

This Opinion is not a  
Precedent of the TTAB

Mailed: August 24, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re USA Enterprises, LLC.*  
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Serial No. 86170165  
—

Joseph E. Sutton of Ezra Sutton PA,  
for USA Enterprises, LLC.

Andrew Leaser, Trademark Examining Attorney, Law Office 117,  
Hellen Bryan-Johnson, Managing Attorney.

—  
Before Quinn, Cataldo and Wellington,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

USA Enterprises, LLC (“Applicant”) seeks registration on the Principal Register of the mark THE RESERVOIR (in standard characters) for the following goods, as amended:

Plastic bags for household use for storing drinking water  
in International Class 16.<sup>1</sup>

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<sup>1</sup> Application Serial No. 86170165 was filed on January 20, 2014, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as September 1, 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 ground that the applied-for mark merely describes a function, feature or characteristic of the recited goods.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

### I. Applicable Law

A term is merely descriptive of goods (or services) 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 thereof. *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 is merely descriptive is determined in relation to the goods 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 Dev. Corp.*, 588 F.2d 811, 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 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). This requires consideration of the context in which the mark is used or intended to be used in connection with those goods, and the possible significance

that the mark would have to the average purchaser of the goods in the relevant marketplace. See *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Abcor Dev. Corp.*, 200 USPQ at 218; *In re Venture Lending Assocs.*, 226 USPQ 285 (TTAB 1985).

In other words, the question is whether someone who knows what the goods are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *In re Patent & Trademark Servs. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). “On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *Coach Servs. Inc. v. Triumph Learning LLC*, 96 USPQ2d 1600, 1616 (TTAB 2010) (quoting *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978)), *vacated-in-part on other grounds*, 668 F.3d 1356, 101 USPQ2d 1713 (Fed. Cir. 2012).

The Examining Attorney argues that

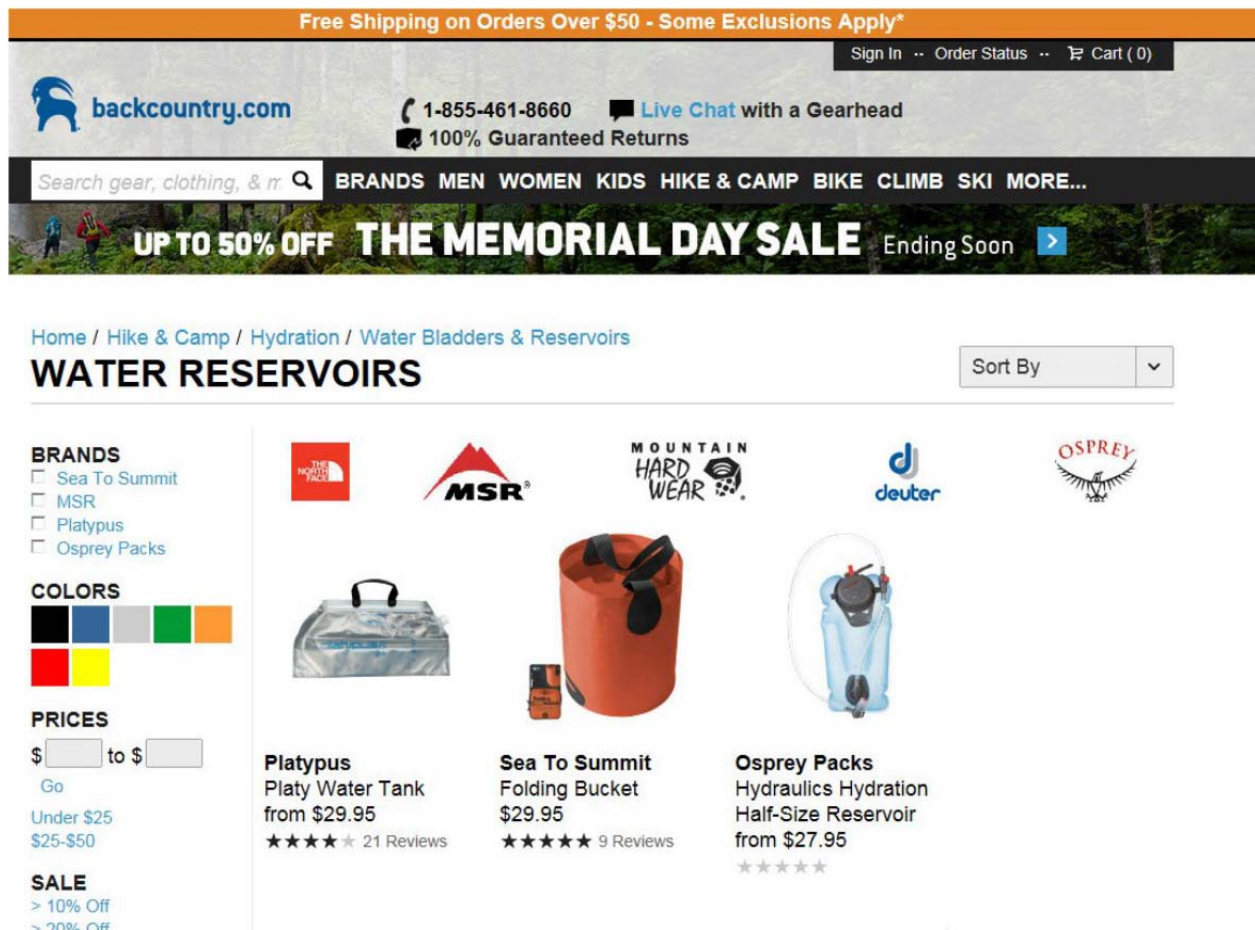
A “reservoir” is defined as “a receptacle or chamber for storing a fluid.” The American Heritage® Dictionary of the English Language (4th ed. 2000), <http://www.thefreedictionary.com/reservoir>.<sup>2</sup> Applicant offers “plastic bags for household use for storing drinking water.” Thus, Applicant offers receptacles (i.e., plastic bags for household use) for storing a fluid (i.e., drinking water). As such, based on the dictionary definition alone, the word “RESERVOIR” in the applied-for mark,

