

This Opinion is not a  
Precedent of the TTAB

Mailed: February 8, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re What Do You Meme, LLC*

—  
Serial No. 97406016

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Audra Kemp of Neal & McDevitt, LLC,  
for What Do You Meme, LLC.

Alex Seong Keam, Trademark Examining Attorney, Law Office 114,  
Nicole Nguyen, Managing Attorney.

—  
Before Goodman, Dunn, and Lebow,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

What Do You Meme, LLC (“Applicant”) seeks registration on the Principal Register of the proposed mark MENSTRUATION CRUSTACEAN (in standard characters) for “Microwavable heating pads not for medical purposes” in International Class 11.<sup>1</sup>

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<sup>1</sup> Application Serial No. 97040503 was filed on May 11, 2022 based upon Applicant’s use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging January 2022 as its date of first use and first use in commerce.

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

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

I. Evidence

A. Applicant's specimen

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Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

Applicant's brief is at 4 TTABVUE and the reply brief is at 7 TTABVUE; the Examining Attorney's brief is at 6 TTABVUE.

In its appeal brief, Applicant claims ownership of a prior registration issued on the Principal Register for MENSTRUATION CRUSTACEAN for goods in Class 28 for, among other things, plush toys, card games, and party games, 6 TTABVUE 19. Applicant, however, did not make this registration of record prior to appeal; instead, Applicant submitted an electronic copy from the TESS (Trademark Electronic Search System) database of its claimed prior registration with its appeal brief. Although the Examining Attorney did not object to the TESS registration evidence, it was not addressed in the Examining Attorney's brief. Applicant also attached exhibits that were not submitted during examination to the reply brief, to which the Examining Attorney had no opportunity to object.

An applicant has the responsibility to make sure that the record is complete prior to filing a notice of appeal. *In re Van Valkenburgh*, 97 USPQ2d 1757, 1768 n. 32, 1769 (TTAB 2011). The Board will ordinarily not consider additional evidence filed by the appellant or by the examiner after the appeal is filed. Trademark Rule 2.142(d); 37 C.F.R. § 2.142(d). In accordance with this general rule, the Board has not considered the evidence attached to Applicant's brief or reply brief, or the arguments concerning this evidence.



B. Dictionary Definitions:

Applicant and the Examining Attorney provided dictionary definitions of “crustacean” and “menstruation” that essentially corroborate each other.<sup>2</sup>

The dictionary definitions provided by Applicant and the Examining Attorney include the following:

Menstruation : a cyclical discharging of blood, secretions, and tissue debris from the uterus that recurs in nonpregnant breeding-age primate females at approximately monthly intervals and that is considered to represent a readjustment of the uterus to the nonpregnant state following proliferative changes accompanying the preceding ovulation;

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<sup>2</sup> January 10, 2023 Response to Office action at TSDR 8, 12; February 7, 2023 Office action at TSDR 23; May 16, 2023 Denial of reconsideration at TSDR 20, 22. MERRIAM WEBSTER DICTIONARY merriam-webster.com. The Examining Attorney provided dictionary definitions from additional dictionaries including COLLINS DICTIONARY, OXFORD LEARNERS DICTIONARY and AMERICAN HERITAGE DICTIONARY. February 7, 2023 Office action at TSDR 24, 25, and 26.

Crustacean : any of a large class (Crustacea) of mostly aquatic mandibulate arthropods that have a chitinous or calcareous and chitinous exoskeleton, a pair of often much modified appendages on each segment, and two pairs of antennae and that include the lobsters, shrimp, crabs, wood lice, water fleas, and barnacles.

C. Product Listing of Applicant's Goods

The record includes product listings for Applicant's goods. Excerpts of those listings are as follows:

Product details:

We know THAT time of the month can be the worst, but there are a few things that make it better. ...the Menstruation Crustacean! Introducing your new favorite period pal, a huggable, heat-up 14 [inch] plush lobster. This cuddly crustacean serves as microwaveable heating pad with the relaxing scent of lavender to both soothe your cramps and brighten your mood.

January 6, 2023 Office action at TSDR 3 (Walmart, walmart.com).

Product details:

Not only is this plush lobster just as cute as can be, it also comes with a heating pad insert to help you relieve cramps when it's that time of the month!

February 7, 2023 Office action at TSDR 4 (The Paper Store, paperstore.com).



An image of Applicant's packaging:

January 6, 2023 Office action at TSDR 3.

