

**This Opinion is Not a
Precedent of the TTAB**

Mailed: December 4, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The Coleman Company, Inc.

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Serial No. 85980011

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Janet A. Marvel and Seth I. Appel of Pattishall McAuliffe Newbury Hilliard &
Geraldson LLP, for The Coleman Company, Inc.

Ira J. Goodsaid, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

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Before Bucher, Cataldo and Wellington,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

The Coleman Company, Inc. (“applicant”) seeks registration on the Principal Register of the mark **THE COOLER COMPANY** (*in standard character format*) for the following goods, as amended: “food and drink containers for domestic use; portable water carriers, namely, jugs sold empty; portable coolers and jugs of both rigid and fabric construction” in International Class 21.

Procedurally, we note that application Serial No. 85520148 was filed on January 19, 2012, based upon applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Act for a variation of the goods mentioned

above, as well as “insulating sleeve holders for beverage cans.” On October 29, 2012, the examining attorney issued a final refusal to register applicant’s mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that applicant’s mark, when used in connection with the goods as originally identified, is merely descriptive thereof. On April 29, 2013, applicant appealed and requested reconsideration. On May 1, 2013, the examining attorney denied applicant’s request for reconsideration. Applicant filed its brief in the appeal of Application Serial No. 85520148 on July 2, 2013. The examining attorney submitted his appeal brief on August 1, 2013. It was then not until August 21, 2013, that applicant filed an amendment to allege use for certain goods and a divisional application. As a result, the goods for which applicant has not yet alleged use, namely, its “insulating sleeve holders for beverage cans,” remain in the “parent” Application Serial No. 85520148. The majority of the goods (as identified in the first paragraph, *supra*) were moved into “child” Application Serial No. 85980011, which is the subject of this appeal.

As far as briefing, we note that applicant’s main appeal brief and the examining attorney’s brief were both filed before the division of goods and creation of the “child” application. On the same date that applicant requested separation of the goods into different applications, it filed its reply brief. There has been no further briefing on either application.

Moreover, we further note that due to delays in processing the divisional request and creating the child application, the parent application was ripe for appeal prior to the institution of the appeal in the instant application. However, on November 7,

2013, just as we were issuing a final decision in the parent application, the examining attorney requested a remand of that case. Based upon an understanding reached between applicant and the examining attorney, applicant agreed via examiner's amendment on November 12, 2013, to disclaim the exclusive right to use the word "Company" apart from the mark as shown, and the examining attorney immediately approved that application for publication. Hence, the descriptiveness refusal pertaining to the parent application is no longer before the Board, and we turn now to the merits of the refusal in connection with this child application.

In looking at this alleged mark as a whole, applicant argues that in addition to conveying the information that it is an entity that offers portable coolers and jugs, it also suggests that applicant is *cooler* – that is, more fashionable and hip – than other companies in this field. Given this second connotation, applicant contends that the term is not merely descriptive. Applicant argues that this dual meaning is readily apparent from the mark itself, and furthermore, that this dual meaning is confirmed by its promotional materials emphasizing the "cooler" aspects of applicant's products and business.

By contrast, the examining attorney takes the position that the ordinary meaning of the applied-for term – "The Cooler Company" – is a company that sells coolers. He argues that in this context, "the proposed mark is simply the combination of generic terms for the goods and the entity offering those goods." The examining attorney refused to accept applicant's arguments about a dual meaning, comparing his rejection of **THE COOLER COMPANY** to the refusal to register **THE**

PHONE COMPANY as being merely descriptive of telephones, *In re The Phone Co., Inc.*, 218 USPQ 1027 (TTAB 1983), arguing that applicant is simply adding the merely descriptive term “Company” to the generic name for the goods.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

Based upon the evidence of record, we find that the examining attorney has made a *prima facie* case that the word “Cooler” is highly descriptive of a significant feature of, if not the generic designation for, applicant’s identified thermal products that include “portable coolers.” Moreover, given applicant’s association with outdoor, insulating products which are frequently called simply “coolers,” we find that applicant’s use of “The Cooler Company” as an appositive for “Coleman” (or “The Coleman Company, Inc.”) clearly and unambiguously describes applicant’s business and related products. Indeed, applicant concedes as much when it acknowledges that “on the one hand, [the applied-for mark] conveys that Applicant offers coolers, *i.e.*, containers for food and beverages.”

