

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: March 17, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Clic Goggles, Inc.*

Serial Nos. 85880646 & 85880679

Nathan P. Koenig of Bay Area Technology Law Group PC for Clic Goggles, Inc.

Carolyn P. Cataldo, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Greenbaum, Adlin and Hightower, Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Clic Goggles, Inc. (applicant) filed two applications to register on the Principal Register the marks EZ SNAP EYEWEAR and SNAP EZ EYEWEAR in standard characters for “eyewear” in International Class 9.<sup>1</sup>

In each case, registration has been refused on the ground that the mark is merely descriptive of the identified goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). When the refusals were made final, applicant appealed. Applicant and the examining attorney have filed briefs in each case.

---

<sup>1</sup> Serial Nos. 85880646 and 85880679, respectively, filed March 19, 2013, based on applicant’s bona fide intent-to-use the marks in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

When, as here, applicant has filed *ex parte* appeals to the Board in two co-pending applications, and the cases involve common issues of law or fact, the Board, upon request by the applicant or examining attorney or upon its own initiative, may order the consolidation of the appeals for purposes of briefing, oral hearing, or final decision. TBMP § 1214 (3d ed. rev. 2 2013). *See also, e.g., In re Anderson*, 101 USPQ2d 1912, 1915 (TTAB 2012) (Board sua sponte consolidated two appeals); *In re Country Music Association, Inc.*, 100 USPQ2d 1824, 1827 (TTAB 2011) (same); *In re Bacardi & Co. Ltd.*, 48 USPQ2d 1031, 1033 (TTAB 1997) (Board sua sponte considered appeals in five applications together and rendered single opinion). Accordingly, the Board consolidates these appeals. The records are identical in each appeal, and references to the record, whether in the singular or plural form, pertain to both applications.

A mark is deemed to be merely descriptive of goods, within the meaning of Section 2(e)(1), if it “immediately conveys knowledge of a quality, feature, function, or characteristic” of the goods with which it is used. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007)); *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark need not immediately convey an idea of each and every specific feature of the applicant's goods in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338

(TTAB 1973). Whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with the goods, and the possible significance that the mark would have to the average purchaser of the goods because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that “[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them.” *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).<sup>2</sup>

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. *See, e.g., DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753 (Fed. Cir. 2012) (SNAP SIMPLY SAFER is merely descriptive for “medical devices, namely,

---

<sup>2</sup> Applicant's reliance on *Ex Parte Heatube Corp.*, 109 USPQ 423 (Comm'r Pats. 1956) as setting forth the test for determining whether a mark is merely descriptive is misplaced. *See* App. Br., p. 4. The test has evolved over time, and we must follow the test as set forth above by the Court of Appeals for the Federal Circuit, our primary reviewing court. *See also In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant's goods and services,” citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)).

cannulae; medical, hypodermic, aspiration and injection needles; medical, hypodermic, aspiration and injection syringes”); *Oppedahl*, 71 USPQ2d at 1371 (PATENTS.COM is merely descriptive of computer software for managing a database of records that could include patents for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM is merely descriptive of computer game software); *In re Tower Tech Inc.*, 64 USPQ2d at 1317 (SMARTTOWER is merely descriptive of commercial and industrial cooling towers); and *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS is merely descriptive of computer programs for use in development and deployment of application programs). 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) (October 2013).

It is the examining attorney’s position that EZ is an abbreviation for the word “easy,” and that SNAP identifies a feature of applicant’s eyewear in that it snaps or connects with magnets at the bridge of the wearer’s nose, so that the applied-for marks EZ SNAP EYEWEAR and SNAP EZ EYEWEAR merely describe the fact that the frames of applicant’s eyewear easily snap together with magnets.

