

This Opinion is not a
Precedent of the TTAB

Mailed: March 27, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re EBCO, Inc.

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Serial No. 85894991

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Matthew H. Swyers of The Trademark Company,
for EBCO, Inc.

Charles H. Hiser IV¹, Trademark Examining Attorney, Law Office 112,
Angela Wilson, Managing Attorney.

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Before Bucher, Taylor and Wellington,
Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

EBCO, Inc. (“Applicant”) seeks registration on the Principal Register of the mark LOCKDOWN MAGNET (the word “Magnet” disclaimed), in standard character format, for “magnets” in International Class 9.²

¹ Brittany A. Estell was the Examining Attorney responsible for the application prior to briefing.

² Application Serial No. 85894991 was filed on April 4, 2013, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C § 1051(b).

The Trademark Examining Attorney finally refused registration on the ground that LOCKDOWN MAGNET is merely descriptive of the identified goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

Applicant appealed to this Board, and both Applicant and the Examining Attorney filed briefs. We affirm.

Arguments and Evidence

Applicant, while conceding that the word “magnet” in its mark LOCKDOWN MAGNET is generic and further noting that it was disclaimed in the initial application,³ maintains that its mark, as a whole, is suggestive of the identified goods, and that “the ‘mental link’ between the mark LOCKDOWN MAGNET and Applicant’s goods as recited in the application is neither immediate nor instantaneous.” Br. p. 12.⁴ Applicant explains:

When presented with the term LOCKDOWN in connection with magnets, the term conveys the idea of safety, or that of keeping someone or something confined inside of a particular room or building. The term does not, however, immediately convey or necessarily describe an object that is used to replace a door key for ease-of-use in school classrooms, as the Examining Attorney has cited.

Conversely, the Examining Attorney maintains that “Applicant’s mark is descriptive of a magnet with the sole advertised purpose of be [sic] used to help effectuate a lockdown proceeding.” Ex. Atty. Br. unnumbered p. 4.⁵ He points to Applicant’s concession that the word “Magnet” is generic and, with regard to the

³ Br. p. 13. TTABVue 14.

⁴ 4 TTABVue 13.

⁵ 6 TTABVue 5.

word LOCKDOWN and the term LOCKDOWN MAGNET, has made the following evidence of record:

1. Dictionary definitions

Lockdown is defined as:

(US) a security measure in which those inside a building such as a prison, school, or hospital are required to remain confined in for a time → many schools remained under lockdown yesterday.⁶

A protocol followed in an emergency that involves confining people in a secure place, such as the confinement of prison inmates in cells after a disturbance, or the locking of students and teachers in classrooms after a violent attack.⁷

2. Internet evidence

a. The Examining Attorney attached to the initial Office action copies of webpages showing that the term “lockdown” is commonly used in connection with magnets to refer to a method of securing doors by use of a magnetic strip, usually for school safety.⁸ This evidence resulting from a Google search shows various

⁶ This definition, attached to Office Actions dated Aug. 6, 2013 and March 5, 2014, is taken from the *Collins World English Dictionary*, <http://www.collinsdictionary.com/dictionary/english/lockdown>. We observe that this website allows the user to choose between “English Worldwide” and “American English” definitions. However, the Trademark Examining Attorney utilized the “English Worldwide” definition in this case, which despite the parenthetical (US) does not necessarily reflect usage in the United States.

⁷ In order to confirm that we have the correct meaning ascribed to the term in the United States, we take judicial notice of this additional definition of “lockdown,” based upon *The American Heritage Dictionary of the English Language*, 5th ed. (2014) retrieved at <https://www.ahdictionary.com/word/search.html?q=lockdown>. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁸ Attachments to the Office Action dated August 6, 2013.

providers of magnets used to “lock down” rooms without the use of keys. Examples of record from this search include the following webpages:

Master Grinding & Security, LLC produces “lockdown magnets” which allow teachers to lockdown a classroom through use of a magnetic strip⁹

Montville PBA donated magnets to local schools that would allow teachers alternative means to lock their doors for “faster school lockdowns”¹⁰

Edu-Care provides a “lockdown magnet” for door jambs to “keep your door locked at all times without students being locked out”¹¹

b. The Examining Attorney attached to the final Office action excerpts from websites showing the term “lockdown” used in association with security products to be used to secure schools during lockdown security situations.¹² For example, the Tempshield website¹³ features magnet rubberized material that attaches to metal doors and covers classroom door windows providing an immediate blackout effect for “safer and faster school lockdowns”; the CinchLock website¹⁴ features steel personal door locks for “personal safety for lockdown situations”; the website of McMar Design LLC¹⁵ features the “JAMBLOCK™ SAFETY SYSTEM, which is described as a “crisis lockdown safety device” of “lightweight crafted steel that will

⁹ <http://lockdownmagnets.com/>.

