

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

Mailed: January 21, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Creations By Sherry Lynn, LLC*  
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Serial No. 86041474  
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Christine C. Washington, Esq.,  
for Creations By Sherry Lynn, LLC

D. Beryl Gardner, Trademark Examining Attorney, Law Office 117,  
Helen Bryan, Managing Attorney.

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Before Seeherman, Mermelstein and Wolfson,  
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Creations By Sherry Lynn, LLC (“Applicant”) seeks registration on the Principal  
Register of the mark NECKLETTE (in standard characters) for

Jewelry, namely, bracelets, wristbands and necklaces that  
also provides notification to the wearer of a pending  
medical related task; Jewelry, namely, magnetic  
necklaces; Necklaces

in International Class 14.<sup>1</sup>

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<sup>1</sup> Application Serial No. 86041474 was filed on August 19, 2013, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as August 12, 2013.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the basis that the applied-for mark merely describes a feature of Applicant's goods.

When the refusal was made final, Applicant appealed and filed a request for reconsideration, which was denied. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. Applicant then filed a request for remand with the Examining Attorney, which was also denied and the appeal again resumed.<sup>2</sup> We affirm the refusal to register.

#### I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address an evidentiary matter. The Examining Attorney has objected to Applicant's submission of two third-party registrations as untimely, on the ground that they were submitted during appeal. The registrations are for the marks CAMIETTE for "Ladies' bras, bralettes, camisoles"<sup>3</sup> and LEMONETTE for "salad dressing."<sup>4</sup>

It is well-established that the record must be complete prior to the filing of an appeal. Trademark Rule 2.142(d). However, "if the appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may request the Board to suspend the appeal and to remand the application for further examination." *Id.* A showing of good cause is required. TBMP § 1207.02 (2015)

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<sup>2</sup> As discussed more fully *infra*, the request for remand should have been filed with the Board. Trademark Rule 2.142(d).

<sup>3</sup> Reg. No. 3710385, issued November 10, 2009.

<sup>4</sup> Reg. No. 4764550, issued June 30, 2015.

“Request to Remand for Additional Evidence” (“[T]he request must include a showing of good cause therefor (which may take the form of a satisfactory explanation as to why the evidence was not filed prior to appeal), and be accompanied by the additional evidence sought to be introduced.”).

Applicant argues that the third-party registrations<sup>5</sup> are of record because they were first filed as attachments to Applicant’s request for remand. However, Applicant’s request for remand was improperly filed with the Examining Attorney, and not with the Board. Nonetheless, had the request been filed with the Board, the Board would have suspended the appeal and remanded the application for further examination because Applicant’s appointment of a new attorney who wished to supplement the record satisfied the good cause showing.<sup>6</sup> Accordingly, and because the Examining Attorney treated the evidence as being of record in denying the request for remand, we have considered the registrations.

## II. Applicable Law

Trademark Act § 2(e)(1) prohibits registration of a mark which is merely descriptive of the applicant’s goods or services. A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith

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<sup>5</sup> At the time Applicant filed the request for remand, the application that matured into Reg. No. 4764550 for LEMONETTE was still pending. The application had been approved for publication, and Applicant submitted a copy of the approval notice with its request for remand. Applicant then filed a copy of the registration certificate with its appeal brief, the mark having registered on June 30, 2015, during the appeal period.

<sup>6</sup> One of the examples enumerated in TBMP § 1207.02 of circumstances that have been found to constitute good cause for a remand for additional evidence is that a “new attorney for the applicant, or a new examining attorney, has taken over the case and wishes to supplement the evidence of record.”

