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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re 0950702 BC Ltd.

Serial No. 85780769

Andrei Mincov of the Mincov Law Corporation for Applicant.

Naakwama S. Ankrah, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

Before Cataldo, Shaw, and Greenbaum, Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

Applicant, 0950702 BC Ltd., filed an application to register on the Principal

Register the mark DOG SHAMING in standard characters for goods identified as:

Printed matter, namely, books in the field of entertainment, photo albums, calendars, greeting cards, post cards, and posters, in International Class 16;

Dog clothing; garments for dogs, in International Class 18;

Casual clothing, namely, shirts, t-shirts, sweat-shirts, polo-shirts, hooded tops, pull-overs, vests, blouses, skirts, dresses, woven shirts, shorts, jeans, jackets and tank tops, in International Class 25; and

Entertainment services, namely, providing photographs and images of pets with added captions and comments on-line and in mobile wireless form, in International Class 41.¹

Registration has been refused under 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 of the goods and services in classes 16 and 41. When the refusal was made final, Applicant filed this appeal and requested reconsideration. Upon reconsideration, the Examining Attorney maintained the refusal to register. The case is fully briefed.

Evidentiary Objection

Before addressing the substance of this appeal, we will consider first the Examining Attorney's objection to Applicant's submission of new evidence with its appeal brief as untimely, namely, exhibits 2, 3, 5, 6, and 7.² Trademark Rule 2.142(d) provides in relevant part that "[t]he record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed." Insofar as the Examining Attorney has timely interposed an objection to Applicant's late-filed evidence in its brief, the objection is sustained, and exhibits 2, 3, 5, 6, and 7 submitted concurrently with Applicant's appeal brief have been given no consideration. *See e.g., In re Fiat Group Marketing & Corporate Communications S.p.A.*, 109 USPQ2d 1593, 1596 (TTAB 2014) (Examining Attorney's objection to Applicant's submission

¹ Application Serial No. 85780769, filed on November 15, 2012, based on an allegation of first use and first use in commerce in connection with the identified services of August 16, 2012 under Trademark Act Section 1(a) and a *bona fide* intent to use the mark in commerce on the identified goods under Section 1(b).

² Examining Attorney's Appeal Br. at 8.

of registrations with appeal brief sustained). We note, however, because exhibits 5 and 6 were submitted in another form prior to filing of the appeal, the corresponding previously submitted evidence has been considered, as appropriate.

Refusal under Section 2(e)(1)

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. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). 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*, 3 USPQ2d at 1009-10. Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

In virtually all examples of record, the term “Dog Shaming,” as used by Applicant, appears in connection with photographs of dogs with a sign describing some recent bad behavior engaged in by the animal. For example:

Dogshaming <http://www.dogshaming.com/>



- [Home](#)
- [Submit A Dog](#)

[Shark Attack Maddy](#)

Posted [Nov 15 2012](#)

³ Applicant’s Specimen, November 15, 2012.



The Examining Attorney argues that DOG SHAMING is merely descriptive “because it identifies the subject matter of the goods and the services.”⁵ In support of the refusal the Examining Attorney has submitted excerpts from a number of websites, including Applicant’s website, showing merely descriptive use of the term DOG SHAMING, and a dictionary definition of “shame.”

- <http://guiltydogs.com> – A website showing photographs of dogs with signs identifying their bad behavior entitled “Guilty Dogs funny dog shaming photos.”
- <http://dogshaming.tumblr.com> – Applicant’s website featuring photographs of dogs with signs identifying their bad behavior stating “We supply your favorite furry friends with a healthy dose of shaming” and a link to “Submit Dog for Public Shaming.”
- <http://shameyourpet.com> – A website featuring photographs of pets with signs identifying their bad behavior.
- Woof.doggyloot.com/what-is-dog-shaming – A pet-related information web site answering the question: “What is Dog Shaming?” The web site discusses seeing “a dozen or more photos of dogs with hand-written signs

⁴ Examining Attorney’s Office Action of August 20, 2013.

⁵ Examining Attorney’s Appeal Br. at 5.

describing what they had done wrong, or to cause the scene in the photo” and states “Dog shaming has become an Internet sensation. There are entire websites dedicated to these photos.”

- www.flickr.com – A website gallery of photographs entitled “Dog Shaming” featuring photographs of dogs with signs identifying their bad behavior.
- <http://jezebel.com> – A web site with a link to video featuring bad dogs described as “These Guilty-as-Hell Pups take Dog Shaming to the Next Level.”
- <https://www.pinterest.com/stimmons123/the-best-of-dog-shaming> – A website showing photographs of dogs with signs identifying their bad behavior entitled “The Best of Dog Shaming.”
- [Reddit](#) – A web page entitled “DOGSHAMING” showing photographs of dogs with signs identifying their bad behavior. Some of the photographs include titles such as “shaming my dog,” “Halloween dog shaming” and “I got dog shamed....”
- www.tumblr.com/tagged/dog-shaming – A web page entitled “tumblr. Find and follow posts tagged #dog shaming” featuring photos shaming dogs (and cats) for various transgressions.
- www.buzzfeed.com/tag/dog_shaming – A web page entitled Dog Shaming featuring links to four stories about dogs guilty of various bad behaviors.
- <http://peta.org/blog/best-people-shaming> – A web page entitled “11 of the very Best People Shaming” featuring photographs of pet owners with signs identifying ways they have mistreated their dogs. The web site explains that “Dogs give us all their love and affection, but what are some people giving them in return? Dog shaming. Dogs don’t deserve that, but we can’t say the same for some guardians.”
- <http://merriam-webster.com/dictionary/shaming> – A dictionary definition of shame:

shame *noun* \shām\

: a feeling of guilt, regret, or sadness that you have because you know you have done something wrong