However, applicant has argued throughout the prosecution of these now-divided applications that its applied-for mark involves an inventive double entendre – “an ambiguity of meaning arising from language that lends itself to more than one

interpretation”¹; that is, an expression that has a double connotation or significance as applied to the goods. See *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 384-85 (CCPA 1968) (finding **SUGAR & SPICE** a double entendre and not descriptive for bakery products because it evokes the lyrics of the nursery rhyme “sugar and spice and everything nice”). Indeed, it is black letter trademark law that a mark is not merely descriptive if a portion of the mark “creates a separate commercial impression, such that the mark as a whole has a double entendre, with one meaning that is not merely descriptive.” *In re National Tea Co.*, 144 USPQ 286 (TTAB 1965) (**NO BONES ABOUT IT** for fresh, boneless pre-cooked ham). See also *In re Tea and Sympathy Inc.*, 88 USPQ2d 1062 (TTAB 2008) (holding **THE FARMACY** is more than simply a misspelling of “the pharmacy,” providing a play on the natural or farm-fresh characteristics of applicant’s herbs and organic products used for medicinal purposes); *In re Grand Metro. Foodservice Inc.*, 30 USPQ2d 1974 (TTAB 1994) (holding that the commercial impression of the mark *Muffins* will be more than simply the word “muffins”); *In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978) (**TENNIS IN THE ROUND** not merely descriptive for the service of providing tennis facilities and instruction); *In re Simmons Co.*, 189 USPQ 352 (TTAB 1976) (**THE HARD LINE** is not merely descriptive for firm mattresses and bed springs inasmuch as it also comprises a vernacular expression describing an attitude of toughness by one party in its relationship to others); *In re Del. Punch Co.*, 186 USPQ 63 (TTAB 1975) (**THE SOFT PUNCH** registrable for soft

¹ See *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005).

drink inasmuch as the term “Soft” is redundant, and this coined composite suggests that the drink has an impact like a soft punch or a “pleasing hit”); and *Ex parte Barker*, 92 USPQ 218, 219 (Comm’r Patents 1952) (**CHERRY-BERRY-BING** not merely descriptive of bing cherries and loganberries because it recalls the Italian ballad, “Chiribiribin”). In some of these cases (as well as others cited by applicant) and unlike the instant case, the Board finds stark incongruities in addition to potential double meanings (e.g., with **TENNIS IN THE ROUND**, for instance, applicant’s tennis courts were not round, and unlike “Theatre in the Round,” the tennis players were not surrounded by spectators).

The Examining Attorney maintains that the proposed mark is not a double entendre because the alleged second meaning is not readily apparent from the mark itself. The examining attorney is correct that the dual meaning that makes an expression a “double entendre” must be well-recognized by the public and readily apparent from the mark itself. *See In re Brown-Forman Corp.*, 81 USPQ2d 1284, 1287 (TTAB 2006) (finding **GALA ROUGE** not a double entendre in relation to wines and affirming requirement to disclaim the word “Rouge”); *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005) (laudatory and merely descriptive term, **The Greatest Bar**, is not registrable as double entendre inasmuch as the second claimed meaning was not readily apparent from mark itself without reference to other indicia); and *In re Carlson*, 91 USPQ2d at 1201 (**URBANHOUSING** will be seen immediately as the equivalent of the descriptive term “Urban Housing,” rather than as including the separate word “Zing,” and so the mark does not convey a double

entendre that would prevent it from being merely descriptive of applicant's services). Factually, these terms (**GALA ROUGE**, **The Greatest Bar**, and **URBANHOUSING**) – unlike the marks in the earlier listed cases (**SUGAR & SPICE**, **NO BONES ABOUT IT**, **THE HARD LINE** or **THE SOFT PUNCH**) – were each found not to provide a readily apparent second connotation. As in many areas of trademark law, each case of an alleged double entendre and/or incongruity overcoming the mere descriptiveness bar must be decided on its own set of facts.