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<sup>2</sup> The Examining Attorney introduced this definition into the record as an attachment to his April 26, 2014 Office Action.

when considered in relation to Applicant's goods, immediately and directly conveys to consumers the function or purpose of those goods. Consequently, the word "RESERVOIR" is merely descriptive.<sup>3</sup>

In further support of the refusal to register, the Examining Attorney made of record with his May 27, 2014 Office Action copies of the following pages from the following informational and commercial Internet websites displaying the term "reservoir" used in connection with various water receptacles:



(Backcountry.com);

<sup>3</sup> 9 TTABVUE 5. Record citations are to TTABVUE, the Trademark Trial and Appeal Board's publically available docket history system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

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(REI.com);

### Why Use a Water Bottle Over a Hydration Pack

- **Weight** Most packs we tested were quite heavy. The bladders/**reservoirs** themselves can weigh almost a pound for a 2-liter container. The packs are also fairly heavy for

their small size.

- **Cost** The packs we tested cost \$50-150. This is a lot of money considering that a plastic water bottle can essentially be free and our top rated backpacks in our [Daypack Review](#) often cost less and were larger and more versatile than a hydration pack.
- **Difficulty of cleaning** If you drink a lot of sports powders with your water, you will need to clean your hydration pack often. Even the easiest to clean **reservoirs** we tested are still much harder to clean than a water bottle.
- **Spillage and leakage** Even the best performers in our tests are much more likely to spill while filling than a water bottle. Some of the least durable hydration bladders leaked either by accidental failure on our part to lock the bite valve or through failure of the hose and bladder
- **Rationing** It is difficult to keep track of how much water you have in hydration bladder and it can be a pain to regularly dig into your pack to see.

### Ease of Cleaning

All hydration packs need to be cleaned eventually. If you are adding sugar/electrolyte powder to your water, you should clean your **reservoir** and hose every use or two. You can delay the frequency of cleaning by not using sugar drinks and leaving the bladder full of water or storing the bladder empty in the freezer (but in a plastic bag first).