D. Third-party articles on Applicant's goods

The Examining Attorney submitted third-party articles discussing Applicant's goods, including the following excerpts therefrom:

She Knows (sheknows.com):

Customers Say This Adorable \$22 Tool is the 'Cutest Pain Reliever' for Alleviating Period Cramps. ... For only \$22 you can get this Menstruation Crustacean for your period pains, and nearly everyone says it's worth the money. ... It is lavender-scented ... it's a bit overpowering when the actual heating pad comes out of the microwave but the smell goes away once it's put back in the lobster. ... The Menstruation Crustacean is an adorable and effective tool to beat those debilitating cramps you always seem to get at the most inconvenient times.

February 7, 2023 Office action at TSDR 6.

Digg (digg.com):

This 14-inch lobster isn't just adorable, it's also a lavender-scented heating pad that will get you through some rough times. ...

February 7, 2023 Office action at TSDR 8.

- E. Heating Pads advertised for use with period or menstrual pain and in animal shapes including crustaceans (crab and lobster)

The Examining Attorney submitted creature-shaped heating pad product listings for use in connection with menstruation (periods) as shown below:



Heating Pads for Cramps - Weighted Sloth Stuffed Animal - Microwavable Heating Pad for Cramps Relieves Period Cramp Pain - Giftable Sloth in Canvas Bag (Cuddly Sloth)

~~US\$84.49~~ **US\$64.99**  
Availability: In stock

1

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February 7, 2023 Office action at TSDR 10 (Go Supps.com gosupps.com).



Solayman's Removable Lavender Scented Microwavable Heating Pad for Cramps

Brand: Solayman's  
4.5 ★★★★★ 39 ratings

\$29<sup>99</sup>

FREE Returns

Apply now and get a \$60 Amazon Gift Card upon approval of the Amazon Store Card, or see if you pre-qualify with no impact to your credit bureau score.

Brand	Solayman's
Unit Count	1.0 Count
Special Feature	Microwaveable
Color	White
Model Name	Animal heating pad

**About this item**

- **YOUR BEST BUDDY, FOR THE BAA-D DAYS:** Is it that time of the month? Experiencing unbearable cramps? Heat up our lovable and huggable sheep. Feel instant soothing and warmth while it lays across your lower belly. Let the heat radiate throughout, helping you feel relaxed and relieved. This period heating pad for cramps is a much-needed pain reliever.
- **CALMING LAVENDER:** Soothe and relax while you wait for this weighted sheep to do its magic. We use LAVENDER BUDS therefore, no need to purchase extra lavender essential oil. The lavender stuffed animal also contains MILLET. Millet can retain heat very well and will not catch on fire like clay beads. We made sure our heating pad for period cramps does not reek of mildew or feel greasy like other fillers.

May 16, 2023 Denial of reconsideration at TSDR 18 (Amazon, amazon.com).

The third-party listings include crustaceans (lobster and crab) as shown below:



Roll over image to zoom in

x 14" Cute Soft Short Plush Crustacean, Removable Lavender Filled Heating pad for Menstruation and Cramps Relief.

