

**THIS OPINION IS NOT A
PRECEDENT OF
THE T.T.A.B.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brian Newville

Serial No. 85470364

Eric Hanscom of Intercontinental IP for Brian Newville.

Charles L. Jenkins, Jr., Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Seeherman, Cataldo and Gorowitz,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Brian Newville, seeks registration on the Principal Register of the standard character mark MANTLEMOUNT for "metal audio, video and computer wall and ceiling mounts" in International Class 6.¹

Applicant appeals from the final refusal of registration on the ground that the mark is merely descriptive of the identified goods. Trademark Act

¹ Application Serial No. 85470364, filed November 11, 2011, is based on an allegation of use in commerce under Section 1(a) of the Trademark Act as of November 8, 2011.

§ 2(e)(1); 15 U.S.C. § 1052(e)(1). Applicant and the examining attorney filed main briefs on the issue under appeal.²

We affirm.

I. Applicable Law

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services with which it is used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); and *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987).

Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. 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 issue is whether someone who knows what

² The examining attorney's objection to materials attached to applicant's brief on appeal that were not made of record during prosecution of the involved application is sustained. *See* Trademark Rule 2.142(d). *See also In re Volvo Cars of North America, Inc.*, 46 USPQ2d 1455, 1456 n.2 (TTAB 1998); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1372 (TTAB 2006); and *In re District of Columbia*, 101 USPQ2d 1588, 1591 (TTAB 2012). Accordingly, these materials have not been considered.

the goods or services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *In re Patent & Trademark Servs. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); and *In re Home Builders Ass'n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990). "On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003); *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); and *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983).

II. Discussion

We begin our determination by considering the applied-for mark and the recited goods. Applicant's mark is MANTLEMOUNT, identifying "metal audio, video and computer wall and ceiling mounts." In his March 9, 2012 response to the examining attorney's Office action, applicant acknowledges:

Applicant's product is a TV mount that sits above a mantle. It does not attach to a mantle, nor

does it require a mantle to work. Indeed, it could be mounted to any wall, with or without a mantle. This can be seen both in the patent application and the pictures. As such, while the name may give the impression that Applicant's device mounts something to a mantle, the reality is that it CAN mount a TV above a mantle, thus the name is not descriptive of the function of the invention.

With his response, applicant submitted drawings from a patent for the identified goods, as well as the following photographs thereof.



In support of the refusal to register, the examining attorney made of record several dictionary definitions, including the following:

mount - an object to which another is affixed or on which another is placed for accessibility, or use;³ and
mantle - a wooden or stone frame around the opening of a fireplace, together with its decorative facing.⁴

³ Accessed on February 29, 2012 at education.yahoo.com, retrieved from Merriam-webster.com and attached to the Office action of the same date.

⁴ Accessed on October 19, 2012 at collinsdictionary.com and attached to the Office action of the same date.

We turn then to the question of whether MANTLEMOUNT (which is equivalent to "mantle mount") is descriptive of applicant's metal wall and ceiling mounts for audio, video and computer products. We observe initially that the novel presentation of a mark that is the phonetic equivalent of a merely descriptive word or term is also merely descriptive if purchasers would perceive the different spelling as the equivalent of the descriptive word or term. See *In re Hercules Fasteners, Inc.*, 203 F.2d 753, 97 USPQ 355 (C.C.P.A. 1953) (holding "FASTIE," phonetic spelling of "fast tie," merely descriptive of tube sealing machines); and *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (holding "URBANHOUSING," phonetic spelling of "urban" and "housing," merely descriptive of real estate services).

As noted above, the examining attorney has made of record dictionary definitions of the salient terms comprising the applied-for mark. Based upon these dictionary definitions, we find that applicant's mark merely describes a feature or characteristic of applicant's goods, namely, that they may be used to mount televisions and other electronic products on or above the outer covering of a wall or the frame around a fireplace, i.e., a mantle. It is settled that "evidence [that a term is merely descriptive] may be obtained from any competent

source, such as dictionaries, newspapers, or surveys." See *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, (Fed. Cir. 2005); and *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986).

We note that applicant does not dispute these definitions of the wording comprising its mark, but argues that the combination thereof in its mark is not descriptive of its goods. However, applicant's argument is contradicted by its own evidence and statements. As reproduced above, photographs of applicant's goods display them as a flexible mount located above a fireplace mantle, allowing a television to be viewed at several different angles in a room. Thus, consumers will perceive applicant's goods either as a "mantle mount" for a television or as something that allows one to "mantle mount" a television. Regardless of whether consumers will view applicant's mark as a noun or a verb, the term MANTLE MOUNT merely describes this feature of his goods.

Further, applicant acknowledges that his goods are a television mount that sits above a fireplace mantle. Applicant argues that his mounts are not attached to a mantle itself, but rather above it, and may be affixed to any wall. However, it is clear that applicant's goods are intended to allow one to mount, inter alia, a television

above a fireplace mantle for convenience and stylistic purposes. The mere fact that it may mount a television elsewhere or does not mount a television directly to the mantle itself does not render the mark suggestive or otherwise remove its descriptive meaning as applied to applicant's goods.

Nor are we concerned that the terms "mantle" and "mount" comprising the mark may have additional definitions in other contexts. As noted above, our determination of whether MANTLEMOUNT is merely descriptive must be made in the context of the applied-for goods, not in the abstract. *In re Abcor Dev. Corp.*, 200 USPQ at 218; and *In re Remacle*, 66 USPQ2d at 1224.

The totality of the evidence made of record by the examining attorney and the information supplied by applicant support a finding that, as applied to applicant's goods, the term MANTLEMOUNT would immediately describe, without conjecture or speculation, a significant characteristic or feature of the goods. Prospective purchasers, upon confronting the term MANTLEMOUNT for applicant's goods, would immediately perceive that the goods are used to attach televisions and other electronic devices on or above a fireplace mantle.

III. Conclusion

We have carefully considered all of the evidence and argument of record, including any evidence not specifically referenced herein. We conclude that applicant's mark, MANTLEMOUNT is merely descriptive of its identified goods. Trademark Act § 2(e)(1).

Decision: The refusal to register is AFFIRMED and registration to applicant is refused.