

This Opinion is not a  
Precedent of the TTAB

Mailed: May 18, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re RIIP, Inc.*

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Serial No. 86308556

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Joseph Agostino of Greenberg Traurig LLP,  
for RIIP, Inc.

Maria-Victoria Suarez, Trademark Examining Attorney, Law Office 102,  
Mitchell Front, Managing Attorney.

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Before Zervas, Mermelstein, and Heasley,  
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

RIIP, Inc. (“Applicant”) seeks registration on the Principal Register of the mark

INTELLIGENT RACK (in standard characters) for:

“Computer hardware; computer hardware adapted to be installed on racks; electronic controllers for computer systems; electronic controllers for computer systems adapted to be installed on racks; electronic sensors, namely, electronic environmental sensors for temperature, humidity and other environmental information; electronic positioning tags; asset management systems comprising computer hardware and software for data centers; infrastructure management systems comprising computer hardware and software for data centers; electrical power management systems comprising power distribution units for computer data centers; power

electronics for datacenters, namely, power distribution units (PDUs); and KVM switches” in International Class 9.<sup>1</sup>

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 mark is merely descriptive of Applicant’s goods.

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

## **I. Analysis**

### **A. Applicable Law.**

Section 2(e)(1) of the Trademark Act provides for the refusal of registration of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them.” 15 U.S.C. § 1052(e)(1). A term is merely descriptive if it immediately conveys knowledge of an ingredient, quality, or characteristic of the goods with which it is used. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1270 (TTAB 2016).

A descriptive term is less likely to be perceived as an indicator of source, and more likely to be used by the public and competitors to refer to the goods themselves. *See In re Greenliant Systems Ltd.*, 97 USPQ2d 1078, 1085 (TTAB 2010), *quoted in Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1767

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<sup>1</sup> Application Serial No. 86308556 was filed on June 12, 2014, 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).

(TTAB 2013). Trademark Manual of Examining Procedure (TMPEP) § 1209 (2015). The descriptive term is accordingly refused registration, first to prevent the owner of a mark from inhibiting competition in the sale of particular goods, and second to maintain freedom of the public to use the language involved. *See In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978) (“This for the reason that the function of a trademark is to point distinctively, either by its own meaning or by association, to the origin or ownership of the wares to which it is applied, and words merely descriptive of qualities, ingredients or characteristics, when used alone, do not do this.”). A descriptiveness refusal is proper with respect to all of the identified goods in an International Class if the mark is descriptive of any of the goods or services in that class. *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)).

It is the Examining Attorney's burden to show, *prima facie*, that a mark is merely descriptive of an applicant's goods or services. If such a showing is made, the burden of rebuttal shifts to the applicant. The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant. *In re Fat Boys Water Sports LLC*, Serial No. 86490930, \_\_ USPQ2d \_\_ (TTAB 2016) (citing *In re Gyulay*, 3 USPQ2d at 1010; *In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003); *In re Stroh Brewery Co.*, 34 USPQ2d 1796, 1797 (TTAB 1994)).

**B. Application to this Appeal.**

In support of the mere descriptiveness refusal, the Examining Attorney has adduced dictionary definitions indicating that “intelligent” can be defined as “guided or controlled by a computer,”<sup>2</sup> and “rack” as “a frame or cabinet for mounting computer components.”<sup>3</sup>

Applicant responds that these components of the INTELLIGENT RACK mark do not immediately convey the qualities or characteristics of its identified goods, but are, at worst, suggestive—suggestive *first* because they are susceptible of multiple connotations, some of which do not describe computer goods, and suggestive *second* because they require some thought, imagination, or perception in order for the relevant public to perceive how the mark relates to those goods.<sup>4</sup> See *StonCor Grp, Inc., v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1252, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (suggestive versus descriptive). The word “intelligent,” Applicant insists, can also mean “having or showing the ability to easily learn or understand things or to deal with new or difficult situations: having or showing a lot of intelligence,” or “revealing or reflecting good judgment or sound thought,” among other similar definitions.<sup>5</sup> And the word “rack,” it contends, does not describe its goods, which are not “a frame or cabinet for mounting computer

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<sup>2</sup> Merriam-Webster.com, Office Action of Oct. 2, 2014, pp. 18-19.

<sup>3</sup> ComputerUser.com/dictionary, Office Action of Oct. 2, 2014, p. 30.

<sup>4</sup> Applicant’s brief, pp. 4-6, 4 TTABVUE 5-7.

<sup>5</sup> Merriam-Webster.com, Applicant’s brief, pp. 5-6, 4 TTABVUE 6-7, 20-24.

components,” but the computer components themselves, as shown on its website.<sup>6</sup> What’s more, Applicant contends, “the fact that Applicant’s INTELLIGENT RACK mark consists of two ordinary words does not necessarily mean that the mark is merely descriptive. When joined in a single mark, descriptive terms can create a distinct commercial impression which is not merely descriptive.”<sup>7</sup> See, e.g., *In re TBG, Inc.*, 229 USPQ 759 (TTAB 1986) (SHOWROOM ONLINE held not merely descriptive of computerized interior furnishings product information services).