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); *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). 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. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

When deciding whether a mark merely describes a significant feature of goods or services, the Board looks to the goods or services as they are identified in the application for registration, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1831. The question is whether someone who knows what the goods or services are will understand the mark immediately to convey information about them. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

In this case, the goods as identified in the application are: “Jewelry, namely, bracelets, wristbands and necklaces that also provides notification to the wearer of a pending medical related task; Jewelry, namely, magnetic necklaces; Necklaces.” The Examining Attorney argues that the evidence shows use of the term “necklette” to refer to a hybrid piece of jewelry that may be worn as either a necklace or a bracelet. She points to several Internet websites advertising such versatile jewelry. For example,

1. At the JCK Marketplace, a “melody carnelian necklette” is offered. It is “a versatile hybrid that may be worn as a necklace or bracelet.”<sup>7</sup>

2. Foxy Originals sells a “Nature Bracelet/Necklette” designed to “add a length of chain, easily converting bracelet to necklace for two great looks in one.” The item



is pictured as shown: . The lettering inside the pink circle reads: “Converts to a Necklace.”<sup>8</sup>

3. Foxy Originals also advertises a “necklette/bracelet” that can be worn as a necklace or as a bracelet, as shown:



. The wording inside the pink circle reads: “Converts to a Bracelet.”<sup>9</sup>

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<sup>7</sup> At <http://jckmarketplace.jckonline.com>; attached to Final Office Action dated September 6, 2014.

<sup>8</sup> At <http://www.foxyoriginals.com>; attached to Office Action dated December 8, 2013.

<sup>9</sup> At <http://www.foxyoriginals.com>; attached to Final Office Action dated September 6, 2014. We note that while the above illustrations are similar, the two advertisements by Foxy Originals are offering different items. The one shown in bracelet form is titled “Nature” and the charms include pinecones and leaves; the other in necklace form is titled “Joy” and the charms include hearts and doves.

4. Nina Nguyen Designs advertises that it has “crafted a timeless hybrid between a necklace and a bracelet – called a Necklette – that can be worn to match the wearer’s style and mood.” The site advertises several different strings of beads, long enough to wear as a single or double-chain necklace or wrapped around one’s wrist several times for a bracelet.<sup>10</sup>

4. “Paper Beads Jewelry Made From Recycled Paper” provides instructions for making “the Necklette – paper bead necklace convertible to brackelet.” The step-by-step instructions are advertised as available via YouTube.<sup>11</sup>

Inasmuch as prospective consumers will perceive the term as describing necklaces that can be converted into bracelets, and Applicant’s identification of goods includes “necklaces,” the descriptiveness refusal is proper.<sup>12</sup>

Applicant argues that its goods are not worn as necklaces or bracelets but rather as a type of jewelry or accessory that adheres to the wearer’s clothing by means of magnets in the nature of trim along the neckline of a garment. Applicant’s specimens show that the magnetic necklaces frame one’s neck, but do not

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<sup>10</sup> At <http://ninanguyen.wordpress.com>; attached to Office Action dated December 8, 2013.

<sup>11</sup> At <http://paperbeads.org>; attached to Final Office Action dated September 6, 2014.

<sup>12</sup> Excerpts submitted by the Examining Attorney from two other websites appear to show the term “necklette” being used to describe a small, or short, necklace, rather than one which may be shortened from a necklace to a bracelet. *See* at <http://www.etsy.com>; attached to Office Action dated December 8, 2013, and at <http://www.etsy.com/uk/>; attached to Final Office Action dated September 6, 2014. The probative value of this evidence is limited. Only the necklace at “www.etsy.com” is described as “mini”; the necklaces at “etsy.com/uk” are not described and may in fact be able to be shortened. Further, “etsy.com/uk” indicates the company is from the United Kingdom. Information originating on foreign websites does not show U.S. consumer exposure to the site. *See In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1828. (“The probative value, if any, of foreign information sources must be evaluated on a case-by-case basis.”); *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1050 (TTAB 2006); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265 n.9 (no basis to conclude U.S. consumers exposed to website for Australian brewery; those webpages not considered). Nonetheless, even if we were to accept that the term “necklette” would be perceived as referring to a short necklace, such alternative meaning is also merely descriptive.

