

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
January 2, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Bhasin Enterprise Corporation*

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Serial No. 86025037

Charles P. Kennedy of Lerner, David, Littenberg, Krumholz & Mentlik, LLP for  
Bhasin Enterprise Corporation.

Patty Evanko, Trademark Examining Attorney, Law Office 119 (Brett J. Golden,  
Managing Attorney).

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Before Seeherman, Adlin and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Bhasin Enterprise Corporation (“Applicant”) filed an application to register on the  
Principal Register the mark COOMI 47AG in standard characters for “silver  
jewelry,” in International Class 14.<sup>1</sup>

The Trademark Examining Attorney required Applicant, under Trademark Act §  
6(a), 15 U.S.C. § 1056(a), to disclaim the exclusive right to use 47AG with respect to

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<sup>1</sup> Application Serial No. 86025037 was filed on July 31, 2013 on the basis of Applicant’s  
asserted *bona fide* intent to use the mark in commerce, under Trademark Act § 1(b), 15  
U.S.C. § 1051(b). The application states that “The name ‘COOMI’ is the nickname of a  
living individual whose consent is of record.” The application also includes goods in Classes  
18 and 25, but they are not at issue in this appeal.

the goods in Class 14, on the ground that it is an unregistrable component of Applicant's mark, because it is merely descriptive of Applicant's goods within the meaning of Trademark Act § 2(e)(1), 15 U.S.C. § 1052(e)(1). When the requirement was made final, Applicant filed a request for reconsideration, which the Examining Attorney denied. This appeal ensued. Applicant and the Examining Attorney have filed briefs and Applicant has filed a reply brief.<sup>2</sup>

The Director of the U.S. Patent and Trademark Office "may require the applicant to disclaim an unregistrable component of a mark otherwise registrable." Trademark Act § 6(a), 15 U.S.C. § 1056(a). The Patent and Trademark Office may require a disclaimer as a condition of registration if the term at issue is merely descriptive of any of the identified goods or services. *In re Stereotaxis Inc.*, 429 F3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

A term is merely descriptive within the meaning of Section 2(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 Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *see also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark or a component of a mark is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811,

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<sup>2</sup> Citations herein to the briefs are to TTABVUE, the Board's online docket numbering system. Citations to the examination record are to the Trademark Office's online Trademark Status and Document Retrieval system (TSDR).

200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). A term need not immediately convey an idea of each and every specific feature of the goods or services in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of them. *See In re Gyulay*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

The Examining Attorney contends that 47AG describes the material composition of Applicant's identified "silver jewelry." She has demonstrated that "Ag" is the recognized chemical symbol of the element silver, and that 47 is the recognized atomic number<sup>3</sup> of the element silver:

**Silver** is a chemical element with the chemical symbol **Ag** [*etymology omitted*] and atomic number 47. A soft, white, lustrous transition metal, it possesses the highest electrical conductivity of any element and the highest thermal conductivity of any metal. ...

Silver has long been valued as a precious metal, used in currency coins, to make ornaments, jewelry, high value tableware and utensils ... and as an investment in the forms of coins and bullion.

Entry for "Silver" from Wikipedia.org.<sup>4</sup> The same entry shows a table that includes the following information:

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<sup>3</sup> An "atomic number" is "the number of positive charges or protons in the nucleus of an atom of a given element ...." 132 THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed). 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).

<sup>4</sup> Office Action of November 20, 2013 at 5.

**Silver**  
**<sup>47</sup>Ag**

...

Name, symbol,  
number

silver, Ag, 47

The Wikipedia entry also includes a representation of the periodic table of elements,<sup>5</sup> a relevant portion of which is shown below:<sup>6</sup>

[hide]											
7	8	9	10	11	12	13	14	15	16	17	18
											He
						B	C	N	O	F	Ne
						Al	Si	P	S	Cl	Ar
Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr
Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe
Re	Os	Ir	Pt	Au	Hg	Tl	Pb	Bi	Po	At	Rn
Bh	Hs	Mt	Ds	Rg	Cn	113	Fl	115	Lv	117	118

The entry for “The Element Silver” from <education.jlab.org>, also submitted by the Examining Attorney,<sup>7</sup> is reproduced in part below:

<sup>5</sup> A “periodic table” is “a table illustrating the periodic system in which the chemical elements, formerly arranged in the order of their atomic weights and now according to their atomic numbers, are shown in related groups.” 1441 THE RANDOM HOUSE DICTIONARY. Both THE RANDOM HOUSE DICTIONARY and WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993), at 1680, contain representations of the periodic table as illustrations of their respective definitions of “periodic table.”

<sup>6</sup> We presume that “Ag” is highlighted in the periodic table shown because it was designed as an illustration for the entry for “Silver.”

<sup>7</sup> *Id.* at 17-18.

