

This Opinion is Not a
Precedent of the TTAB

Mailed: March 6, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Roto-Mix, LLC.

Serial No. 90862644

Mark D. Hansing and Michael C. Gilchrist of Mckee, Voorhess & Sease, P.L.C.,
for Roto-Mix, LLC.

Gabrielle Marotta, Trademark Examining Attorney, Law Office 103,
Stacy Wahlberg, Managing Attorney.

Before Lynch, Acting Deputy Chief Administrative Trademark Judge; and
Coggins and Cohen, Administrative Trademark Judges.

Opinion by Cohen, Administrative Trademark Judge:¹

¹ As part of an internal Board pilot citation program on possibly broadening acceptable forms of legal citation in Board cases, this decision varies from the citation form recommended in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (June 2023). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board and the Director, this decision employs citation to the Westlaw (WL) database. Only precedential decisions are cited. Until further notice, however, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

Applicant, Roto-Mix, LLC, seeks registration on the Principal Register of the proposed mark AUTO-FEED in standard characters for “agricultural machines, namely, motorized-vehicle-based automated and semi-automated livestock feed dispensers for livestock feeding trucks and systems,” in International Class 7 and “land vehicles, namely, automated feed delivery vehicles” in International Class 12.²

The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that AUTO-FEED is merely descriptive of a feature or characteristic of Applicant’s goods. After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. The appeal has been fully briefed.

We affirm the mere descriptiveness refusal to register.

I. Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them,” unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).³ A term is merely descriptive of goods if it conveys an immediate idea of an ingredient, quality,

² Application Serial No. 90862644 filed August 3, 2021, claiming a bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

All TTABVue and Trademark Status and Document Retrieval (“TSDR”) citations reference the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents. Citations in this opinion to the briefs refer to TTABVue, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, Opposition No. 91216455, 2020 WL 2853282, at *1 n.1 (TTAB 2020).

³ Applicant does not claim that its proposed mark has acquired distinctiveness.

characteristic, feature, function, purpose or use of the goods. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 972 (Fed. Cir. 2018) (quoting *N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017)); *Chamber of Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012); *In re Canine Caviar Pet Foods, Inc.*, Serial No. 85710350, 2018 WL 2277123, at *7 (TTAB 2018).

Whether a term is merely descriptive is not determined in the abstract, but rather in relation to the goods for which registration is sought, the context in which the term is being used on or in connection with those goods, and the possible significance that the term would have to the average purchaser of the goods because of the manner in which the term is used or intended to be used. *In re Bayer A.G.*, 488 F.3d 960, 964 (Fed. Cir. 2007); *In re Omniome, Inc.*, Serial No. 87661190, 2019 WL 7596207, at *5 (TTAB 2019) (quoting *In re Chamber of Com.*, 675 F.3d at 1300). The question is whether someone who knows what the goods are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012).

We must “consider the commercial impression of a mark as a whole.” *Real Foods*, 906 F.3d at 974. In considering the mark as a whole, we may not dissect the mark into isolated elements, without considering the entire mark; but, we may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. *Id.* Indeed, we are “required to examine the meaning of each component individually, and then determine whether the mark as a whole is merely descriptive.” *DuoProSS*, 695 F.3d at 1255.

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase. *Omniome*, 2019 WL 7596207, at *5; *In re Phoseon Tech., Inc.*, Serial No. 77963815, 2012 WL 3854070, at *2 (TTAB 2012); *In re Assoc. Theatre Clubs Co.*, Serial No. 557499, 1988 WL 252332, at *2 (TTAB 1988). “If the words in the proposed mark are individually descriptive of the identified goods, we must determine whether their combination ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Zuma Array Ltd.*, Serial No., 79288888, 2022 WL 3282655, at *4 (TTAB 2022) (quoting *In re Fat Boys Water Sports LLC*, Serial No. 86490930, 2016 WL 3915986, at *6 (TTAB 2016)). If each component “retains its merely descriptive significance in relation to the goods ... , the combination results in a composite that is itself merely descriptive.” *Id.* (quoting *Fat Boys*, 2016 WL 3915986, at *6).

A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods are to reach a conclusion about their nature from the mark. *See, e.g., StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1332 (Fed. Cir. 2014); *Fat Boys*, 2016 WL 3915986, at *5.

