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Mailed: September 12, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Carbon Audio Holdings, LLC

Serial No. 85394582

Phil Nelson of Slinde Nelson Stanford,
for Carbon Audio Holdings, LLC.

Laura Dawn Golden, Trademark Examining Attorney, Law Office 103,
Michael Hamilton, Managing Attorney.

Before Bucher, Ritchie and Kuczma,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Carbon Audio Holdings, LLC (“applicant”) seeks registration on the Principal Register of the mark Carbon Audio (in standard character format) for “audio headphones; audio speaker enclosures; audio speakers; wireless indoor and outdoor speakers” in International Class 9.¹

¹ Application Serial No. 85394582 was filed on August 10, 2011, based upon applicant’s allegation of *bona fide* intention to use the mark in commerce. No claim is made to the exclusive right to use the word “Audio” apart from the mark as shown.

The examining attorney has refused registration on the ground that the term is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

When the refusal was made final, applicant appealed and requested reconsideration. After the examining attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products 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 for which registration is sought and the context in which the term is used. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); and *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is whether someone who knows what the products are will understand the mark immediately to convey information about them. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

Applicant argues that inasmuch as the element “carbon,” at the molecular level, is the building block of every organic compound and one of the most abundant elements in the universe, carbon is everywhere. Hence, applicant’s speakers, like most tangible products, contain some amount or form of carbon. However, applicant argues that the word “carbon” carries no independent meaning or perceived value in the audio speaker market,



and that prospective consumers will make “[n]o functional distinction ... between a speaker made out of carbon or something else.” Furthermore, applicant argues that “[a]s one slides down the specificity scale [*e.g.*, from “coffee” as a product ingredient of a beverage, to “carbon” atoms in speakers], that [direct] association is reduced. The universal abundancy of carbon as an ingredient makes the reference vague, even perhaps arbitrary, in the minds of some consumers.” Applicant also argues that while much of the evidence in the file makes reference to a rigid and durable composite material known as “carbon fibers,” the word “carbon” alone has no specific meaning in the audio industry.

By contrast, the examining attorney contends that carbon fiber composites are simply a specific type of carbon. Moreover, in the context of audio products, the word “carbon” clearly conveys information immediately that applicant’s speakers may be “made of carbon fibers.” The examining attorney contends that it is most relevant that the evidence of record clearly demonstrates that “carbon fibers” are a most desirable ingredient in many “audio headphones; audio speaker enclosures; audio speakers; wireless indoor and outdoor speakers.”

We learn from the record that carbon fibers were first employed in the 1960s in the aerospace and defense industries, for racing yachts, and for open wheel racing automobiles. A desirable characteristic of carbon fiber is its high strength-to-volume ratio, making components strong for their size. The articles of record repeatedly cite to its low weight, high tensile strength, durability, high stiffness/rigidity, high temperature tolerance and low thermal expansion, etc.

Perhaps not surprisingly, carbon-fiber-reinforced polymers are also quite expensive to fabricate into finished products. Following its initial applications in aerospace/defense and in the transportation industry, this technology was then adopted prominently in other fields such as medical devices, home furniture and other “life-style products,” including for our purposes, high-end audiophile loudspeakers, for home, stage and cars.

STUDY SOUGHT ON LIGHTER BUSES, TRAINS

... The proposal cites such lightweight materials as carbon-fiber panels.

“Carbon-fiber material is virtually corrosion-free, so that the bodies of these vehicles should have a very long life, potentially as high as 25 to 30 years,” the proposal states... .²

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FUTURISTIC YACHT SAILS SEAS WITH PUSH-BUTTON EASE

The Procyon is billed as the most advanced sloop ever to sail the high seas. Here are some features:

Lightweight bipod mast

“Upside-down wishbone” made of carbon fiber saves about 400 lbs. and can be lowered from full 81 feet to 60 feet to travel under bridges. Mainsail is furled on a central stay... .³

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TECHNOLOGY UP SEVERAL PEGS

... [T]he revolutionary prosthetic is a carbon-fiber-composite leg that weighs 6 pounds or less (half the weight of its predecessor) and utilizes vertical shock absorption through telescoping tubes and a carbon-fiber side-spring assembly... .

