incongruous in meaning because the game scouting camera is

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<sup>4</sup> Applicant also argues that its proposed mark is not found in the dictionary. However, the fact that a term is not found in the dictionary is not controlling on the question of registrability. In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); In re Orleans Wines, Ltd., 196 USPQ 516 (TTAB 1977). The fact that applicant may be the first and only user does not obviate a mere descriptiveness refusal. In re Nat’l Shooting Sports Found., Inc., 219 USPQ 1018 (TTAB 1983). In addition, applicant’s reference to a third-party application for the mark LIVEVIEW for mobile phones is not probative. Glamorene Products Corp. v. Earl Grissmer Company, Inc., 203 USPQ 1090, 1092 n. 5 (TTAB 1979) (applications serve as evidence only of the filing of the application); In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (each case must stand on its own merits).

designed to take pictures when the user is not there. As such, those meanings are not descriptive of applicant's cameras. This leaves the various dictionary definitions to support a mere descriptiveness refusal. The feature of these cameras is that they take pictures of animals in their habitat when they pass by and trigger the sensor. In this context, we find that there is a multi-stage reasoning process required to understand that LIVEVIEW could refer to the provision of a view of live animals in their natural habitat by means of a recorded image that is actually not viewed "live," but sometime later. The mark clearly does not reference the preview framing, which would be incongruous to the goods, or live streaming, which is also not possible without other functionality in the goods.

Based on this record, we have doubt that LIVEVIEW immediately describes a significant feature or function of the goods, and we resolve that doubt, as we must, in favor of applicant. *Gourmet Bakers*, 173 USPQ at 565.

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