But eventually you will need to clean all hydration bladders and hoses.

### Cleaning Reservoirs/Bladder

Bags that zip open on top are the easiest to clean. Geigerrig models are dishwasher safe and even zip top models that can't go in the dishwasher are still much easier to get a brush in and clean. Perhaps an even larger factor is that zip top pouches are easy to dry. Just flip them inside out (or not) and they will dry just about anywhere.

Next in ease of cleaning are single compartment bladders with large openings so you can easily get a brush inside. Most CamelBak and Osprey **reservoirs** are of this design. These are relatively easy to clean, but can be a pain in the ass to dry. You either need to buy the drying rack or improvise a coat hanger or kitchen utensil. The hardest bladders to clean are ones that you can't easily get a brush into and/or have multiple compartments like the CamelBak waist belt hydration bladders. These require more effort with a brush and/or usually involve many rounds of warm water flushing with a bacteria killing additive, then more flushing to clean out that additive.

([Outdoorgearlab.com](http://Outdoorgearlab.com)); and



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**15L Universal Bag**  
New!

These large capacity multipurpose bags are durably constructed yet remarkably compact and lightweight.

An extremely versatile piece of gear which can be used as a solar shower, drinking water **reservoir**, or dry bag.

Originally designed for use with our ShowerCoil™ system, these new and improved bags are **lined with BPA-Free food-grade polyurethane** making them great for dispensing drinking water\* for larger groups or base camping. Also ideal for use as a large capacity **reservoir**\* for third party inline gravity water filters. (\*1690 Hydration Kit required)

**Features**

**Durable**

- RF-Welded construction.
- Tough 210D Nylon/TPU Materials.

**Versatile**


- Use as a solar shower, drinking water **reservoir**, or dry bag.
- Waterproof roll-down closure serves as a carrying handle.
- View water level or contents through the semi-transparent front panel.
- Evacuate air when needed using tethered purge valve.

**Easy-Filling/Cleaning**

- Wide, roll-top opening is great for packing gear or quickly filling from a lake or river, as well as offering a large access for cleaning and drying.

**Safe-Drinking**

- BPA-free food grade polyurethane lining



(Boundarytec.com).

The Examining Attorney also made of record with his September 27, 2014 Office Action copies of the following articles from the LexisNexis® Internet database: (emphasis provided by the Examining Attorney)

A man running a 12,000-mile route from Canada to the bottom tip of South America made a pit stop in Newnan on Friday.

Oh, and he's running the entire distance barefoot.

Joseph Micheal Liu began his trek on July 2 from Montreal, Canada. His goal is the capital city of Tierra del Fuego, Ushuaia, considered to

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be the southernmost city of the world. Liu is running to raise awareness and funding for charity, and he is running the entire distance without shoes.

“After so many miles, it hurts,” Liu said. “You have to transition your running from using shoes, and it took me a full two years of training. I also ran cross country for six years.”

Liu's charity, Edible Schoolyard, is a nonprofit organization that hopes to introduce and supply children from low-income families with organic fresh fruits and vegetables. The organization seeks to blend organic and edible gardening with children's elementary school education to teach them about healthier eating habits. Edible Schoolyard has two branches in New York City and New Orleans.

Liu is running the entire distance solo with the help of donations and sponsors. Each day, he tries to run between 15 and 25 miles, with his maximum so far being 33 miles. He explained how he has chosen his route to work with the seasons and is trying to stay ahead of winter.

So far, Liu has run down the East Coast, following the Appalachian Trail, from Montreal. From Georgia, he plans to run through New Orleans to Houston and over the border into Mexico. He will be running along the Gulf of Mexico to Guatemala, and then along the Pacific Ocean to Panama.

Because of the geography of Panama and the Darien Gap, he is being forced to take a boat to northern Colombia, but he will then continue south along the Qhapaq Nan Trail through Ecuador, Peru and Chile. Finally, he will cut through Argentina and follow the Atlantic Ocean to Tierra del Fuego.