“The carbon fiber is lightweight, but really strong,” Huston said. ... The success of Phillips’ carbon-fiber leg/foot assembly prompted a number of competing manufacturers to fabricate similar limbs... .⁴

² *Los Angeles Times*, B-1, by Mark A. Stein, April 4, 1992.

³ *St. Petersburg Times* (FL), at 1E, by Mark Albright, November 4, 1995.

⁴ *Tulsa World* (OK), at E1, September 24, 1996.

NOUVEAU RICH: THESE AREN'T YOUR DAD'S RICH PEOPLE

Welcome to the Land of the Loaded, where the stinkin' rich crank their tunes on **\$12,000 carbon-fiber speakers** from **Wilson Benesch** and toss their loose pennies into \$125 black leather change trays from Calvin Klein

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LUXURY CAR PROFILES

Gadgets and innovations: [The 2003 Mercedes-Benz SLR McLaren's] **lightweight carbon-fiber** body combined with its 600-plus horsepower, supercharged V-8 engine results in zero-to-60 acceleration of 3.7 seconds

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AUDIO STARTUP CREATES BUZZ: FOLSOM COMPANY RAISES CASH TO PERFECT ULTRA-THIN SPEAKER TECHNOLOGY

The pleated-panel speakers are 12 inches square. They incorporate lightweight components such as **carbon fiber** and neodymium magnets, so they weigh less than 15 pounds each, contrasting with a typical "fine sounding" speaker that weighs 50 to 150 pounds, Alberts said.

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GOT GIFT MONEY TO BURN?

A far cry from the \$10 million stable of racehorses offered in 2008, this year's most expensive gift is the sport aircraft **ICON A5** ... and pilot training for two. The plane features an amphibious hull and landing gear; a **lightweight carbon-fiber frame**, and wings that rotate and fold back for transport in a custom trailer – all for \$250,000 eco-friendly sparkle.

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GOT A NEW MP-3 PLAYER? WHAT ABOUT EARPHONES?

Phiaton MS 300 (list price \$199) – The Phiatons [sic] offer really excellent quality at a relatively low price, and they look like infants next to any of the grown-up **Bose** or **Sennheiser** headsets. Their double-shelled **carbon fiber** speaker enclosures make for an

⁵ *The Denver Post*, at E-01, by Bill Briggs, January 30, 2000.

⁶ *Crain's Detroit Business*, at E-4, October 27, 2003.

⁷ *Sacramento Business Journal*, by Melanie Turner, June 2, 2008.

⁸ *The Virginian-Pilot* (Norfolk, VA), at E4, by Mike Kernels, October 31, 2009.

excellent, natural sound, and they're a lot quieter than run-of-the-mill headphones... . 9

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FLIPS AND SPLITS OF NEW YORK'S REAL-ESTATE COMMUNITY

Bad Boy Entertainment promotions exec Dontay Thompson, who works with [Sean "P. Diddy" Combs], just bought a unit at the condo. The audio can be controlled from every room, and will soon be connected to a 5.1 channel theater [system] that includes high-grade aluminum and carbon-fiber speakers 10

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RUSH ORDER FOR INNOVATION SAVES COMBAT LIVES; SYRACUSE COMPANY'S INVESTORS MEET THE ARMY'S CHALLENGE TO CUSTOMIZE ANTI-MORTAR RADAR

... [A]t Forward Operating Base Delta, in southern Iraq, last summer, Frank Ordoñez holds a magnifier to show the detail of the carbon fiber his company produces in his Elbridge lab for SRC's anti-mortar radar. SRC came to him to figure out how to make the radar small and light enough for the field. Allred's carbon fiber is twice as strong as steel and half the weight of aluminum. 11

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REFINED POWER: DESIGN: ASTON MARTIN DBS VOLANTE FEATURES BRITISH DESIGN AND A V12 BUILT TO THRILL