In the instant case, applicant argues that even if this term is deemed to be a highly descriptive designation for applicant's line of business (e.g., a company that sells coolers), the combination also creates a dual meaning that is readily apparent.

The record contains the following dictionary definitions:

cool (kool) *adj.* **cool·er**, cool·est
1. Neither warm nor very cold; moderately cold: *fresh, cool water; a cool autumn evening.*
...
6. *Slang*
a. Knowledgeable or aware of the latest trends or developments: *spent all his time trying to be cool.*
b. Excellent; first-rate: *has a cool sports car; had a cool time at the party.*
c. Acceptable; satisfactory: *It's cool if you don't want to talk about it.*²

Cool *adjective* \ 'kool\
1 : moderately cold : lacking in warmth
...
7 *slang*
a: very good : **EXCELLENT**; *also*: **ALL RIGHT**
b: **FASHIONABLE**, **HIP**<not happy with the new shoes ... because they were not *cool*—
Celestine Sibley>³

² <http://www.ahdictionary.com/word/search.html?q=cool>, (American Heritage online dictionary).

³ <http://www.merriam-webster.com/dictionary/cool>, (Merriam-Webster online dictionary)

In addition to understanding this term to be a clear reference to the nature of the goods sold by applicant, applicant argues that prospective consumers are likely to perceive the word “Cooler” as a play on the relative hipness of applicant and or applicant’s thermal products. Applicant contends:

The slang meaning of “cool” has been used in common parlance for many years, and it can be found in virtually any dictionary.

As a matter of English language construction, applicant is correct in pointing out the understood meaning of the slang expression “cool” as “fashionable” or “hip,” and by extension, the comparative term “cooler” as meaning “more fashionable.” Applicant also argues that consumers’ understanding of the word “cooler” as having this second connotation is reinforced repeatedly in applicant’s advertising campaign (with our highlighting added below) and on labels affixed to the products, where this applied-for mark is used in connection with goods, such as sixty-quart wheeled coolers:



⁴ While it does not change our result herein, we note that in several of the advertisements made of record, applicant also promotes these “cool” products alongside its “hot” new outdoor grills – attempting to employ another double entendre.

We recognize that alleged double entendre marks often involve close, difficult cases requiring a measure of intuitive and subjective judgments. *In re Grand Metro. Foodservice Inc.*, 30 USPQ2d at 1976; *In re Atavio*, 25 USPQ2d 1361, 1363 (TTAB 1992); *In re George Weston Ltd.*, 228 USPQ 57, 58 (TTAB 1985); and *In re TMS Corp. of the Americas*, 200 USPQ 57, 58 (TTAB 1978).

Applicant and the examining attorney seem to agree that the first construction of this term, “The Cooler Company,” is highly descriptive for all the goods remaining in this child application. The question before us then is whether applicant has made a sufficient showing that this expression would be perceived by consumers as a double entendre in the context of its goods, or that such dual meaning is readily apparent from the mark.

Inasmuch as applicant’s goods remaining in this application are all known generally as “coolers,” any arguments about the ability of an alleged double entendre to overcome the bar of Section 2(e)(1) must be strong. However, other than the arguments of counsel, we have no evidence of consumer recognition of this double entendre. To the contrary, applicant’s cooler labels and advertising efforts, as seen above, suggest that applicant is working exceedingly hard to create an aura of fashionableness and trendiness among its prospective consumers around a class of goods many consumers might well not place too high on the hipness scale. This adds strength to the conclusion that consumers perhaps will not readily perceive the word “Cooler” as having this alternative connotation when used in connection with applicant’s “coolers.”

In conclusion, this determination is not a simple binary decision, and in balancing the several possible connotations placed before us, we find that the applied-for mark does not operate as a double entendre when considered in connection with the identified goods. Whatever the possibility that some sub-set of consumers might perceive this expression as leading with the slang interpretation of The Coleman Company as being “more hip” than its competitors, we find that factually it cannot overcome the highly descriptive nature of the mark when used in connection with the identified goods.

Decision: The examining attorney’s refusal to register applicant’s mark, **THE COOLER COMPANY**, under Section 2(e)(1) of the Lanham Act, is hereby affirmed.