Liu began his trip with a backpack to carry his gear - which was pretty heavy and included a tent, a sleeping bag, **a water reservoir**, clothes, a satellite communicator, solar panels, and a cell phone, his only connection to the world. However, after three weeks into his journey, he hit a heat wave in Vermont. ...

(The Newnan Times-Herald, Inc. October 12, 2013); and

GRAVITY FEEDS PURE WATER TO CAMPERS No pumping required as gravity filters water from bag to bag.



Procuring clean water in the wilderness can be a pain. Pumps are hard work. Purifying tablets require a long wait. But on a recent trek in Northern California, I simply scooped some water from a stream and hung a bag in a tree.

The venue was the Lost Coast Trail, an ocean-hugging route where rivers pour out of green mountains and empty right into the sea. My water-purifying product of choice, the GravityWorks Filter from Platypus, gave our group near-instant access to drinkable water anywhere on the hike.

As its name says, the GravityWorks Filter counts on nature's primal pull (gravity) to coax water through a filter, no pumping required. The product, a system of tubes, water bags, and a filter cartridge in the middle, lets you grab untreated water then wait for gravity to do the work.

To operate, fill the GravityWorks' "dirty" **reservoir bag** with lake or river water. Hang that bag in a tree or simply hold it up. Water seeps out of a hose on the bottom, coursing a foot through rubber tubing before entering a filter.

Clean water flows out the other end, slipping through a hose and collecting in the unit's "clean" **reservoir bag**, ready to drink.

The whole process takes just a couple minutes. There is very little effort required, allowing you to fill, hang the bag, and relax as water is dripping through from dirty to clean.

Platypus quotes a purifying speed of 1.75 liters per minute, which was about what we saw on the Lost Coast. The GravityWorks' filter unit has a pore size of .2 microns. That's enough to eliminate bacteria, protozoa, and other "bugs" that may taint fresh water. It is not effective against viruses, but for most wild places that is not a worry.

Online, the unit costs \$110 at [Cascadedesigns.com/Platypus](http://Cascadedesigns.com/Platypus), and it is made in the United States. Platypus cites 1,500 liters as the life of the filter, which can be replaced.

In a backpack, the GravityWorks folds and packs up fairly small. Stack the bags together, coil the hoses, and slip the filter unit in between - you'll have a 10-ounce purification system always at hand no matter where your trek may lead.

The system is particularly useful for groups.  
(Spokane Spokesman-Review September 2, 2012).

The Examining Attorney's evidence establishes that the term "reservoir" is defined as a receptacle for storing fluid. Applicant's goods are "plastic bags for household use for storing drinking water." Thus, Applicant's goods fall within the broader definition of "reservoir." The Examining Attorney's Internet and Lexis/Nexis® evidence is consistent with this dictionary definition and demonstrates that consumers are exposed to third parties using the term "reservoir" to identify various types of receptacles, namely bags, used to store drinking water. We recognize that several of these uses indicate that the "reservoir" in question is being used to store water for hiking, camping and outdoor purposes. However, other of the third-party uses are not so limited and may include water storage receptacles for household use, presumably in the place of bottled water or for circumstances during which tap water may be unavailable.

It further is settled that the definite article "the" adds little, if any, source identifying significance to Applicant's THE RESERVOIR mark. *Accord Jay-Zee, Inc. v. Hartfield-Zodys, Inc.*, 207 USPQ 269 (TTAB 1980); *United States National Bank of Oregon v. Midwest Savings and Loan Association*, 194 USPQ 232, 236 (TTAB 1977) ("The definite article 'THE' likewise adds little distinguishing matter because the definite article most generally serves as a means to refer to a particular business entity or activity or division thereof, and it would be a natural tendency of customers in referring to opposer's services under the mark in question to utilize the article 'THE' in front of 'U-BANK' in view of their uncertain memory or

recollection of the many marks that they encounter in their everyday excursion into the marketplace”).