The test car we had was the so-called "Carbon Edition," which means that, in a sop to the 21st Century, Aston Martin has made some of the car's pieces – the outside mirror heads, pieces of the tail lights and tailpipes – out of carbon fiber, an extremely strong and lightweight material 12

As a matter of fact, the record shows that there is a huge market among audiophiles for high-quality loudspeakers, some costing more than \$12,000 a pair. Among the priciest of such speakers are ones containing woofers (or subwoofers) that produce low-frequency sounds by incorporating carbon-fiber-

⁹ *St. Louis Post-Dispatch*, at D3, by Sarah Bryan Miller, January 3, 2010.

¹⁰ *New York Daily News* (NY), at 3, January 15, 2010.

¹¹ *The Post Standard* (Syracuse, NY), at A1, by Dave Tobin, May 2, 2010.

¹² *San Francisco Chronicle*, at J4, by Michael Taylor, May 20, 2012.

reinforced materials into the speaker enclosures and/or speaker components such as the cone (or diaphragms), dust caps or frame/basket structure:

Advanced Compositite™ Carbon Fiber Enclosure—reduces passive enclosure losses (resulting in greater sonic accuracy), offers reduced weight, and is highly weather resistant.

The QSC-ACE 1100 Series Composite Ultra-Wide Dispersion All Weather Loudspeakers are high output, two-way speaker systems housed in lightweight, all-weather carbon fiber enclosures.

QSC-ACE enclosures incorporate Compositite™, a patented core composite technology that yields superior acoustic properties, lighter weight, and outstanding weather resistance compared to conventional enclosure materials. Multiple skins of carbon fiber are layered over a phenolic honeycomb core to form a rigid, seamless enclosure. The extreme stiffness of composite construction prevents flexing of the enclosure walls, significantly reducing transmission loss due to wall vibration. The result is reduced cabinet resonance, increased low-frequency output, and greater sonic accuracy.

Furthermore, the enclosure's light weight translates to safer rigging and reduced handling costs.



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Enclosure Materials: Compositite™ Composite Core with Carbon Fiber

A3X

The smallest big sound ever...

With the A3X, ADAM Audio present their smallest monitor to date, making it perfectly suited for all environments where space is limited but sound shouldn't be constricted. The A3X combines a tiny footprint with the much acclaimed ADAM sound quality by using the X-ART tweeter for the higher frequencies, a guarantee for crystal clear music reproduction.

A 4.5" (basket) driver handles the lower registers. The diaphragm is made from carbon fiber, a material that is very light but very stiff and therefore capable of delivering colouring-free sound. Two built-in 25 Watt amplifiers power each of the drivers directly.



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- Careful acoustic design and the use of advanced materials contribute to the exceptional music fidelity and speech intelligibility exhibited by the Mackie Industrial MR4/4T (black) and MR4W/4WT (white) two-way speaker systems.
- The low-frequency driver's carbon fiber diaphragm remains extremely rigid at high power levels, producing a more linear response and lower distortion. The cone is fitted with a durable foam surround and treated to resist moisture. The high-frequency section features a constant directivity horn with a built-in mechanical phase equalizer. The horn is driven by a Ferrofluid® cooled, 0.5" Mylar® dome tweeter.

Compact Two-Way Speaker



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JackHammer SuperWoofer

- 900 ounce strontium ferrite magnet with extended magnetic field gap technology
- Carbon fiber and glass fiber dust cap with aluminum honeycomb center
- Expanded polypropylene cone with mica filler for reduced mass and increased stiffness
- FEA designed progressive roll spider with 10 AWG integrated tinsel leads woven in to allow for 2.5" of linear cone movement one way
- Aluminum shorting ring
- 6.5" voice coil with 17 AWG high temperature aluminum wire in a flat wound, long-excursion design
- Aluminum heat sink to maintain the optimum voice-coil temperature



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¹³ http://media.qscaudio.com/pdfs/discontinued_products/1160spec.pdf as accessed by the examining attorney on July 10, 2012.