II. Evidence of Descriptiveness and Analysis

Evidence of the public’s understanding of a term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications. *Zuma Array*, 2022

WL 3282655, at *5. The sources may also include websites and use on labels, packages, or in advertising materials directed to the goods. *Id.*; see *N.C. Lottery*, 866 F.3d at 1368. Proof of mere descriptiveness may originate from an applicant's own descriptive use of its proposed mark, or portions thereof in its materials and an applicant's own website and marketing materials may be the most damaging evidence in indicating how the relevant purchasing public perceives a term. *Zuma Array*, 2022 WL 3282655, at *8; *In re Mecca Grade Growers, LLC*, Serial No. 86358219, 2018 WL 1314995, at *11 (TTAB 2018).

In support of the descriptiveness refusal, the Examining Attorney argues that AUTO-FEED is merely descriptive because it “conveys that the Applicant's goods are self-regulating mechanisms for livestock food, or that the Applicant's goods are livestock food devices for use on or with four-wheeled automotive vehicles.”⁴ The Examining Attorney relies on dictionary definitions for:

- AUTO meaning “automobile,” or “automatic”;⁵
- AUTOMOBILE meaning “a usually four-wheeled automotive vehicle designed for passenger transportation”;⁶
- AUTOMATIC meaning “done or produced as if by machine; having a self-acting or self-regulating mechanism”;⁷ and
- FEED meaning “food for livestock”.⁸

⁴ 6 TTABVUE 4.

⁵ MERRIAM-WEBSTERDICTIONARY.COM, May 9, 2022 Office Action at TSDR 2.

⁶ *Id.* at 6.

⁷ *Id.* at 4.

⁸ *Id.* at 8.

Additionally, the Examining Attorney argues that Applicant's website, rotomix.com, describes Applicant's goods as "[t]he new Auto-Feed System ... is the newest innovation in automated feed delivery for commercial feedlots";⁹ and describes Applicant as a company that "has built its reputation as the leading manufacturer of livestock mixing and feeding equipment."¹⁰ Of note is Applicant's website description of how to use the "Auto-Feed system" where the user is instructed to "make sure the **Auto**/Manual switch on the **Auto-Feed** control is set to **Auto**"; and advised that "Pressing start the **Auto-Feed** control box will energize the system. ... At this point, the driver is only steering the truck"; "The **Auto-Feed** system will stop discharging **feed** when the call weight is reached"; "While you are **feeding** with the **Auto-Feed** system, the driver will still have manual control of the spout and discharge door"; and the "**Auto-Feed** System is constantly learning and adjusting the **feed** rate ..." (bold emphasis added).¹¹

The Examining Attorney also refers to third-party websites that "confirm[] the descriptive nature of the wording in the mark" examples of which include (bold emphasis added):

- AUTOMATICCATTLEFEEDER.COM displays "HANEN **AUTOMATIC** CATTLE AND LIVESTOCK **FEEDERS**" and lists various machines such as the "Hanen LSF-12 Solar Powered **Automatic** Programmable Livestock **Feeder**" or the "Hanen LSF-1 **Automatic** Programmable Livestock **Feeder**," and reads "The Expandable Hanen **Automatic** Solar Powered or

⁹ 6 TTABVue 5; December 19, 2022 Final Office Action at TSDR 71. *See also id.* (describing the "Auto-Feed System™" as "Automation for Commercial Feed Delivery.").

¹⁰ December 19, 2022 Final Office Action at TSDR 75.

¹¹ *Id.* at 71, 73.

120 Volt Programmable Livestock **Feeders** are the ultimate programmable **feeding** systems”;¹²

- AUTOEASYFEEDER.COM has a tab entitled “Programmable Livestock Feeder” and includes the following description of certain machinery: “The **Auto Easy Feeder** is the ultimate livestock feeder! Old style ‘Bunk Feeders’ have numerous limitations ... The **Auto Easy Feeder** dispenses different types and sizes of bulk **feed**, textured-type **feed**, as well as, cube **feed** without any adjustment needed – simply load the desired type of **feed** into the **Auto Easy Feeder**,” “When an owner is not available to personally portion out the **feed** at the predetermined intervals, another person must take over the chore. ... The **Auto Easy Feeder** will take care of **feeding** your animals, while letting you apply your time, talents, and finances to finally get ahead in other areas”;¹³
- AUTOMATICSOLARFEEDERS.COM reads “**AUTO-MAX Feeders** are produced and distributed by AMS Global ... These **feeders** save money by eliminating labor ... and provide a much more consistent, balanced and efficient feeding versus traditional creep feeders”;¹⁴ and
- AUTOMATICFEEDING.COM asks “**IS AUTOMATIC FEEDING AN ATTRACTIVE OPTION ON OUR FARM?**” and reads “**Automatic feeding** is a major step for many livestock farmers. That said, **automation** is becoming increasingly important”¹⁵

Applicant takes issue with this evidence, arguing: that the “term auto-feed or the related autofeed are not common English language words [and] are not found in any dictionaries of record”;¹⁶ that the Examining Attorney “has not cited to any parties using the term AUTO-FEED descriptively”;¹⁷ and that the Examining Attorney has improperly dissected the proposed mark by looking at the meaning of the individual

¹² *Id.* at 78-79.

