

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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March 13, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Murphy Bed Concepts, Inc.

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Serial No. 85422382

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John F. Rollins, Law Office of John F. Rollins for Murphy Bed Concepts, Inc.

Linda M. Estrada, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

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Before Seeherman, Wolfson, and Gorowitz, Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Murphy Bed Concepts, Inc. (applicant) filed an application to register the mark MURPHY DESKBEDS for “furniture, namely, desks that are able to be converted to beds” in Class 20.¹

Registration was refused pursuant to Section 2(e)(1) of the Trademark Act,¹⁵ U.S.C. §1052(e)(1), on the ground that applicant’s mark is merely descriptive. The

¹ Application Serial No. 85422382, filed September 14, 2011, pursuant to Section 1(a) of the Trademark Act, based on use in commerce, alleging first use anywhere and first use in commerce at least as early as January 1, 2010.

refusal was made final in the Office action dated February 20, 2013. Applicant has appealed the refusal.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). The burden is on the United States Patent and Trademark Office to make a prima facie showing that the mark in question is merely descriptive from the vantage point of purchasers of an applicant's goods. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005), citing *In re Abcor Development*; *see also, In re Merrill Lynch, Pierce, Fenner, and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987). When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. 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. *DuoPross Meditech Corp. v. Inviro Medical Devices, Ltd.*, supra (SNAP SIMPLY SAFER merely descriptive for medical devices); *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun*

Microsystems Inc., 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of new information services in the food processing industry).

The examining attorney asserts that “[t]he proposed mark is merely descriptive of a characteristic and feature of applicant’s goods, which are a Murphy bed with a desk.” Examining Attorney’s Brief, p. 4. To support her position, the examining attorney submitted definitions from www.vocabulary.com of both “Murphy bed” (“a bed that can be folded or swung into a cabinet when not being used”) and “desk” (“a piece of furniture with a writing surface and usually drawers or other compartments”). She also submitted evidence of use of the term “desk bed” and use of the term “Murphy beds” in conjunction with “desk beds,” examples of which include the following excerpts from various webpages, attached to the Office action dated December 31, 2011:

- “The innovative ORG desk bed converts small spaces in a matter of minutes without adding or moving furniture. Its unique balancing mechanism provides a smooth, uninterrupted transition, allowing bedding and items stored and on display to remain stationary when changing from a desk to a bed.” www.closetlifenj.com.
- “M&R Custom Millwork has been in business since 1981 providing attention to detail and quality to our Murphy Bed Desks. The Hide Away Deskbeds are great Murphy Bed Alternatives for all of your needs! Whether you are looking for Murphy Bed Desks or just Murphy Bed alternatives, our murphy bed desks are both functional and

attractive combining both a bed and a desk.”
hideawaydeskbed.com.

- “The Desk Murphy Bed allows the user to leave their personal items such as a laptop, printer and books (up to 10” high) on the desk when the bed is pulled down.” www.usamurphybeds.com.

The word “Murphy” is also used to describe a “style” or “type” of bed-units or beds. See, for example, www.sicoinc.com (“murphy style SICO Wallbeds and functional furniture”); murphywallbedschicago.com (“Murphy style bed unit”), and www.murphybedsorland.com (“Murphy-type beds”). Office action dated February 20, 2013. As shown, “Murphy” is descriptive for a type of bed that can be stored out of view when not in use and “deskbed” is descriptive of a single piece of furniture designed to function both as a bed and as a desk. When combined as MURPHY DESKBED, the mark is merely descriptive of a piece of furniture that functions alternatively as a bed and as a desk, and has the ability to store one of the functions out of view when the other is in use.

Applicant contends that the mark MURPHY DESKBEDS does not describe features of its goods because the goods are identified as “desks that are able to be converted to beds,” and thus the focus should be on whether the mark describes “desks” rather than “beds.” However, the evidence, as discussed above, shows that terms such as “desk beds,” “Murphy bed desks” and “desk Murphy beds” are used to describe desks that are able to be converted to beds. Moreover, applicant’s own website, www.murphydeskbeds.com, clearly indicates that applicant’s goods are the type of product that competitors describe as “Murphy desk beds” or “desk beds.” See, for example, the following description:

“The Murphy Desk Bed is one of those great, versatile pieces of furniture that not only looks amazing but is filled with functionality and personality. This modern twist on an old classic is one way for you to gain space and add multiple purposes to a room while maintaining that elegant and contemporary look.

Our distinctive design allows you to lower your Murphy Desk Bed while everything remains level on the desk and conveniently stores away under the bed. This stress free transition takes you from home office to bedroom and back again, in one easy and simple movement. Unlike sleeper couches and inflatable mattresses, your Murphy Desk Bed can hold almost any mattress as well as the bedding.”

The description is illustrated by the accompanying pictures showing applicant’s product:



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Applicant contends that “the [e]xamining [a]ttorney has failed to provide sufficient evidence of descriptive use of [a]pplicant’s mark as a whole.” Appeal Brief, p. 4. We disagree. As established above, the examining attorney has introduced persuasive evidence and on the basis thereof, the Office has met its burden.

Applicant argues that the examining attorney is “attempting to improperly dissect the mark,” and that when it is viewed as a whole, it has a different

impression from “Murphy Bed” and “desk” because of the interposition of the word “desk” between “Murphy” and “Bed.” However, because the term “Murphy,” when used for furniture, has the connotation of furniture that can be stored in a wall, when the mark MURPHY DESKBED is viewed in connection with applicant’s goods, applicant’s mark immediately conveys the nature of the goods to purchasers, namely, that they are Murphy-style desk beds.

We also note applicant’s argument that the examining attorney has not submitted a dictionary definition of MURPHY DESKBED. Such evidence is not necessary to show that a term is merely descriptive. It is sufficient, as here, that the combination of terms results in a term that is merely descriptive.

Applicant also argues that “to be precluded from registration [on the grounds of descriptiveness], the mark must do nothing other than immediately convey an understanding of the goods for which registration is sought.” It appears to be applicant’s position that it is the burden of the examining attorney to show that MURPHY DESKBED has no other meaning than as a descriptive term. To the extent this is indeed applicant’s argument, we find that the examining attorney has in fact shown that MURPHY DESKBED has a descriptive meaning. There is no requirement for the examining attorney to prove a negative, i.e., that there are no non-descriptive meanings for this term. To the contrary, in view of the fact that the examining attorney has made out a prima facie showing that the mark is merely descriptive, it would be applicant’s obligation to rebut that prima facie case by

showing that the mark has a non-descriptive meaning. Applicant has not submitted evidence of any such non-descriptive meaning.

Finally, applicant argues that registration should not be refused because the Office allowed Application Serial No. 85251015 for the mark MURPHY BAR for “furniture, namely, free standing and wall mounted cabinets, tables, display cases, metal storage cabinets, for storing and serving liquor and beverages.” This application was abandoned in 2012 for failure of the applicant to file a Statement of Use. Our finding is not contraindicated because that application was allowed. The Board is not bound by the prior decisions of examining attorneys and must decide each case on its own merits. *In re Nett Designs Inc.*, 236 F3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) and *In re Merrill Lynch, Pierce, Fenner & Smith Inc.*, at 1142; *see also In re Pedersen*, 109, USPQ2d 1195, 1197. In this case, the evidence submitted by the examining attorney is sufficient for us to find that applicant’s mark is merely descriptive of its goods.

In conclusion, we find the mark MURPHY DESKBED to be merely descriptive of applicant’s “furniture, namely, desks that are able to be converted to beds.”

Decision: The refusal to register is affirmed.