¹⁴ http://www.adam-audio.com/files/downloads/A3X_engl150dpi.pdf as accessed by the examining attorney on July 10, 2012.

¹⁵ http://www.mackie.com/pdf/mr4t_ss.pdf

¹⁶ http://www.mtx.com/mobile/products/series/28/JackHammer_Subwoofers/show.html

SPECIFICATIONS SP™ 12M

The new SP 12M is a two-way floor monitor speaker system comprised of a 12" Black Widow® spider-frame BWX woofer with a Kevlar®/carbon fiber-impregnated cone and an enclosure made from nine-ply Baltic birch.



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TS-W5000SPL

Premier 12" Competition SPL Component Subwoofer

- 2000 Watts Nominal Power
- Interlaced Carbon Fiber Reinforced IMPP Cone Woofer
- Dual Voice Coil Design

Interlaced Carbon Fiber Reinforced IMPP Cone*

The cone of the TS-W5000SPL features a patent-pending design that combines long carbon fibers into a proprietary blend. The strong, lightweight characteristics of carbon fiber render a robust IMPP cone capable of withstanding the enormous pressure levels the speaker is capable of generating.



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Kick some Serious asphalt.

The advantages of being lightweight and shallow.

First, we optimized every performance parameter so every MM speaker would work with the latest thinking in automobile design. All models in the MM Series—coaxial, systems and subwoofers—use newly developed carbon composite basket structures. As you might suspect, carbon composite baskets are significantly more rigid and robust than stamped steel buckets, therefore way less likely to be a source of distortion; carbon composites also measure their reliability in years.



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Audax HM210C0 8" Carbon Fiber Woofer

Designed for high end systems, these drivers utilize a very stiff and lightweight woven carbon fiber cone. The use of this material results in dynamic bass response, superb midrange clarity and an extremely natural top end roll off. ... This 8" unit takes full advantage of the carbon fiber material providing flat response, and deep, tight bass.

- Woven carbon fiber cone



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17 http://www.peavey.com/assets/literature/manuals/sp12m_specs.pdf

18 <http://www.pioneerelectronics.com/PUSA/Car/Subwoofers/TS-W5000SPL>

19 <http://www.polkaudio.com/caraudio/mm/>

20 <http://www.madisoundspeakerstore.com/approx-8-woofers/audax-hm210c0-8-carbon-fiber-woofer/>

Aurum Cantus AC-200MKII 8" Carbon Fiber Sandwich Woofer

Overview

The AC-200MKII utilizes a special non-woven carbon fiber sandwich cone with foam core for light weight and extreme rigidity. A high-power motor offers exceptional cone control, high sensitivity, and substantial power handling.

Highlights

- Multi-layer composite non-woven carbon fiber cone



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T3 Audio T6C 6-1/2" Coaxial Speaker Pair

Highlights

- 6-1/2" 2-way full-range system brings true hi-fi quality to mobile installations
- Lightweight yet strong carbon fiber cone with butyl rubber surround

Manufactured with high quality carbon fiber cones, butyl rubber surrounds, and a 1" low-profile red aluminum dome tweeter, these coaxials were designed to handle harsh hot and cold environments while performing at an unparalleled level of sonic excellence.



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Carbon fiber home stereo speakers by Paul Stet

Over the years, we have seen designers and companies making good use of carbon fiber in different fields, including autos, home furniture and other lifestyle products. A true audiophile's den is never complete without a pair of stylish luxury speakers. Designed by Paul Stet, these beautiful home stereo speakers have been made with lightweight, high-strength carbon fiber.



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10" Woven Carbon Fiber Cone Woofer

Extremely lightweight and rigid, carbon fiber makes an ideal woofer cone material. The stamped frame features a rounded over front basket for greatly improved appearance



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21 <http://www.parts-express.com/pe/showdetl.cfm?partnumber=296-420>

22 <http://www.parts-express.com/pe/showdetl.cfm?partnumber=269-094>

23 <http://www.homechunk.com/?s=carbon+fiber+home+stereo+speakers&x=12&y=11>

24 <http://www.mcmelectronics.com/product/MCM-AUDIO-SELECT-55-1555-/55-1555> as accessed by the examining attorney on February 4, 2013.