¹³ *Id.* at 81-84.

¹⁴ *Id.* at 88.

¹⁵ *Id.* at 92.

¹⁶ 4 TTABVUE 8.

¹⁷ 7 TTABVUE 3.

elements; but that “even if deconstructed into ‘auto’ and ‘feed’, there is no monolithic and immediate connotation of either that applies.”¹⁸ Applicant continues that “‘feed’ has a double meaning—both as sustenance for animals and as supplying a consumable within a machine ... meaning the term is not merely descriptive”;¹⁹ and that “‘auto’ could be a shortened version of automatic but also a reference for an automobile and thus, the proposed mark requires “[s]everal mental steps” to determine what the coined term suggests about the goods and that the mark may be suggestive.²⁰

That a term may have other meanings in different contexts is not controlling. *In re Polo Int’l Inc.*, Serial No. 74729974, 1999 WL 438840, at *2 (TTAB 1999); *In re Bright-Crest, Ltd.*, Serial No. 131713, 1979 WL 24897, at *3 (TTAB 1979). As noted, it is well established that the determination of mere descriptiveness is made not in the abstract but in relation to the goods for which registration is sought. *Bayer AG*, 488 F.3d at 964; *In re Eng’g Sys. Corp.*, Serial No. 507205, 1986 WL 83295, at *3 (TTAB 1986). In fact, “[t]he question is not whether someone presented with only the mark could guess what the goods ... are. Rather, the question is whether someone who knows what the goods ... are will understand the mark to convey information about them.” *DuoProSS*, 695 F.3d at 1254 (quoting *In re Tower Tech Inc.*, Serial No. 75709532, 2002 WL 992268, at *3 (TTAB 2002)).

¹⁸ *Id.* at 9.

¹⁹ *Id.*

²⁰ *Id.* at 10.

While “auto” may be understood to mean “automobile” as well as “automatic,” in the context of the identified goods – “agricultural machines, namely, motorized-vehicle-based automated and semi-automated livestock feed dispensers for livestock feeding trucks and systems” and “land vehicles, namely, automated feed delivery vehicles” – the evidence of record indicates that the purchasers of those goods will immediately understand the AUTO portion of the mark as referring to the “automatic” nature of Applicant’s goods. Additionally, in the context of the identified goods, the FEED portion of the proposed mark exactly identifies that the goods involve food for livestock. Indeed, the fact that Applicant’s goods in both classes automatically dispense feed is a significant, if not defining, feature of those goods.

While the record does not demonstrate that AUTO-FEED is in the dictionary or used identically by others, the fact that Applicant may be the first and only user of AUTO-FEED for the identified goods does not obviate a mere descriptiveness refusal. *Zuma Array*, 2022 WL 3282655, at *9. “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.’” *Swatch Grp. Mgmt. Servs. AG*, Serial No. 85485359, 2014 WL 1679139, at *9 n.50 (TTAB 2014) (quoting *In re Bailey Meter Co.*, 102 F.2d 843, 1137-38 (CCPA 1939)); see *Fat Boys*, 2016 WL 3915986, at *5 (“first and only user of a term does not render that term distinctive”); *Phoseon Tech.*, 2012 WL 3854070, at *6; *In re Carlson*, Serial No. 78752616, 2009 WL 1719596, at *6 (TTAB 2009) (competitor need is not the test for descriptiveness).

Applicant also disputes the Examining Attorney's evidence of third-party use, arguing that the third-party examples show use of "automatic" or the shortened form, "auto" and "feed" as source indicators.²¹ Review of these websites, as the bolded language above demonstrates, supports the Examining Attorney's assertion that most of the third-party uses of the terms are used to describe goods that provide feed to livestock in an auto or automated/automatic manner and all of the third-party uses are probative of the meaning of the terms in the industry. We note that even Applicant's use of "automated" (which, as noted, is shortened as "auto"), "auto" and "feed," are used as adjectives to describe its goods in the identification of goods (agricultural machines, namely, motorized-vehicle-based **automated and semi-automated livestock feed** dispensers for livestock feeding trucks and systems, and land vehicles, namely, **automated feed** delivery vehicles) as well as on its website (e.g., "automated feed delivery," "make sure the **Auto**/Manual switch on the **Auto-Feed** control is set to **Auto**," and "while you are **feeding** with the **Auto-Feed** system"). Applicant's own use highlights the descriptive nature of AUTO-FEED. *See In re Gould Paper Corp.*, 834 F.2d 1017, 1019 (Fed. Cir. 1987); *Zuma Array*, 2022 WL 3282655, at *8; *In re SPX Corp.*, Serial No. 75877999, 2002 WL 531128, *4 (TTAB 2002) ("[W]hen the combined term E-AUTODIAGNOSTICS is used for an 'electronic engine analysis system comprised of a hand-held computer and related computer software,' purchasers, prospective purchasers and users of such goods will

