

This Opinion is Not a
Precedent of the TTAB

Mailed: July 25, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re AP&G Co., Inc.
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Serial No. 87584274
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Tuvia Rotberg of Amster, Rothstein & Ebenstein LLP, for AP&G Co., Inc.

Sally Shih, Trademark Examining Attorney, Law Office 106, Mary I. Sparrow,
Managing Attorney.

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Before Wolfson, Shaw and Lynch,
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

AP&G Co., Inc. (“Applicant”) seeks registration on the Principal Register of the mark SKEETER BAND (in standard characters) for goods identified as “Mosquito Repellent Bracelets,” in International Class 5.¹

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 Applicant’s mark is merely descriptive of the identified goods. When the refusal was

¹ Application Serial No. 87584274 was filed on August 25, 2017 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging Applicant’s bona fide intent to use the mark in commerce.

made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration and the appeal resumed. We affirm the refusal to register.

Mere Descriptiveness under Section 2(e)(1)

“A term is merely descriptive 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 Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987). Whether a particular term 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).

In support of her position that SKEETER BAND is merely descriptive of the applied-for goods, the Examining Attorney submitted the following dictionary definitions of SKEETER and BAND:

- The Oxford English Dictionary: Skeeter - “A mosquito.”²
- The American Heritage Dictionary: Skeeter - “Shortening and alteration of mosquito.”³

² Oxforddictionaries.com, Office Action of December 1, 2017, p. 12.

³ Ahdictionary.com, Office Action of December 1, 2017, p. 17.

- The Merriam-Webster Dictionary: Skeeter - “Mosquito.”⁴
- The Collins Dictionary: Band - “A band is a flat, narrow strip of cloth which you wear round your head or wrists, or which forms a piece of clothing.”⁵
- The Oxford English Dictionary: Band - “A flat, thin strip or loop of material put around something, typically to hold it together or to decorate it.”⁶

In addition, the Examining Attorney introduced a number of third-party registrations in which the term “skeeter” or “band” was disclaimed:⁷

- Reg. No. 4025437 for the mark 'SKEETER SKIDADDLER for insect repellants, “SKEETER” disclaimed.
- Reg. No. 4448699 for the mark SKEETER SKATTER for insect repellants, “SKEETER” disclaimed.
- Reg. No. 4619750 for the mark SKEETER DEFENSE for insect repellants, “SKEETER” disclaimed.
- Reg. No. 5099565 for the mark NO MO SKEETERS for pest control services, “SKEETERS” disclaimed.
- Reg. No. 5334284 for the mark SKEETER GITTER for insect traps, “SKEETER” disclaimed.
- Reg. No. 4177871 for the mark THE YOGI BAND for silicon wristband bracelets, “BAND” disclaimed.

⁴ Merriam-webster.com, Office Action of December 1, 2017, p. 18.

⁵ Collinsdictionary.com, Office Action of December 1, 2017, p. 28.

⁶ Oxforddictionaries.com, Office Action of June 20, 2018, p. 12.

⁷ Office Action of December 1, 2017, pp. 2-11 and 41-53.

- Reg. No. 4147852 for the mark JOY BAND for rubber or silicon wristband bracelets, “BAND” disclaimed.
- Reg. No. 4176944 for the mark NATURE BAND for rubber or silicon wristband bracelets, “BAND” disclaimed.
- Reg. No. 4197768 for the mark THE ANSWER BAND for rubber or silicon wristband bracelets, “BAND” disclaimed.
- Reg. No. 5053005 for the mark BREACHER BAND for leather wristband bracelets, “BAND” disclaimed.

The Examining Attorney’s evidence establishes that the terms SKEETER and BAND are merely descriptive when used in connection with insect repellants and bracelets, respectively. “[T]hird-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry.” *In re Box Sols. Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *see also In re Country Music Assoc. Inc.*, 100 USPQ2d 1824, 1833 (TTAB 2011) (“[T]hird-party registrations show the Office’s consistent treatment of the word ‘association’ as a generic term when used in connection with association services such as those identified in applicant’s application.”).

Taken together, the terms SKEETER BAND retain their descriptive meaning and merely convey knowledge of a quality, feature, function, or characteristic of the goods, “Mosquito Repellent Bracelets.” That is, the goods are wearable bands that will repel mosquitoes. It is well established that if the individual components of a mark retain their descriptive meaning in relation to the goods, the combination results in a

composite mark that is itself descriptive and unregistrable. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB (2002))).

Applicant argues that its use of the term SKEETER in its mark conveys multiple meanings besides referring to mosquitoes: “the cited dictionary alternatively defines the term SKEETER as: i) ‘an iceboat 16 feet (5 meters) or more in length having a single sail’ and ii) ‘a skeet shooter.’”⁸ This argument is unpersuasive. Descriptiveness must be determined in relation to the goods for which registration is sought. Therefore, the fact that a term may have different meanings in a different context is not controlling. *See In re RiseSmart Inc.*, 104 USPQ2d 1931, 1933 (TTAB 2012); *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest Ltd.*, 204 USPQ 591 (TTAB 1979).

Applicant also argues that “the term SKEETER is an ‘informal’ term for mosquito. Thus, the term SKEETER cannot and does not literally describe mosquitos.”⁹ We disagree. The test for descriptiveness is whether someone who knows what the goods are will immediately understand the mark as directly conveying information about them. *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1317 (TTAB 2002). The dictionary entries in the record for SKEETER suggest that the term is a common synonym for “mosquito,” and is not so informal or obscure as to defy consumer understanding.

⁸ Applicant’s Br., pp. 3-4, 7 TTABVUE 4-5.

⁹ *Id.* at 4, 7 TTABVUE 5.

Lastly, Applicant argues that “even if the term SKEETER BAND directly translated to ‘mosquito bracelet,’ it still would not describe a ‘mosquito *repellent* bracelet.’ The combination of the terms SKEETER and BAND do not yield a mark that immediately imparts information about the goods with a ‘degree of particularity.’”¹⁰ This argument too is unpersuasive. It is well settled that consumers have a habit of shortening names. *See In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (GASBADGE is at least descriptive for “gas monitoring badge”; “the users of language have a universal habit of shortening full names--from haste or laziness or just economy of words....I regard it as inevitable that a gas monitoring badge will be called a gas badge as the name of the goods to the same extent as gas monitoring badge is the name.” (Rich, J., concurring)). Consumers will perceive Applicant’s SKEETER BAND as a shortened version of “mosquito repellent band.”

For the foregoing reasons, we conclude that when used on or in connection with Applicant’s identified goods the proposed mark, SKEETER BAND, merely describes mosquito repellent bracelets.

Decision: The refusal to register Applicant’s mark SKEETER BAND under Section 2(e)(1) of the Trademark Act is affirmed.

¹⁰ *Id.*