

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re De Beers UK Limited

Serial No. 86978658

Brian R. McGinley and Kate E. Hart of Dentons US LLP,
for Rieker Instrument Company, Inc.

Seth Willig Chadab, Trademark Examining Attorney, Law Office 104,
Dayna Browne, Managing Attorney.

Before Bergsman, Ritchie, and Lynch,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

De Beers UK Limited (“Applicant”) seeks registration on the Principal Register of the mark MARKET PRICE QUOTE in standard characters for the following services:

Jewellery [sic] and gemstone remounting; recycling in the nature of collection of jewelry for recycling, remanufacturing and refurbishing of jewellery including jewellery with diamonds, precious and semi-precious gemstones, precious and semi-precious gemstones, and chronometric instruments[,] all to the order and/or specification of others; collection of jewellery, gemstones including diamonds, precious metals and chronometric instruments for recycling in International Class 37;

Mounting in the nature of jewelry mounting in the course of custom construction of jewelry for others, engraving and cutting services all in the field of precious metals and their alloys and goods in precious metals or coated therewith, jewellery and imitation jewellery, precious and semi-precious stones, horological and chronometric instruments; Inscription services, namely, etching of diamonds in International Class 40;

Grading, namely, gemological services in the nature of grading precious stones, identification, namely, gemological services in the nature of identifying precious stones, inspection, namely, gemological services in the nature of inspecting precious stones, measuring in the nature of calibration services, testing in the nature of material testing and certification services in the nature of testing, analysis and evaluation of the goods of others for the purpose of certification, all in the field of precious metals and their alloys and goods in precious metals or coated therewith, jewellery and imitation jewellery, precious and semi-precious stones, horological and chronometric instruments in International Class 42.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1), 15 U.S.C. § 1052(e)(1), as merely descriptive of the identified services. After the Trademark Examining Attorney made the refusal final, Applicant requested reconsideration, which the Examining Attorney denied. Applicant has appealed, and we affirm the refusal to register.

¹ Application Serial No. 86978658 has a filing date of October 15, 2014, and is based on intent to use in commerce under Section 1(b), 15 U.S.C. § 1051(b). This child application resulted from a request by Applicant to divide out these three classes of goods and services from the parent application, Serial No. 86424404, which also contained three other classes of goods and services. The parent application was also the subject of an appeal, wherein the Board affirmed the refusal to register on November 1, 2016.

Section 2(e)(1) of the Trademark Act precludes registration of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is merely descriptive within the meaning of Section 2(e)(1) “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services 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) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

Descriptiveness must be assessed “in relation to the goods [or services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use.” *Bayer AG*, 82 USPQ2d at 1831 (citing *Abcor Dev. Corp.*, 200 USPQ at 218). The descriptiveness analysis concentrates on the identification of services set forth in the application. *See In re Cordua Rests., Inc.* 823 F.3d 594, 118 USPQ2d 1632, 1636 (Fed. Cir. 2016) (quoting *Octocom Sys., Inc. v. Houston Computer Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). If a mark is descriptive of any of the services in a class for which registration is sought, it is proper to refuse registration as to the entire class. *In re Chamber of Commerce of the United States*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (“Moreover, a mark need not be merely descriptive of all recited goods or services in an application. A descriptiveness refusal is proper ‘if the

mark is descriptive of any of the [services] for which registration is sought.”) (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013) (“[I]f the mark is descriptive of some identified items -- or even just one -- the whole class of goods still may be refused by the examiner.”).

“Market price” refers to “the price at which a commodity, security, or service is selling in the open market.”² “Quote,” is defined in relevant part as “a statement of the current price.”³ Applicant’s website promotes its program to facilitate jewelry retailers giving customers a “Market Price Quote” as “the basis for an offer made by the retailer to purchase the diamond jewelry from the customer.”⁴ This webpage appears under the “Valuation Process” section on “Pricing,” and notes that Applicant’s “Market Price Quote” is “based on market transaction data for similar pieces.”⁵ The same page of Applicant’s website sets out the “key elements that determine the prices” as including the “[c]haracteristics of the diamond.”⁶ Applicant’s FAQ’s page explains the “Market Price Quote” as “the highest possible

² Feb. 9, 2015 Office Action at 16 (Dictionary.com entry for “market price,” based on the Random House Dictionary, 2015); *see also* Aug. 31, 2015 Office Action at 2 (Oxforddictionaries.com entry for “market price” defining it as “The price of a commodity when sold in a given market”).

³ *Id.* at 15 (Dictionary.com entry for “quote,” based on the Random House Dictionary, 2015); *see also* Aug. 31, 2015 Office Action at 16 (Oxforddictionaries.com entry for “quote” defining it as “A quotation giving the estimated cost for a particular job or service”).