Applicant argues that (emphasis provided by Applicant)

In this case, almost no one would normally describe plastic bags for storing drinking water in a household environment, as THE RESERVOIR. The normal understanding of the “average purchaser” is that the term RESERVOIR refers to a lake or large body of water. While the Examining Attorney might have uncovered **a few sporadic web pages out of billions of web pages showing purported usages of this term to refer to a bag that holds drinking water for household use**, this is not the commonly understood meaning or use of this term by an “average purchaser.” The Examining Attorney has the burden of proof to establish mere descriptiveness, and the evidence submitted into the record below is not sufficient to meet this burden of proof. Stated differently, if one out of a hundred people would use a term a certain way to refer to or describe a certain product, but 99 out of a 100 would not, this indicates a suggestive term, not a merely descriptive term.

This is supported by the more common dictionary definition of the word “Reservoir” as “a natural or artificial pond or lake used for the storage and regulation of water.” (See dictionary definition attached to the first office action). Generally, the term “Reservoir” is associated with an outdoor environment (not a household environment) and the “water” in the outdoor reservoir is not yet “drinking water” – it has to first be filtered, processed, and cleaned before it becomes “drinking water”, which is suitable for a household environment. Therefore, Applicant’s product cannot properly be described as a “reservoir,” as used in the cited dictionary, and does not “immediately convey” a description of the nature of the actual product, which is the standard for merely descriptive marks.

This is also true of the less common dictionary definition of “a receptacle or chamber for storing a liquid.” (See dictionary definition attached to the first office action). For example, this secondary dictionary definition is so broad that it can include many different “liquids” and different containers, such as a can of gasoline, or a bottle of milk. However, no one would call a can of gasoline or a bottle of milk a RESERVOIR. Therefore applicant’s identification of goods, which is

described as “plastic bags for household use for storing drinking water,” cannot be referred to as THE RESERVOIR.<sup>4</sup>

However, it is not necessary for the Examining Attorney to demonstrate that THE RESERVOIR is used in a descriptive manner in a majority, or even a large number, of the countless webpages available on the Internet. To so require would place an unrealistic burden upon the Office and would essentially render Internet evidence meaningless. In this case, the Internet and Lexis/Nexis® evidence of third-party uses of “reservoir” persuades us that the term is commonly used and understood in the field of water storage to describe a container used to collect and store drinking water, including for household use.

Furthermore, the fact that “reservoir” is the subject of other dictionary definitions, such as a pond or lake, which are not relevant to the goods at issue, is of no moment. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The proper inquiry is whether someone who knows what the goods are will understand the mark to convey information about them. *DuoProSS*, 103 USPQ2d at 1757; *Tower Tech, Inc.*, 64 USPQ2d at 1316-17. The evidence in this case is sufficient to indicate that consumers familiar with “plastic bags for household use for storing drinking water” will understand “reservoir” to convey a central feature, function or characteristic thereof.

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<sup>4</sup> 7 TTABVUE 3-5.

In addition, the simple fact that a “reservoir” may contain liquids other than water does not render the term any less descriptive of a container or receptacle for water storage. The question of whether consumers would consider a receptacle filled with gasoline, milk or other liquids a “reservoir” is not relevant to our determination herein. The evidence of record demonstrates that consumers would view the term “reservoir” to describe a central feature, characteristic or use of a plastic water storage bag for household use.

Finally, we note it is well established that even if an applicant is the only user of a merely descriptive term, this does not justify registration of that term. *See In re BetaBattInc.*, 89 USPQ2d 1152, 1156 (TTAB 2008); *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001); *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985).

Based upon the evidence of record, we find that no imagination is required to discern that a “reservoir” immediately describes a key feature, characteristic or use of “plastic bags for household use for storing drinking water.” We further find that the presence of the definite article “the” does not alter the descriptive nature of “reservoir” in Applicant’s mark. As a result, we find the proposed mark THE RESERVOIR, when considered as a whole, is merely descriptive of Applicant’s goods.

**Decision:** The refusal to register Applicant’s mark THE RESERVOIR is affirmed.