## It's Elemental

← Previous Element  
(Palladium)

The Periodic Table of Elements

Next Element →  
(Cadmium)

### The Element Silver

[\[Click for Isotope Data\]](#)

47

Ag

Silver

107.8682

**Atomic Number:** 47  
**Atomic Weight:** 107.8682  
**Melting Point:** 1234.93 K (961.78°C or 1763.20°F)  
**Boiling Point:** 2435 K (2162°C or 3924°F)  
**Density:** 10.501 grams per cubic centimeter  
**Phase at Room Temperature:** Solid  
**Element Classification:** Metal  
**Period Number:** 5   **Group Number:** 11   **Group Name:** none

The entry for “Silver Facts” from <chemistry.about.com><sup>8</sup> includes the following information:

**Silver**

**Atomic Number:** 47

**Symbol:** Ag

**Atomic Weight:** 107.8682

The web page at <njsas.org/elements/47.php><sup>9</sup> includes the following chart, as well as the illustration of a portion of the periodic table shown below it:

<b>&lt; 46</b>	<b>47 Ag Silver</b>	<b>48 &gt;</b>
Atomic Number:	47	
Atomic Radius:	144 pm	
Atomic Symbol:	Ag	
Melting Point:	961.78 °C	
Atomic Weight:	107.868	
Boiling Point:	2162 °C	
Electron Configuration:		

<sup>8</sup> Office Action of February 19, 2014 at 9.

<sup>9</sup> *Id.* at 13.

28 <b>Ni</b> 58.69	29 <b>Cu</b> 63.55	30 <b>Zn</b> 65.39
46 <b>Pd</b> 106.4	47 <b>Ag</b> 107.9	48 <b>Cd</b> 112.4
78 <b>Pt</b> 195.1	79 <b>Au</b> 197.0	80 <b>Hg</b> 200.5

The Examining Attorney argues that each of these terms is merely descriptive of the material composition of Applicant’s silver jewelry and that when they are combined, they “retain their descriptive meaning in relation to the goods, [and] the combination results in a composite mark that is itself descriptive and not registrable.”<sup>10</sup>

The Examining Attorney has shown, beyond question, that the designation “Ag” is the chemical symbol for the precious metal silver; and that the number “47” is the atomic number assigned uniquely to the element silver.<sup>11</sup> However, Applicant argues that:

[the] commercial impression that a mark conveys “must be viewed through the eyes of a consumer.” [Citing *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753 (Fed. Cir. 2012).] The relevant consumers in this case would be purchasers or shoppers for jewelry, and they would have to immediately translate 47AG to mean silver by knowing that 47 is silver’s atomic number and AG its chemical symbol for 47AG to be merely descriptive.”<sup>12</sup>

Applicant also argues, “Although chemists and chemistry students might surmise that 47AG is a combination of the atomic number and chemical symbol of silver,

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<sup>10</sup> Examining Attorney’s brief, 6 TTABVUE at 4.

<sup>11</sup> Applicant admits that “these are true scientific facts.” Reply brief, 7 TTABVUE at 6.

<sup>12</sup> Reply brief, 7 TTABVUE at 5.

typical jewelry shoppers would not. ... Because the Examining Attorney has been unable to provide evidence that jewelry purchasers would translate 47AG to mean silver without the use of imagination, thought, and perception, the requirement for a disclaimer should be reversed.”<sup>13</sup>

In *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987), our principal reviewing court considered the argument that an allegedly descriptive term would not be understood by most relevant customers:

[Appellant argues] that the board failed to determine descriptiveness of “first tier” by its meaning to “average” or “ordinary” customers, citing *In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 385 (CCPA 1968) (descriptiveness determined from standpoint of “potential purchaser”). *See also In re Abcor Development Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978) (“descriptiveness ... is to be determined from the standpoint of *the average prospective purchaser*”). Appellant asserts that the “vast majority” of its customers would not be knowledgeable of the meaning of “first tier” in the banking industry.

2 USPQ2d at 1861.

The Court responded to this argument with the following explanation:

Appellant misunderstands the import of the above decisions. In context, “average” or “ordinary” consumers simply refers to the class or classes of actual or prospective customers of the applicant’s particular goods or services. In this sense, corporate users of banking services who, appellant admits, understand the industry meaning of a “first tier” bank are “average” or “ordinary” customers. That corporate customers may constitute a smaller number of accounts than individuals is irrelevant. Descriptiveness is not determined by its meaning only to

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<sup>13</sup> *Id.*, 7 TTABVUE at 5-6.

the class of regular customers with the largest head count.

*Id.*

Similarly, in *In re BetaBatt, Inc.*, 89 USPQ2d 1152 (TTAB 2008), a case that involved “batteries deriving power from nuclear decay processes,” the applicant argued that “the Examining Attorney failed to prove that ‘the common everyday purchaser of a battery that is used in connection with hearing aids or similar medical devices will know that DEC stands for direct energy conversion.’” 89 USPQ2d at 1154. The Board, noting that applicant’s description of goods was not limited to batteries used in connection with hearing aids and other consumer goods, considered that the goods could also be offered to persons having knowledge of the technical meaning of the acronym DEC. *Id.* at 1156. *See also Wise v. Bristol-Myers Co.*, 107 F.Supp. 800, 94 USPQ 327 (S.D.N.Y. 1952) (in considering the mark BUFFERIN, “It is not material that the word ‘buffer’ is mostly known in trade circles, and may be unknown to a large portion of the general public.”)