⁴ Aug. 31, 2015 Office Action at 14 (www.iidv.org)

⁵ *Id.*

⁶ *Id.*

price one could achieve for his/her diamond jewelry in the secondary, after-sales market. . . .”⁷

Additionally, a third-party internet jewelry industry news article about Applicant’s services, which are described as relating to “secondhand diamonds,” uses the term “market price quote” descriptively.⁸ The article states that retailers with customers who want to resell diamonds may do “an in-store valuation of the stone and then send[] the info to the IIDV [Applicant], which responds with a market price quote.”⁹ The article goes on to note that a second option is to send the jewelry piece to Applicant, which “takes the piece out of its mounting, cleans it, and evaluates it using technology like De Beers’ synthetic spotter DiamondView. After a few days, the lab supplies a market price quote,” “meant to be the ‘highest possible price one could achieve ... on the secondary, wholesale market,’ in part because the stones are examined out of their mountings.”¹⁰

Other third parties in the industry also use the entire term “market price quote” descriptively about their own goods and services that consist of or relate to precious metals such as gold and precious stones such as diamonds. For example:

- An online article describes services like Applicant’s identified jewelry for recycling. Entitled “How to Tell How Much Scrap Gold Is Worth,” the article refers to “[s]elling unwanted gold jewelry as scrap gold” and states “Go online to one of the many websites that track gold prices and find out

⁷ *Id.* at 19.

⁸ Feb. 9, 2015 Office Action at 17 (www.jckonline.com).

⁹ *Id.*

¹⁰ *Id.* (quoting from Applicant’s website).

today's gold market price. . . . If you can find only a **market price quote** per troy ounce, convert that figure into a price per gram.”¹¹

- A’per Trading Corporation, which deals in “Diamonds[,] Gemstones[, and] Precious Metals,” states on its website, “Contact us for **Current Market Price Quote**,” and “Contact us for current **market prices**. . . .”¹²
- The website for GoldParty LLC promotes instructional videos on acquiring and selling scrap gold, and one screenshot summarizing a video states, “He talks about the important factors you will need to run against your own numbers, including, incoming weight, post refined weight, **market price quote** and settlement price paid.”¹³ Thus, the context involves “recycling” scrap gold.

This evidence shows descriptive use of the term with recycling precious metal jewelry, and appraising or valuing precious metals and stones, as well as with those types of goods themselves.

The Examining Attorney’s evidence further shows descriptive use of the terms “market price,” “price quote” and “quote” in the industries for jewelry and precious metals and stones and with related services identical or similar to Applicant’s. For example:

- The website of Hemming Plaza Jewelers invites customers to “[b]ring in [their] unwanted or broken jewelry to our store,” and states that they buy gold, silver, platinum, and diamonds, and that they “will test your jewelry and provide a professional **quote** based on current **market price**.”¹⁴ Thus, in the context of recycling and testing jewelry, the jeweler gives the customer a market price quote.
- The website of the Diamond Registry offers a “**Quote**” along with a price list with “an updated sheet of diamond prices used by wholesalers within the diamond industry,” noting its usefulness “to estimate the diamond

¹¹ Feb. 9, 2015 Office Action at 12-14 (<http://finance.zacks.com>) (emphasis added).

¹² *Id.* at 19-20 (www.apertrading.com) (emphasis added).

¹³ *Id.* at 23, 26 (www.goldpartyllc.com) (emphasis added).

¹⁴ Aug. 31, 2015 Office Action at 20 (<http://hemmingplazajewelers.com>) (emphasis added).

prices with the original **market price** indicator.” The website notes that the price is determined from assessing various “parameters” of the diamond.¹⁵

- The website of Findmyrock.com offers a “Diamond Price Calculator” whereby the user enters information “to generate a projected **market price** of the exact diamond” based on factors including the “quality grade.” The site also provides information on “Diamond Grading Reports” and “Engagement Settings.”¹⁶
- RapNet The Diamond Market offers services including diamond grading, and its website states that “RapNet members also have full access to graphs showing **market price** changes for the cost of diamonds over time.”¹⁷
- The website of Overnight Mountings—Semi-Mounts—Finished Jewelry promotes its mounting and custom-jewelry services, noting “[w]e can provide immediate **price quotes**.”¹⁸
- The website of Jewelry Notes states, under the heading “Calculating the Value of Diamonds,” “Valuing diamonds starts with establishing their quality level, which will be the basis for determining their retail **market price**. . . .” According to the site, “the starting point in calculating the value of a diamond should be figuring out its quality grades.” Under the heading “Determining Diamond **Market Price**,” a description of “market value” research purports to help the user “calculate an average price, which will serve as an estimate of your diamond’s value.”¹⁹
- The website of Doctor Jeweler notes, under the heading “Get Pricing on Jewelry Mounting in NYC” that “We will need to see the jewelry and talk to you about the various services and options before giving you a **quote**. The **quote** is free.”²⁰

¹⁵ *Id.* at 5 (www.diamondregistry.com) (emphasis added).

¹⁶ *Id.* at 8-10 (<http://findmyrock.com>) (emphasis added).

¹⁷ *Id.* at 11-12 (<http://member.rapnet.com>) (emphasis added).

¹⁸ March 29, 2016 Denial of Reconsideration Office Action at 27 (www.overnightmountings.com) (emphasis added).