It is well-established, however, that the determination of mere descriptiveness is not made in the abstract. *In re Abcor Dev. Corp.*, 200 USPQ at 218; *Highlights for Children*, 118 USPQ2d at 1270. Rather, the question is whether someone who knows what the products are will understand the mark to convey information about them. *Id. DuoProSS*, 103 USPQ2d at 1757. This requires consideration of the context in which the mark is intended to be used in connection with those products, and the possible significance that the mark would have to the average purchaser of the products in the marketplace. See *In re Chamber of Commerce*, 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.

As the Examining Attorney demonstrates, the term “intelligent rack” is commonly used in the context of the relevant computer industry to refer to computer components

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<sup>6</sup> Applicant’s brief, p. 5, 4 TTABVUE 6.

<sup>7</sup> Applicant’s brief, p. 7, 4 TTABVUE 8.

used to monitor and regulate power distribution units (“PDUs”).<sup>8</sup> The following representative excerpts, taken from numerous websites made of record by the Examining Attorney, exemplify this common usage:

- “Metered PDUs also come with some **intelligent racks** that monitor and regulate temperature and room humidity, thus making it even easier to avoid crashes.”
- “Today’s **intelligent rack** PDUs offer more than just power distribution – they are a launch pad for remote power monitoring, environmental sensors, data center infrastructure management, and so much more.”
- “The market for **intelligent rack** PDUs is forecasted by IMS Research to grow nearly twice as fast as non-intelligent units over the next five years, because these units can monitor and track power consumption within a rack or enclosure in a data center.”<sup>9</sup>

Applicant’s own website uses the term “intelligent rack” in this descriptive sense:

## PX Intelligent Rack PDUs

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### Rack Power Distribution Units (PDUs)

The PX series boasts the most reliable and sophisticated rack PDUs on the market. It offers metering at the inlet, outlet, and PDU circuit breaker level. And tracks current, voltage, power, power factor, and energy usage within 1% billing-grade accuracy. In short, it helps you to better manage existing power capacity, and save energy.

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<sup>8</sup> Examining Attorney’s brief, 6 TTABVUE 6-7.

<sup>9</sup> *Id.*, Office Action of Oct. 2, 2014, pp. 2-17, 29, Office Action of April 15, 2015, pp. 2-33 (emphasis in brief and Office Actions).

LearnMoreAbout  
PX Intelligent Rack PDUs

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<http://www.raritan.com/products/power-distribution/intelligent-rack-pdus><sup>10</sup>

According to Applicant’s website, it “offers 4 families of Intelligent Rack PDUs.”<sup>11</sup> It thus appears, from Applicant’s website, among others, that “intelligent rack” is a term commonly used to describe Applicant’s product in the context of the computer industry. *See In re Fat Boys Water Sports LLC*, Serial No. 86490930, \_\_ USPQ2d \_\_ (TTAB 2016) (applicant’s advertising demonstrates descriptive use of term); *Wallpaper Mfrs., Ltd. v. Crown Wallcovering Corp.*, 680 F.2d 755, 214 USPQ 327, 336 (CCPA 1982) (“If there are numerous products in the marketplace bearing the alleged mark, purchasers may learn to ignore the ‘mark’ as a source identification.”).

Applicant finally argues that its proposed mark INTELLIGENT RACK “can be characterized as a ‘double entendre’ capable of more than one definition. ... A mark that comprises a ‘double entendre’ will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods.”<sup>12</sup> A *double entendre* is an “ambiguity of meaning arising from language that lends itself to more than one interpretation.” *In re The Place, Inc.*, 76 USPQ2d 1467, 1470 (TTAB 2005) (citing *Webster’s Third New International Dictionary* (1993)). For trademark purposes, “a ‘double entendre’ is an expression that has a double connotation or

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<sup>10</sup> Applicant’s web page at <http://www.raritan.com/products/power-distribution/intelligent-rack-pdus>, 4 TTABVUE 11, Response to Office Action of April 2, 2015, p. 2.

<sup>11</sup> Response to Office Action of April 2, 2015, p. 7.

<sup>12</sup> Applicant’s brief, p. 6, 4 TTABVUE 7.

significance as applied to the goods or services. ... The multiple interpretations that make an expression a ‘double entendre’ must be associations that the public would make fairly readily.” *Id.* (citing TMEP § 1213.05(c)). Compare *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR & SPICE double entendre for bakery products), with *In re RiseSmart*, 104 USPQ2d 1931,1934 (“We do not find TALENT ASSURANCE to present a double entendre such that ‘the merely descriptive significance of the term [TALENT] is lost in the mark as a whole.’”) (distinguishing *Colonial Stores*).

Here, as in *RiseSmart*, there is no *double entendre*. There is no indication from the record evidence that the relevant public would fairly readily associate the term INTELLIGENT RACK with anything more than its single meaning: computer components used to monitor and regulate PDUs. That is the meaning that Applicant and its competitors ascribe to the term in the context of the computer industry. That the term may have other meanings in other contexts is not controlling. *In re Franklin County Historical Society*, 104 USPQ2d 1085, 1087 (TTAB 2012). The term INTELLIGENT RACK immediately conveys knowledge of the function or purpose of the computer goods with which it is used. See *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1478 (TTAB 2016).

## **II. Conclusion**

For all the foregoing reasons, we find that the applied-for mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

***Decision:*** The refusal to register Applicant's mark INTELLIGENT RACK is affirmed.