¹⁰ <http://montville.patch.com/groups/police-and-fire/p/pba-donates-magnets-forfaster-school-lockdowns>.

¹¹ <http://www.educareschoolsupply.com/go-kitmagnet.html>.

¹² Attachments to the Final Office Action dated March 5, 2014.

¹³ <http://tempshieldschools.com/>.

¹⁴ <http://www.cinchlock.com/>.

¹⁵ <http://www.lockdownschools.com/about/>.

secure virtually any door in seconds”; an article from American School & University¹⁶ website discusses school security product solutions that may be used during a school lockdown – which “[s]ome schools define a lockdown as securing all exterior school doors” while “others add classrooms doors to the exterior or the cafeteria, library and gymnasium” – including, for example, bullet resistant doors, electronic cylinder locks, and emergency backpacks containing emergency supplies for sheltering in place; and the website of LOCKSMITH LEDGER International¹⁷ discusses classroom and lockdown security solutions from ASSA ABLOY, including, e.g., locks that may be secured from inside a classroom and electronic lockdown capability.

Applicable Law

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) (internal citations omitted). *See also 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) (“A mark is merely descriptive if it ‘consist[s] merely of words descriptive of the qualities, ingredients or characteristics of the goods or services

¹⁶ <http://asumag.com/security/school-security-product-solutions-200909>.

¹⁷ <http://www.locksmithledger.com/article/11142506/classroom-and-lockdown-security-solutionsfrom-assa-abloy>.

related to the mark.”).¹⁸ The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. 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. *Id.*; *In re Gyulay*, 3 USPQ2d at 1010.

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. *In re Phoseon Tech., Inc.*, 103 UPQ2d 1822, 1823 (TTAB 2012); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). A mark comprising a combination of merely descriptive components is registrable only 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

¹⁸ Applicant, citing to *No Nonsense Fashions, Inc. v. Consolidated Foods Corp.*, 226 USPQ 502 (TTAB 1985), additionally points to a three-part test for determining whether a mark is suggestive rather than descriptive. The test includes: (1) the degree of imagination necessary to understand the product; (2) a competitor’s need to use the same term; and (3) the competitor’s current use of the same or similar terms. Br. p. 12, 4 TTABVue 13. We note, however, that this “test” was set out in an *inter partes* case in a discussion of whether the use of a term by a third parties on their packaging detracted from the plaintiff’s trademark rights. Since this decision issued in 1985, there have been numerous decisions from the Court of Appeals for the Federal Circuit, our primary reviewing court, and the Board, making clear that the test for descriptiveness is whether a term “immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Bayer Aktiengesellschaft*, 488 F.2d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007), citing *In re Gyulay*, 820 F.2d 1216, 1217, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

USPQ 363 (TTAB 1983), However, if each component retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive. *Oppedahl & Larson LLP*, 71 USPQ2d at 1371.

Discussion

We note, first, that Applicant, in its brief, concedes that the term “magnet” is generic and, accordingly, the descriptive or generic significance of this term is not in dispute. Thus our focus in this appeal is whether the term LOCKDOWN is descriptive of Applicant’s magnets and, if so, whether the combined term LOCKDOWN MAGNET retains the descriptive significance of the individual components. In that regard, we find the evidence of record highly persuasive. The dictionary definition as well as the Internet evidence submitted by the Examining Attorney show that the term “lockdown” directly describes the purpose or function of Applicant’s magnets, namely to facilitate confinement as a security method.

We thus find that the term “Lockdown” is merely descriptive and, the term “Magnet” is, generic when used in connection with the identified goods. As stated, the word “Lockdown” refers to the confinement within a facility necessary to ensure security and the word “Magnet” identifies the means or device used to implement that security measure.