GREENEDGE™ BY HARMAN – THE SOUND OF EFFICIENCY

GreenEdge in Action

GreenEdge High-Efficiency Speakers –

low power consumption and high sound-pressure levels

... Using innovative, lightweight materials, such as **carbon fiber** and an array of highly efficient design solutions also ensures optimized low mass products.



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Sound Image has designed and developed a complete line of **carbon fiber** speaker enclosures that are perfectly at home in the corporate arena. The enclosures are light-weight, sturdy, and attractive, with pristine sonic quality. With the development of these loudspeakers we gained the ability to put speakers where they may not have been able to go before, due to weight constraints. A 1250 **carbon fiber** box only weighs 47lbs!

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B23-265SUR

The timbre-matching, in-wall, surrounds for the B23 family of premium speakers. Bipole/Dipole surround, dual, 6.5" **carbon fiber** woofers, dual, 1", Titanium diaphragm tweeters. Sold Each.

The B23 is the top of TruAudio's in-wall home theater line up. Engineered for premium sound, excellence in audio doesn't get any better than this. The finest components available, our exclusive tweeter design and sheer beauty of the series will quite literally speak for themselves.

- Single cone light weight **carbon fiber**



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This accumulated evidence too “speaks for itself” quite loudly – carbon fibers are a significant component in woofers, subwoofers and other high-end loudspeakers. The only question remaining is whether the term “carbon” alone as adopted by applicant to be used in connection with speakers is in some way so

²⁵ <http://www.harman.com/EN-US/OurCompany/GroupInitiatives/Pages/GreenEdge.aspx>

²⁶ <http://www.sound-image.com/corporate.html> as accessed by the examining attorney on February 4, 2013.

²⁷ http://www.truaudio.com/products/6/BadBoy_Series/B23-265SUR

attenuated that potential consumers of stereo speakers will not make an immediate connection to “carbon fibers.” On this critical point, we disagree with applicant.

In spite of applicant’s best advocacy, we are not persuaded that prospective purchasers of stereo speakers, upon first seeing “Carbon Audio,” will spend time cogitating on Element #6 of the Periodic Table of the Elements (the “King of the Elements”) due to carbon’s extensive uses in the universe,²⁸ to all of “planet Earth,”²⁹ carbon dioxide, carbon emissions or carbon trading, to the production of energy generally, to the particular form of carbon compounds used in applicant’s plastics, or perhaps even of amplified sounds “providing energy to the listener.”³⁰

Rather, we find that prospective consumers who hear or see the word “Carbon” in the context of the combined term “Carbon Audio” as used in connection with audio speakers and speaker enclosures will immediately think of carbon fibers, and the critical role that they play in the sound quality, durability, rigidity, and light-weight characteristics of high-quality speakers.

In fact, we do agree with one point emphasized by applicant, namely, that “[t]he audio market is quality and characteristic driven.”³¹ Specifically, carbon fibers are a well-known characteristic of expensive, high-end speakers. Applicant’s intended mark, carried by the word “Carbon,” will immediately convey information of just such a quality or characteristic.

²⁸ Applicant’s brief at 3.

²⁹ *Id* at 8.

³⁰ *Id* at 6.

³¹ *Id* at 5.

Finally, in response to applicant's arguments about there being no competitive need for competitors to use the term "carbon,"³² we fear that granting applicant rights in "Carbon Audio" for the listed goods could result in a chilling effect, if not undue constraints, on competitors who certainly need to use the word "carbon" in its narrow sense of "carbon fibers" to describe their audio products.

Decision: The refusal to register applicant's mark **Carbon Audio** under Section 2(e)(1) of the Lanham Act is hereby affirmed.

³² *Id.* at 7-8.