

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 27, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lakshmi Distributors

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Serial No. 90174273

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Jeremy A. Smith of Lanier, Ford, Shaver & Payne, PC,
for Lakshmi Distributors.

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Laura Golden, Trademark Examining Attorney, Law Office 103,
Stacy Wahlberg, Managing Attorney.

—
Before Wellington, Larkin, and Lebow,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Lakshmi Distributors (“Applicant”) seeks registration on the Principal Register of the mark CSTORE (in standard characters) for “wholesale store services featuring tobacco products” in International Class 35.¹

¹ Application Serial No. 90174273 was filed on September 11, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s allegation of first use of the mark anywhere and in commerce on December 31, 2015. Applicant subsequently amended the application basis to intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act ("the Act"), 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of Applicant's services.

After the refusal was made final, Applicant appealed. The appeal is briefed. We affirm the refusal to register.

I. Merely Descriptive Refusal – Applicable Law

Section 2(e)(1) of the Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive or deceptively misdescriptive of them," unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).²

A mark is "merely descriptive" within the meaning of Section 2(e)(1) "if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought." *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017) (citing *In re Bayer A.G.*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Conversely, a term is suggestive, and not merely descriptive, if it requires imagination, thought, or perception to arrive at a conclusion as to the nature, qualities or characteristics of the goods or services. *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014). *See also In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1515 (TTAB 2016); *In re Franklin Cty. Historical Soc'y*, 104 USPQ2d 1085, 1087 (TTAB 2012).

² Applicant does not claim that its proposed mark has acquired distinctiveness.

“A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need only describe a single feature or attribute.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citation and internal quotation omitted); *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.”) (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)).

Whether a mark is merely descriptive is evaluated “in relation to the particular 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.” *In re Chamber of Commerce*, 102 USPQ2d at 1219 (quoting *In re Bayer*, 82 USPQ2d at 1831). It is “not [evaluated] in the abstract or on the basis of guesswork.” *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512-13 (TTAB 2016). Thus, we ask “not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are 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) (citation and internal quotation omitted).

II. Analysis

The Examining Attorney asserts that CSTORE is merely descriptive of “wholesale store services featuring tobacco products” because it “conveys the fact that convenience stores are the intended consumers of applicant’s wholesale store services.”³ Specifically, she argues that “CSTORE is a common abbreviation for convenience stores, and that this is a term of art within the industry.”⁴ In support, she submitted printouts from numerous different third-party websites showing use of CSTORE as an abbreviation for “convenience store,” including use by those involved in distributorship of supplies or otherwise providing business-to-business services to convenience stores.⁵ The following are sample excerpted images from this evidence:⁶

³ 6 TTABVUE 3.

⁴ *Id.* at 4.

⁵ Evidence attached to Office Actions issued on January 28, 2021 and August 24, 2021.

⁶ While we only list a few, the record contains many such examples. The Examining Attorney, in her brief (at 6 TTABVUE 4-6), lists 19 different websites using the term CSTORE in the context of convenience stores.

Home » Wiki

Cstore ←



A convenience store. Normally a small store or shop often located alongside busy roads, or at **gasoline** stations. This can take the form of gas stations supplementing their income with retail outlets, or convenience stores adding gas to the list of goods that they offer. They are frequently located in densely-populated neighborhoods.

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⁷ Office Action issued on January 28, 2021, TSDR p. 2. The “Wiki Index” entry appears on a website (“PEI The leading authority for fuel and fluid handling equipment.”).





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 NEW!	 ADD CRAVEABILITY	 AWARD WINNING	 FIND A REP
FULLY COOKED BREAKFAST SAUSAGE PATTY	COMMISSARY / MADE TO ORDER	ULTIMATE JALAPEÑO CHEDDAR SAUSAGE	REP FINDER

⁸ *Id.*, p. 5.

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C-Store

Trends Pose Both Challenges and Opportunities for CR Stores
Understand the Forces Impacting the Fast Growing Channel
Convenience store operators are facing growing competition, lower gas prices, foodservice demand and technology enhancements.
MARCH 15, 2017

Merchandising the CR Zones to Convert Shoppers into Buyers
Leverage strategic points of inspiration to boost sales
Merchandise the convenience store to attract would-be shoppers with points of inspiration that convert them into buyers.
FEBRUARY 14, 2017

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⁹ *Id.*, p. 6.

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and

¹⁰ *Id.*, p. 7.

¹¹ *Id.*, p. 14.



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Cigar Distributors

Smart cigar distributors understand very clearly that cigars and cigar lovers will never be separated for very long. LA Top Distributors is here to provide a number of outstanding [wholesale convenience store items](#) that customers truly need and want. Being a top provider of cigars as well as cigarettes wholesale is the financial cornerstone of many a business. That's because smokers and their love of tobacco is a genuine force of nature. "I have made it a rule never to smoke more than one cigar at a time," said Mark Twain. Many cigar aficionados have few other limitations on their



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In the excerpt above, a company called “CSW C-Store-Wholesale.com” advertises its “wholesale convenience store items” that include a wide range of “cigars & tobacco products.” This is precisely the same service described in the application.

¹² Office Action issued on August 24, 2021, TSDR p. 3.

The Examining Attorney also submitted printouts from Applicant's own website wherein Applicant describes itself as "a regional distributor of convenience store products ... [including] Tobacco."¹³ Applicant's use of CSTORE in connection with convenience stores corroborates the other evidence of record showing that consumers will understand the term as an abbreviation for convenience store. *N.C. Lottery*, 123 USPQ2d at 1709 (applicant's own promotional materials helped evidence mere descriptiveness). Indeed, "[a]n applicant's own website and marketing materials may be . . . 'the most damaging evidence' in indicating how the relevant purchasing public perceives a term." *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018) (quoting *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)).

Additional evidence, such as the NACS ("Advancing Convenience & Fuel Retailing") trade journal article "D.C. C-Stores Brace for Menthol Ban," shows that CSTORE is a term of art and well-understood in the relevant industry as an abbreviation for "convenience store."¹⁴ The article uses C-STORE in the headline and begins by mentioning "Convenience store operators...." In fact, the article involves restrictions on the sale of tobacco products by convenience store operators, namely, the type of business to whom Applicant presumably markets its wholesale store services for tobacco products.

¹³ *Id.*, p. 2.

¹⁴ *Id.*, p. 4

Applicant argues that CSTORE is not descriptive because “when an average consumer sees/hears CSTORE, perhaps a convenience store might come to mind, but wholesale store services featuring tobacco products do not.”¹⁵ This argument misapprehends the test for mere descriptiveness. As stated already, the question before us is not whether consumers can guess the services, but rather whether someone knows that Applicant offers wholesale store services featuring tobacco products will understand the term CSTORE to convey information about those services. *DuoProSS*, 103 USPQ2d 1757.

In this case, the evidence of record overwhelmingly supports a finding that consumers of wholesale stores services involving tobacco will immediately understand CSTORE to be an abbreviation for “convenience store” and describing a key feature of the services, namely, that the intended market for the services or the target consumers are convenience stores. CSTORE is therefore merely descriptive of the services. *See In re N.C. Lottery*, 123 USPQ2d at 1709; *In re Chamber of Commerce*, 102 USPQ2d at 1220.

Decision:

The refusal to register CSTORE under Section 2(e)(1) of the Act is affirmed.

¹⁵ 4 TTABVUE 5.