In the case before us, silver jewelry is a consumer item of potentially universal appeal to individuals, and the identification of goods in the application sets forth no limitations on the nature of customers to whom the goods will be offered. Accordingly, we must presume that the goods will be offered to all normal customers for such goods, including individuals who have knowledge of the meaning of the terms “Ag” and “47.” We note that the Board has previously acknowledged the descriptive nature of chemical symbols found on the periodic table. *See Plus Products v. Medical Modalities Associates*, 211 USPQ 1199 (TTAB 1981)



(recognizing the descriptive significance of the chemical symbols Zn, Mn, and Ca<sup>14</sup> in the marks ZN-PLUS, MN-PLUS, and CA-PLUS). It also bears noting that, unlike the terminology at issue in *Omaha National* and *BetaBatt*, the terms Ag and 47 are not jargon, but long-established and universally recognized scientific terms whose objective meaning with respect to silver is indisputable. In any event, symbols and even atomic numbers, especially those for common, desirable elements, are not obscure and are taught in many high schools, such that many members of the consuming public, even those without a scientific background, would likely be aware of them.<sup>15</sup>

Having determined that the terms 47 and AG individually have an established significance and immediately describe the material composition of Applicant's silver jewelry, we must further determine whether the composite 47AG is merely descriptive within the meaning of Section 2(e)(1). When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on 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, the combination results in a composite that is itself merely descriptive. *See e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely

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<sup>14</sup> According to the decision, they are the chemical symbols for, respectively, zinc, manganese, and calcium.

<sup>15</sup> Moreover, the public's purported ignorance of these terms is subject to change. Ordinary consumers of no particular technical sophistication have become familiar with many technical terms, through repeated exposure to them in the marketplace, even though those terms might originally have seemed unintelligible.

descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services).

First, the absence of a space between the components 47 and AG is immaterial. *In re Greenliant Systems Ltd*, 97 USPQ2d 1078, 1084 (TTAB 2010); *In re 3Com Corp.*, 56 USPQ2d 1060, 1062 (TTAB 2000); *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628, 1631 (TTAB 1998). Moreover, there is nothing incongruous or unique about the combination of the terms 47 and AG, as the evidence shows that they are commonly used, together and/or in close proximity in referring to the element silver. For example, the evidence discussed above shows the following:

<sup>47</sup> Ag	Ag, 47	47 Ag	47 Ag Silver	<table border="1"><tr><td><sup>47</sup> Ag</td></tr></table>	<sup>47</sup> Ag
<sup>47</sup> Ag					

Also in evidence is an advertisement depicting a silver plated money clip engraved with a small superscript “47” to the left of the term “Ag.”<sup>16</sup>

We do not agree with Applicant that the designation 47AG, when used in connection with silver jewelry, requires a multi-stage reasoning process in order to derive from it an understanding that it designates the material composition of the

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<sup>16</sup> Advertisement from <christofle.com>, Office Action of November 20, 2013 at 21.

goods. The record shows that both 47 and Ag are not only conventional and recognized symbols that identify the element silver, but also that 47 is the *only* atomic number and Ag is the *only* chemical symbol identifying silver. Although each term has a different derivation, each is literally a symbol meaning “silver.” When they are used together, they simply reinforce each other’s identification of silver, without giving rise to any other new or nondescriptive meaning. In this regard, the use of 47 and AG together only *increases* the likelihood that each term, and their combination, will be immediately understood as identifying silver. As previously discussed, even if many customers in the jewelry market are not currently familiar with these terms, that would not justify removing these descriptive terms, or the combination of the two descriptive terms, from the lexicon available to purveyors of silver goods.

Accordingly, we find that 47AG is merely descriptive within the meaning of Section 2(e)(1) and is an unregistrable component of Applicant’s mark within the meaning of Section 6(a). We therefore AFFIRM the Examining Attorney’s requirement of a disclaimer of the exclusive right to use 47AG apart from the mark as shown in connection with the Class 14 goods.

**Decision:** The refusal to register is affirmed. Applicant is allowed until thirty (30) days from the date of this decision to submit to the Board a disclaimer (in proper form) of the designation 47AG, in which case this decision will be set aside. See Trademark Rule 2.142(g). If Applicant does not submit the required disclaimer within the time allowed, the application in Class 14 will stand abandoned, and the

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application will be forwarded to publication ONLY in Classes 18 and 25. *See* 37

C.F.R. § 2.65(a); TMEP § 718.02(a).