: ability to feel guilt, regret, or embarrassment

: dishonor or disgrace

Full Definition of SHAME

1 *α*: a painful emotion caused by consciousness of guilt, shortcoming, or impropriety

b: the susceptibility to such emotion <have you no *shame*?>

2 : a condition of humiliating disgrace or disrepute : ignominy
<the *shame* of being arrested>

3 *a*: something that brings censure or reproach; *also*:
something to be regretted : pity <it's a *shame* you can't
go>

b: a cause of feeling shame

The foregoing evidence submitted by the Examining Attorney demonstrates that posting photographs of dogs, other pets, and even people, highlighting their bad behavior is a recognized theme on Internet web pages. These web page excerpts shaming bad behavior are consistent with the dictionary definition of “shame” as meaning “dishonor or disgrace.” Thus, when DOG SHAMING is used in connection with Applicant’s printed matter and entertainment services, it immediately conveys information concerning the subject of the goods and services, namely, that they comprise images showing dogs being shamed by their owners for bad behavior. *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (“Evidence that a term is merely descriptive to the relevant purchasing public ‘may be obtained from any competent source, such as dictionaries, newspapers, or surveys.’”).

Applicant first argues that DOG SHAMING is not “literally descriptive” because “[d]ogs (like all other animals) are incapable of either shaming someone or feeling shame.”⁶ This argument relies on an overly narrow meaning of “shame” and ignores the complete definition of “shame” which includes “dishonor or disgrace”

⁶ Appeal Br. at 4.

and “something that brings censure or reproach.”⁷ As thus defined, “shaming” does not necessarily require that the perpetrator of the transgression feel shame. Rather, it is the transgression itself and the resulting public opprobrium that brings shame upon the dog. Accordingly, we find that this argument is not persuasive.

Applicant next argues that DOG SHAMING is not descriptive because it does not convey an immediate idea of the goods and services because a “substantial leap is required to jump from ‘DOG SHAMING’ to truly knowing any particular characteristic of Applicant’s goods and services.”⁸ We disagree. The evidence submitted by the Examining Attorney demonstrates that DOG SHAMING is a recognized humorous theme appearing in articles, videos, and photographs on a number of Internet web sites. Where, as here, wording in a mark describes the subject matter of printed matter (or entertainment services), it is deemed to be merely descriptive because it conveys information concerning the subject of the goods or services. *See, e.g., In re Waverly Inc.*, 27 USPQ2d 1620 (TTAB 1993) (MEDICINE merely descriptive for a medical journal); *In re Gracious Lady Service, Inc.*, 175 USPQ 380, 382 (TTAB 1972) (CREDIT CARD MARKETING merely descriptive for “a periodical pamphlet devoted to subjects of interest to those engaged in the credit card merchandising field”); and *In re Medical Digest, Inc.*, 148 USPQ 570 (TTAB 1965) (OB/GYN DIGEST merely descriptive for a periodical magazine dealing with subjects in the field of obstetrics and gynecology).

⁷ <http://merriam-webster.com/dictionary/shaming>.

⁸ Appeal Br. at 11.

Applicant also argues that the evidence does not support the refusal, but instead shows that “Dog Shaming’ was coined by Applicant, is associated in the mind of the public with Applicant and therefore is distinctive of Applicant’s goods and services.”⁹ This argument is unavailing. It is well-settled that the fact that an Applicant may be the first and only user of a merely descriptive or generic designation does not justify registration if the only significance conveyed by the term is merely descriptive. *See In re Carlson*, 91 USPQ2d 1198, 1202 (TTAB 2009); *In re BetaBatt Inc.*, 89 USPQ2d 1152, 1156 (TTAB 2008); *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001).

Applicant’s remaining arguments regarding competitor need and competitor use have been considered but are not persuasive. Further, Applicant’s admonition to resolve doubts in its favor is not applicable here. We have no doubt that the proposed mark is merely descriptive of Applicant’s goods and services.

For the reasons set forth above, we find that the Examining Attorney has met her evidentiary burden of showing that Applicant’s mark is merely descriptive of Applicant’s goods and services, as identified in classes 16 and 41 of the application, within the meaning of Section 2(e)(1).

Decision: The refusal to register Applicant’s mark under Section 2(e)(1) is affirmed as to classes 16 and 41. The application with the remaining classes will proceed to publication in due course.

⁹ Appeal Br. at 12. Although Applicant argues that its mark is “distinctive of Applicant’s goods,” a Section 2(f) claim of acquired distinctiveness was not made.