In support of this position, the examining attorney submitted with the August 15, 2013 Office actions the following dictionary evidence: (1) “EZ” is an abbreviation for “easy”;<sup>3</sup> (2) “easy” is defined as “not requiring much labor or effort; not difficult; simple”;<sup>4</sup> and (3) “SNAP” is defined as “to close (something) with a fastener and especially with a snap.”<sup>5</sup>

In addition, although the applications are based on applicant’s bona fide intent to use the marks in commerce, the examining attorney has made of record with the June 28, 2013 and August 15, 2013 Office actions evidence that applicant actually sells eyewear that snaps together in the front, at the bridge of the wearer’s nose, with magnets. For example, on its website <clicmagneticglasses.com>, applicant describes its eyewear as having a “unique patented neodymium magnetic system” that “allows the glasses to come together at the bridge.” Similarly, the “Little Gorgeous Things” website <littlegorgeousthings.com>, which displays various styles of applicant’s eyewear with the frames both connected and disconnected at the front, describes one such product, the “CliC Petite Magnetic Closure Reading Glasses,” as follows: “The readers open in the front between the lenses ... to put them on, just lift up and ‘clic’ the glasses together over your nose ... the tiny but powerful magnets snap them securely together.” An additional screenshot from the same website displays the “CliC Magnetic Closure Sport and Motorcycle Goggles” disconnected at the bridge. The associated product description

---

<sup>3</sup> Dictionary.com <dictionary.reference.com> derived from Collins English Dictionary (10<sup>th</sup> ed. 2009).

<sup>4</sup> Collins English Dictionary <collinsdictionary.com>.

<sup>5</sup> Merriam-Webster Online Dictionary <Merriam-webster.com>.

touts the magnets that allow the wearer to snap the glasses together: “To wear, snap the goggles together via the high powered neodymium magnet located at ....” Likewise, an article on OverBlog <en.over-blog.com> describes applicant’s eyewear as having “a neodymium magnet at the bridge of the nose [that] wraps around the neck. When they are brought together, they snap close[d] with a ‘click’. These reading glasses are double-hinged to bend both inwards and outwards, so they won’t break as ordinary inexpensive reading glasses that snap at the hinge.” Further, the third-party retailer website Magneticglass.com <magnetglasses.com> describes applicant’s eyewear as follows: “CliC reading glasses are revolutionary eye wear that use a neodymium magnet at the bridge of the nose and wraps around the neck. When they are brought together they snap closed [sic] with a ‘clie’.”

Applicant and other third parties also describe the ease with which the eyewear snaps together. As applicant states on its website: “The head band is form-fitting and wraps around your head to ensure a snug, comfortable fit. Putting them on is simple. Just place the band around your head and let the magnets draw together at the bridge. Want to take them off? No problem. Just pull the magnets apart and the glasses will hang comfortably around your neck. That way you know exactly where they are when you need them again.” According to the Read In Style.com <readinstyle.com> article, applicant’s eyewear is “designed to sit around your neck to be within reach as soon as you need them. Now, the second you need your readers, there is no more searching for them. Simply pull them up from around your neck and click them together with the magnet before settling them on your

nose.” And an article on InventorSpot.com <inventorspot.com> states: “[i]t’s rare these days to find a new product that is so simple it comes with only one instruction: ‘CliC to close.’” The article also reports that the “[n]eodumium magnets draw together so strongly that you hear a click when they meet. And if you have hand tremors from coffee jitters or a medical condition, you don’t need to be very accurate in lining up the CliC lenses; the magnets have a force of their own.”

The evidence also includes a screenshot from the Amazon.com website, which shows a picture of applicant’s “CliC Adjustable Front Connect Reader,” and describes the product as follows: “No more granny chains or uncomfortable elastic headbands, and no more fumbling in your purse or briefcase for your glasses. Reach for them hanging around your neck on their size-adjustable band, simply click the magnets together over your nose, and you can read at will.”

