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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Clic Goggles, Inc.

Serial No. 85880648

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Before Greenbaum, Adlin and Hightower, Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Clic Goggles, Inc. (applicant) filed an application to register on the Principal Register the mark FRONT CONNECTION EYEWEAR in standard characters for "eyewear" in International Class 9.[1]

Registration has been refused on the ground that FRONT CONNECTION EYEWEAR 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 refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.

[1] Serial No. 85880648, filed March 19, 2013, based on applicant's bona fide intent-to-use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

"A mark is merely descriptive if it 'consist[s] merely of words descriptive of the qualities, ingredients or characteristics of' the goods or services related to the mark." *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting *Estate of P.D. Beckwith, Inc. v. Commissioner*, 252 U.S. 538, 543 (1920). *See also In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). 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. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). 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.[2] *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (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

[2] 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 Federal Circuit, our primary reviewing court. *See also Oppedahl*, 71 USPQ2d at 1371 ("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)).

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, 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).

Although the application is based on applicant's bona fide intent to use the mark in commerce, the examining attorney has made of record evidence that applicant actually sells eyewear with a magnetic front closure, that is, eyewear with a frame that connects in the front, at the bridge of the wearer's nose, with magnets.[3] For example, the "Little Gorgeous Things" website <littlegorgeousthings.com> displays various styles of applicant's eyewear with the frames both connected and disconnected at the front, and describes the eyewear as follows:

> CliC readers, sunglasses, and goggles all have a unique, patented, neodymium magnetic front connection system that was invented in the USA. To put the glasses on, you just lift them up and over your nose, and the front magnet guides the lenses closed with a gentle "click." This magnetic front connection allows them to use a flexible headband in the back. This has two benefits... first, when you're looking through the lenses, the headband keeps them securely in place on your head. They won't fall off, blow off, or fly off. Then, when you don't need them, just "un-click" them in front, and let them hang comfortably around your neck. No "granny chain" or cords needed! You will never misplace your readers again.[4]

The examining attorney also submitted printouts from applicant's website <clicmagneticglasses.com> featuring applicant's "Clic Metal Aviator Frame Rx S. V. Silver" and other styles of glasses, all of which are described as having "patented front connection technology."[5] Applicant's website also describes the "Click Half Frame Black Sun Reading Glasses" and many others as having a "unique patented neodymium magnet system" that "allows the glasses to come together at the bridge." Similarly, the printout from the Sportclic website <sportclic.com> displays

[3] June 28, 2013 and August 6, 2013 Office actions.
[4] June 28, 2013 Office action.
[5] August 6, 2013 Office action.

pictures of applicant's "front connecting glasses" -- reading glasses, sunglasses and goggles.[6] Printouts from the Walmart website <walmart.com> show additional eyewear from applicant, such as the "Clic Long Reading Glasses – Black," promoting "[t]he one-of-a-kind front connection system" that "allows you to easily wear and remove them."[7]

The evidence also includes printouts from the Amazon website <amazon.com> displaying several styles of applicant's eyewear and a description thereof.[8] Almost all of the pictures show the eyewear separated at the bridge of the nose to demonstrate that they connect at the front, and the associated descriptions tout this feature. For example, applicant's "Clic Reader Reading Glasses – Long Stem" and "Clic Adjustable Front Connect Reader" have a "magnetic front connection" that offers "as needed access to your [glasses/readers]." Similarly, the printouts show many other styles of applicant's eyewear, and refer to virtually all of them as "front connect reader[s]."

Even if we were to accept applicant's argument that FRONT CONNECTION EYEWEAR could mean many things, including eyewear which can be connected to other optical or non-optical devices, such as prescription lenses, applicant does not contend that the alternate meaning is a double entendre, as was Sugar & Spice for bakery goods in *Colonial Stores*, or that FRONT CONNECTION EYEWEAR is otherwise incongruous, nor can we make such findings based on the evidence of

[6] Id.
[7] Id.
[8] June 28, 2013 Office action.

record, all of which points to the magnetic front connection of applicant's eyewear as the main feature of the eyewear.

Each of the words comprising applicant's proposed mark is individually descriptive (and in the case of EYEWEAR, admittedly generic),[9] and the combination of these terms does not evoke a new and unique commercial impression. Rather, each component of the composite mark retains its merely descriptive significance in relation to applicant's goods, thus resulting in a composite that is itself merely descriptive. *See Petroglyph Games*, 91 USPQ2d 1332 (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUZING merely descriptive of real estate brokerage, real estate consultation, and real estate listing services). No imagination is required by a prospective purchaser or user to discern that applicant's eyewear connects in front. Accordingly, the proposed mark, FRONT CONNECTION 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).

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 such doubt in this case.

Decision: The refusal to register is affirmed.

[9] App. Br., p. 4.