¹⁹ *Id.* at 31-32 (www.jewelrnotes.com) (emphasis added).

²⁰ *Id.* at 30 (www.jewelryrepairnewyork.com) (emphasis added).

Overall, the evidence shows that as a general matter, a market price quote in any industry would refer to providing the price at which a service is selling in the open market. In addition, even within Applicant's industry, the evidence in the record shows "market price" and "quote" used to describe the pricing of services such as grading, mounting, and recycling precious metals and stones, and to describe valuing the goods themselves. We disagree with Applicant's contention that at best, the evidence relates only to pricing for the goods, and not the applied-for services. As noted in the excerpts above, many relate to the recycling of "scrap gold" and unwanted jewelry, while others involve evaluating and grading stones, and others explicitly refer to mounting. Moreover, Applicant's own promotional website, as well as the third-party article about its services, demonstrate the descriptiveness of MARKET PRICE QUOTE in connection with recycling jewelry, removing and mounting stones, and inspecting and grading jewelry and stones.

Even apart from the evidence regarding "market price quote" as a whole, descriptiveness also must be found based on the separate evidence of "market price" and "quote." When a mark combines two descriptive terms, the descriptiveness analysis turns on whether the combination of terms evokes a new and unique commercial impression. We find no such new and unique commercial impression from the combination of "market price" and "quote" in this case. "In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components." *Oppedahl & Larson*, 71 USPQ2d at 1372. If the combination retains

the descriptive significance of the individual parts, the mark as a whole must be considered merely descriptive. *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1337 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *see also In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012) (holding SEMICONDUCTOR LIGHT MATRIX merely descriptive of light and UV curing systems composed primarily of light-emitting diodes for industrial and commercial applications).

While Applicant makes a conclusory argument that its mark is unitary,²¹ we find that Applicant's mark lacks the type of unitary expression or incongruous meaning that could avoid mere descriptiveness. *See generally In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) ("unusual association or arrangement in the applicant's mark [SUGAR & SPICE] results in a unique and catchy expression which does not, without some analysis and rearrangement of its components suggest the contents of applicant's goods"). Although Applicant cites *In re Shutts*, 217 USPQ 363 (TTAB 1983) as support, the Board deemed the SNO-RAKE mark in that case incongruous, and we make no such finding here. Rather, the combination of "market price" and "quote" retains the descriptive significance of these terms and creates no new commercial impression. This is particularly apparent, given some examples of descriptive use by others of the term as a whole. We further reject Applicant's contention that it "coined this unitary composite mark as a fanciful use of multiple terms combined in a somewhat unexpected manner," and we note that

²¹ 10 TTABVUE 7 (Applicant's Reply Brief).

even if Applicant were the first in its industry to combine these common terms to refer to such services, that does not necessarily entitle it to a registration. *See KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 122 (2004) (noting that the law does not permit “anyone to obtain a complete monopoly on use of a descriptive term simply by grabbing it first.”); *In re Bailey Meter Co.*, 102 F.2d 843, 41 USPQ 275, 276 (CCPA 1939) ([being] “the first and only one to adopt and use the mark sought to be registered does not prove that the mark is not descriptive”).

Applicant argues that its proposed mark could have many meanings, and is therefore not descriptive. For example, Applicant posits that the term “could refer to a stock exchange,” or “stock market advice.”²² Contrary to Applicant’s contention, we do not consider the proposed mark in the abstract, but rather inquire whether someone *familiar* with the identified services will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). Thus, given that consumers would be familiar with the nature of Applicant’s goods and services for recycling, mounting, and evaluating and grading jewelry and precious metals and stones, such consumers would immediately understand that its “market price quotes” involve such services, rather than the stock market. The evidence shows that consumers are accustomed to encountering “market price

²² 10 TTABVUE 10 (Applicant’s Reply Brief).

quote,” “market price,” and “quote” as descriptive terms for the same types of services in Applicant’s industry.

Applicant next contends that its proposed mark is not descriptive because even within the relevant industry, the terms in the mark could have numerous meanings, thereby necessitating “mental gymnastics and extrapolation to arrive at the nature of Applicant’s services.”²³ Applicant asserts that “there are numerous ‘market prices’ which may apply, including retail v. wholesale, gold v. silver, custom v. resale jewelry, etc.”²⁴ Again, however, because we consider MARKET PRICE QUOTE in the context of the identified services, *DuoProSS Meditech Corp.*, 103 USPQ2d at 1757, and as reflected by the evidence of record, consumers would think of estimates of the current pricing of the relevant services.

Thus, consumers would immediately understand MARKET PRICE QUOTE, when used in connection with Applicant’s identified services, to describe a key feature of them. While Applicant urges us to resolve doubt in its favor, given the record, we have no such doubt to resolve.

Decision: The refusal to register Applicant’s mark as merely descriptive is affirmed.

²³ 4 TTABVue 9-10 (Applicant’s Brief).

²⁴ *Id.* at 9.