completely encircle it, as would a necklace, and appear to lack means, such as a clasp, by which it could function as a bracelet. However, given the evidence presented by the Examining Attorney that “necklette” is used to describe a hybrid type of jewelry that can be worn either as a necklace or as a bracelet, and given that Applicant’s identification includes “necklaces,” the mark must be found to be merely descriptive of such goods.<sup>13</sup>

Applicant further argues that its mark is not merely descriptive because the mark does not convey the information that one function of the goods is to provide medical information. However, a mark need not be descriptive of all the recited goods or services in an application; a descriptiveness refusal is proper “if the mark is descriptive of any of the goods for which registration is sought.” *In re Stereotaxis Inc.*, 429 F.3d 1039, 1041 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (citations omitted). In this case, the mark is merely descriptive of necklaces.

Applicant also contends that the suffix “lette” is suggestive. However, the evidence shows that “necklette” (with the suffix spelled in the same manner as in the application) is the term used for a necklace that can convert to a bracelet.<sup>14</sup>

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<sup>13</sup> Indeed, if the identification of goods were limited to “magnetic necklaces,” because “necklette” describes a necklace that can be converted into a bracelet, the mark might be unregistrable as deceptively misdescriptive since Applicant’s magnetic necklaces apparently cannot be made into a bracelet.

<sup>14</sup> The suffix “-let” (of which “-lette” is simply an alternative spelling) is commonly used to denote a diminutive, as, for example, in the words “booklet,” “piglet,” “ringlet” and is, “by extraction from bracelet, a suffix denoting a band, piece of jewelry, or article of clothing worn on the part of the body specified by the noun (anklet; wristlet).” From dictionary.com; based on the Random House Dictionary, © Random House, Inc. 2016. The Board may take judicial notice of dictionary definitions, including definitions or entries from references that are the electronic equivalent of a print reference work. *See University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d

Accordingly, we need not consider whether “lette” would have a suggestive significance when paired with other terms; the word “necklette” describes a type of necklace. Further, Applicant’s contention that “NECKLETTE” creates a double entendre because it is made up of two fragments from the words necklace (“neck-”) and bracelet (“-lette”) that relate to goods that “do not function primarily as either necklaces nor bracelets” is unpersuasive. For trademark purposes, a “double entendre” is an expression that has a double connotation or significance as applied to the goods or services, one of which is descriptive and one of which has an arbitrary meaning. There is no clear non-descriptive meaning associated with “necklette” that qualifies it as a double entendre. *In re The Place Inc.*, 76 USPQ2d 1467, 1470 (TTAB 2005) (“A mark thus is deemed to be a double entendre only if both meanings are readily apparent from the mark itself.”).

Applicant submitted evidence to show that “necklette” has also been used to describe scarves that wrap around a wearer’s neck.<sup>15</sup> However, the fact that a term may be used in other contexts is not relevant to the question of whether the term is merely descriptive in connection with the goods for which registration is sought. *Coach Services Inc. v. Triumph Learning LLC*, 101 USPQ2d 1713, 1729 (Fed. Cir.

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1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332, 1334 n.1 (TTAB 2009).

<sup>15</sup> For example, on the Etsy website, a scarf/cowl that can be made from a crochet pattern



has been described as a “necklette.” At <http://www.etsy.com>; attached to Applicant’s Petition To Revive Abandoned Application dated August 15, 2014. The Examining Attorney has also provided a reference that supports this meaning.

2012); *In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1831; *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1034 (TTAB 2007) (“[T]he issue of descriptiveness is determined in relation to the [goods] identified in the application.”).

### **III. Conclusion**

Applicant seeks to register the term NECKLETTE for “Jewelry, namely, bracelets, wristbands and necklaces that also provides notification to the wearer of a pending medical related task; Jewelry, namely, magnetic necklaces; Necklaces.” The term merely describes a characteristic of the goods, specifically, that the necklaces may be worn as a bracelet. Accordingly, the term NECKLETTE is merely descriptive of the goods.

**Decision:** The refusal to register Applicant’s mark NECKLETTE under Section 2(e)(1) is affirmed.