Relying on *Colonial Stores*, 157 USPQ 382 (Sugar & Spice held not merely descriptive of bakery products), applicant contends that EZ SNAP EYEWEAR and SNAP EZ EYEWEAR are not merely descriptive because neither “is descriptive only of the goods and services identified by it.”<sup>6</sup> To this end, applicant argues that the proposed marks could mean many things, “including eyewear which is easy to wear (a “snap” to wear) or easy to store or easy to carry or easy to connect to other optical or non-optical devices such as supplemental lenses which act as sunglasses or which provide a protective feature in the event that the eyewear is to be used in high risk situations where debris could enter one’s eye if left unprotected,” and because the marks have other “associative connection[s]” as in *Colonial Stores*, they are not

---

<sup>6</sup> App. Br., p. 3.

merely descriptive “only of glasses which have frames which are selectively connectable to one another through the use of small but powerful magnets.”<sup>7</sup>

To the extent applicant intended to argue that the proposed marks are double entendres and therefore not merely descriptive of applicant’s eyewear, we do not find that any of the proposed alternative meanings constitutes a non-descriptive meaning that will be readily apparent to the consumer. *See In re The Place, Inc.*, 76 USPQ2d 1467 (TTAB 2005) (THE GREATEST BAR held laudatory and merely descriptive of restaurant and bar services; the Board stating that “[i]f the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of the applicant's trade dress, advertising materials or other matter, then the mark is not a double entendre”); and *In re Wells Fargo & Co.*, 231 USPQ 95 (TTAB 1986) (EXPRESSERVICE held merely descriptive for banking services, despite applicant's argument that the term also connotes the Pony Express, the Board finding that, in the relevant context, the public would not make that association). Further, applicant does not contend that EZ SNAP EYEWEAR or SNAP EZ EYEWEAR is incongruous, and we cannot make such a finding based on the evidence of record. The record evidence clearly points to the main feature of applicant’s eyewear as easily snapping or connecting in the front with magnets.

In addition, the fact that applicant's marks use the well-recognized abbreviation for the word “easy” does not lessen the immediacy of the description conveyed by that part of the marks. This term unquestionably projects a merely descriptive connotation. It is settled that the use of a phonetically identical word or

---

<sup>7</sup> App. Br., pp. 3-4.



a simple misspelling does not normally change a descriptive word into a suggestive term. *See In re Quik-Print Copy Shops*, 616 F.2d 523, 205 USPQ 505, 507 n.9 (CCPA 1980) (QUIK-PRINT held descriptive; “There is no legally significant difference here between ‘quik’ and ‘quick’”); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING found to be perceived as the phonetic equivalent of the descriptive term URBAN HOUSING, and thus, merely descriptive of real estate brokerage, real estate consultation and real estate listing services).

Each of the words comprising applicant’s proposed marks is individually descriptive (and in the case of EYEWEAR, admittedly generic),<sup>8</sup> and the combination of these terms does not evoke a new and unique commercial impression. Rather, each component of the composite marks retains its merely descriptive significance in relation to applicant’s goods, thus resulting in composites that are themselves merely descriptive. *See Petroglyph Games*, 91 USPQ2d 1332 (BATTLECAM merely descriptive for computer game software). No imagination is required by a prospective purchaser or user to discern that applicant’s eyewear easily snaps or connects in the front with magnets. Accordingly, each of the proposed marks, EZ SNAP EYEWEAR and SNAP EZ EYEWEAR, when considered as a whole, is merely descriptive of applicant’s goods.

Finally, the fact that applicant may be the first and only user, as applicant contends, does not obviate a mere descriptiveness refusal. *In re Nat’l Shooting Sports Found., Inc.*, 219 USPQ 1018 (TTAB 1983).

---

<sup>8</sup> App. Br., p. 4.

Serial No. 85880646 & 85880679

Applicant correctly states that in cases of refusals under Section 2(e)(1), we must resolve doubt in favor of applicant; however, we have no doubt in either of these cases.

**Decision:** The refusal to register is affirmed in each case.