We further find that the record establishes that the designation LOCKDOWN MAGNET, as a whole, is descriptive of the identified goods. There is nothing in the combination of terms which is incongruous, nor is there anything which would require the gathering of further information, in order for the merely descriptive

significance thereof to be readily apparent to prospective purchasers of the goods. See, for example, *In re Abcor Development Corp., Inc.*, 588 F.2d 811, 200 USPQ 215 (CCPA) (Rich, J., concurring) [GASBADGE described as a shortening of the name “gas monitoring badge”]; and *Cummins Engine Co., Inc. v. Continental Motors Corp.*, 359 F.2d 892, 149 USPQ 559 (CCPA 1966) [TURBODIESEL held generically descriptive of engines having exhaust driven turbine super-chargers]. Here, the word “Lockdown” modifies the word “Magnet” and the combination of the words fails to create a new and distinct commercial impression.

Indeed, the following webpage from Applicant’s own website confirms the self-explanatory nature of the term “Lockdown Magnet”:



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In urging reversal of the refusal, Applicant made of record various third-party registrations for marks that include the term “Lockdown” (or “Lock Down”), alone or with other matter, arguing that it would be inconsistent for the Office to deny


¹⁹ <http://www.lockdownmagnet.com/About-Us.html>. Attachment to the Final Office Action dated March 5, 2014.


registration of its mark in view of these registrations.²⁰ These registrations do not persuade us, however, to come to a different conclusion. In determining the issue of descriptiveness, prior registrations are of little value because each case must be determined on its own facts. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court”). We are constrained to decide this appeal on the record before us, and the record in this appeal clearly demonstrates that the

²⁰ These registrations include:

Registration No. 4416885 for the mark LOCKDOWN BROWSER (the word “Browser” disclaimed”) for browser software; Registration No. 4287538 for the mark LOCKDOWN for hygrometers and firearm vaults and accessories; Registration No. 3939568 for the mark **Lockdown** for accounting software; Registration No. 3083349 for the mark RAINBOW SIX LOCKDOWN for software and electronic games, software games recorded on CD-ROMs,

digital video discs; Registration No. 4254964 for the mark  for access control programmable locking systems consisting of electronic cylindrical locksets and keypads; Registration No. 4383049 for the mark **Lowest price lock down** (the phrase “Lowest Price” disclaimed) for ticket reservation and booking services for entertainment and cultural events; Registration No. 4300250 for the mark AC LOCK DOWN SECURITY (the terms “AC” and “Security” disclaimed) for metal cages for HVAC units; Registration

No. 4183902 for the mark  (the word “Publishing” disclaimed) for book publishing; Registration No. 4154615 for the mark LOCKDOWN for electronic document storage, document storage and digital imaging services; Registration No. 3844153 for the mark LOCKDOWN SECURITY (the word “Security” disclaimed) for installation, monitoring and repair of security and fire alarm systems; Registration No. 3619047 for the mark

 for consultation in the field of data theft and identity theft; and Registration No. 4050303 for the mark COLOUR LOCKDOWN TECHNOLOGY (the words “Colour” and “Technology” disclaimed) for non-medicated hair preparations.

Applicant also made of record a copy of Registration No. 3429295. It has no probative value whatsoever, having been cancelled pursuant to Section 8 of the Trademark Act.

wording LOCKDOWN MAGNETS is descriptive of the purpose of Applicant's magnets.

Similarly, Applicant's reliance on a variety of cases to bolster its contention that its applied-for mark is not merely descriptive of the identified goods is misplaced. As noted, each case must be decided on its own merits. The determination of registrability of a mark in another case does not control the merits in the case now before us. *See In re Nett Designs Inc.*, 51 USPQ2d at 1566; *see also, In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001). In this case, we must determine the registrability of LOCKDOWN MAGNET based on the record before us.

Finally, we note Applicant's reliance on the principle that when there is doubt whether a mark is merely descriptive, that doubt should be resolved in favor of the applicant. However, in this case, we have no doubt.

Conclusion

We conclude that when applied to Applicant's goods, the designation LOCKDOWN MAGNET immediately describes, without any kind of mental reasoning, the purpose and function of the identified magnets, namely that they facilitate confinement during lockdown situations. Accordingly, LOCKDOWN MAGNET is merely descriptive under Section 2(e)(1) of the Act.

Decision: The refusal to register LOCKDOWN MAGNET is affirmed.