²¹ 7 TTABVUE 3.

immediately understand that applicant's goods are an electronic system used to analyze car engines.”).

In furtherance of its argument that AUTO-FEED is not descriptive, Applicant points to certain third-party registrations, noting that the Office has registered other AUTOFEED (or AUTO-FEED) formative marks, some with a disclaimer of AUTOFEED but “a substantial majority do not include a disclaimer.”²² Applicant provides TRADEMARK ELECTRONIC SEARCH SYSTEM (TESS) search results and printouts²³ for various AUTOFEED-formative marks, of which only four are currently registered²⁴ and none are for Applicant's identified goods.

Regardless, third-party registrations are not conclusive on the question of mere descriptiveness. While third-party registrations featuring the same or similar goods as applicant's goods are probative evidence on the issue of descriptiveness, each case must stand on its own merits, and a mark that is merely descriptive must not be registered on the Principal Register simply because other such marks appear on the register. *See In re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [applicant's] application,

²² 4 TTABVUE 11.

²³ Applicant provides two search results, one with eleven results and another with sixteen results. We note that some of the results are duplicated in each TESS search. Further, the search results include applications which have no probative value except to show that the application was filed and cancelled or expired registrations which have no probative value. *In re Kysela Pere et Fils Ltd.*, Serial No. 77686637, 2011 WL 1399224, at *2 (TTAB 2011) (“third-party applications have no probative value except to show that an application was filed, and ‘dead’ or cancelled registrations have no probative value at all”).

The TESS database was retired on November 30, 2023 and replaced by a cloud-based trademark search system, TRADEMARK SEARCH.

²⁴ November 9, 2022 Office Action Response at TSDR 26-60.

the PTO's allowance of such prior registrations does not bind the board or this court."); *In re theDot Commc'ns Network LLC*, Serial Nos. 77622942, 77622944, 77622945, 99622947 and 77622948, 2011 WL 6099688, at *6 (TTAB 2011).

Applicant's reliance on these four registrations is unpersuasive. These third-party registrations identify goods which are not only different from Applicant's identified goods, but appear to be entirely unrelated. Because the registrations found by Applicant are for disparate goods, they do not support a finding that as to the identified goods, AUTO-FEED, is not descriptive.

In sum, the evidence of the dictionary meanings of the words in Applicant's proposed mark plus Applicant's and third-parties' use demonstrate that the words AUTO and FEED do not lose their merely descriptive significance by being joined together, nor does the composite itself result in a unique or distinctive meaning which differs from the meanings of the terms considered separately. *In re Finisar Corp.*, Serial No. 76300876, 2006 WL 717515 at *6 (TTAB 2006) ("We are persuaded by the evidence of record that the separate terms SMART and SFP are merely descriptive of applicant's identified goods and that when combined do not present a unique or incongruous meaning"), *aff'd per curiam*, 223 F. App'x 984 (Fed. Cir. 2007). Viewed in its entirety, AUTO-FEED does not present an incongruity or lose its descriptive meaning; rather, it readily and immediately informs the consumer that the applied-for goods involve automated feed dispensing. *See In re Copytele Inc.*, Serial No. 74132330, 1994 WL 417268, at *2 (TTAB 1994) (combination of individually descriptive words SCREEN FAX PHONE not incongruous); *cf. In re Shutts*, Serial

No. 245540, 1983 WL 51780, at *2 (TTAB 1983) (“incongruity is one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark”). No mature thought or multi-stage reasoning is necessary to determine the nature or features of the automated feed goods offered. Indeed, the combination serves to enhance the descriptive meaning of each of these words as applied to Applicant’s goods because, combined, the words more fully describe Applicant’s goods than do the individual words alone. AUTO-FEED is merely descriptive of Applicant’s goods without need for conjecture or speculation.

III. Decision

The refusal to register Applicant’s proposed mark AUTO-FEED under Section 2(e)(1) is affirmed.