Brand: ZUNGOUMC  
★★★★★ 35 ratings

Lowest price in 30 days  
-42% \$14.99 (\$0.94 / Ounce)  
Was: \$25.99

prime  
FREE Returns  
Exclusive Prime price

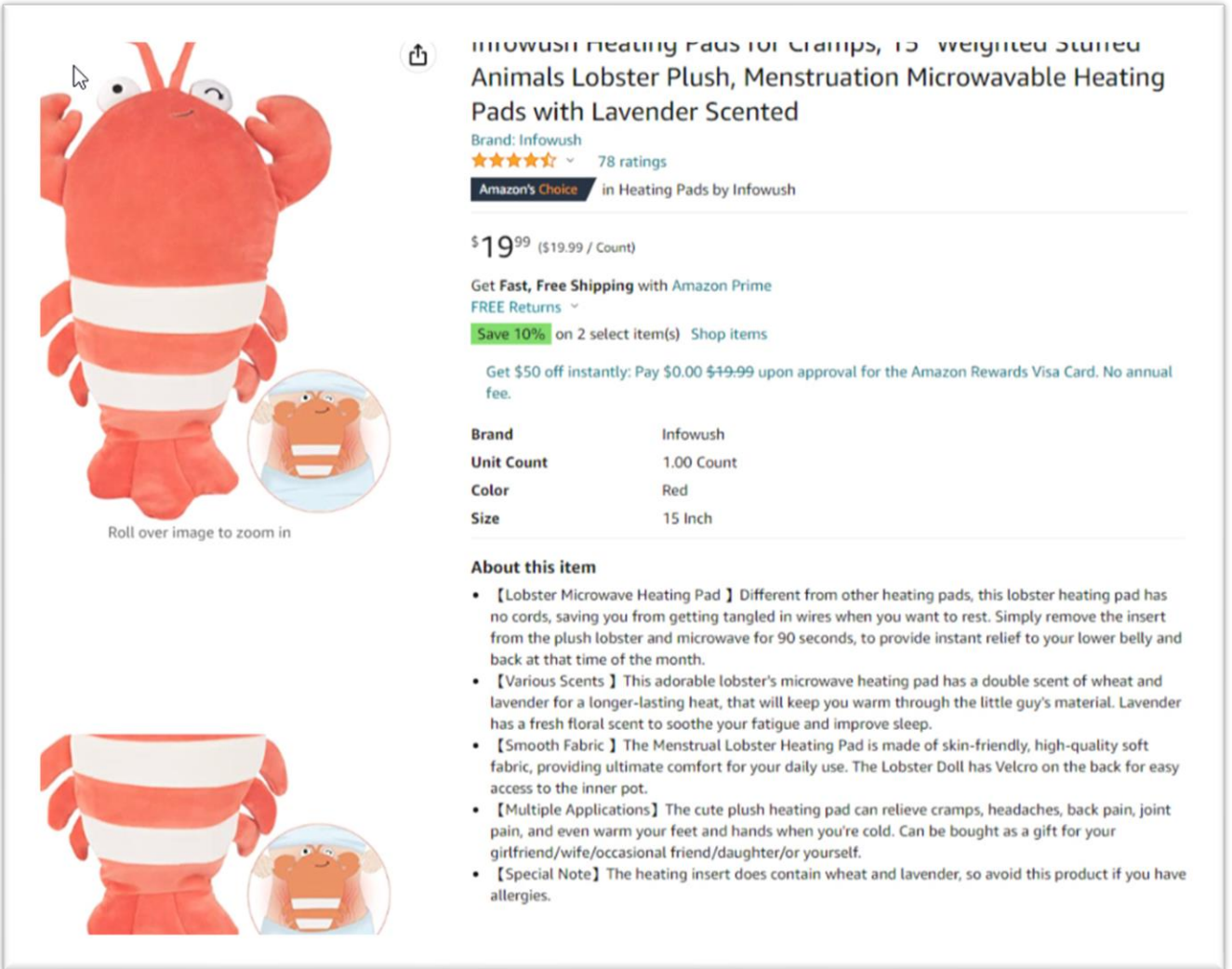
Thank you for being a Prime member. Get a \$100 Amazon Gift Card upon approval for the Amazon Prime Rewards Visa Card.

May be available at a lower price from other sellers, potentially without free Prime shipping.

Scent: Lavender

- **Menstrual Heating pad** Simply remove the heating pack from the crab weighted stuffed animals, heating pad microwavable for 1 minute, and put it back, apply it to your lower tummy or back to relieve your pain
- **Premium Material** Made of skin friendly high-quality super soft short velvet, natural mud beads and lavender, which will not become moldy. Clay beads provide comfortable heat and moist and Lavender emits a fresh flower fragrance, which will make you feel relaxed and comfortable.
- **Easy to Carry** The lovely crab plush toy is cordless design, without plug and battery, which is convenient to carry when going out. Only needs to heat the heating pack for 1 min and keep the temperature for more than 30 min.
- **Warm Hug** Such a warm and lovely crustacean crab will help you sleep, make you feel calm and relieve pain, dysmenorrhea, stress and anxiety. In the special period, damp heat relieves discomfort and improves sleep. It is your perfect partner.
- **Perfect Gift** When the person you love is menstruation, please take care of her. Share the electric mat and greeting card with her to express your concern. It is the ideal gift for any daughter

January 6, 2023 Office action at TSDR 3 (Amazon, amazon.com).



**Infowush Heating Pads for Cramps, 15 Weighted Stuffed Animals Lobster Plush, Menstruation Microwavable Heating Pads with Lavender Scented**

Brand: Infowush  
★★★★☆ 78 ratings  
Amazon's Choice in Heating Pads by Infowush

\$19<sup>99</sup> (\$19.99 / Count)

Get Fast, Free Shipping with Amazon Prime  
FREE Returns

Save 10% on 2 select item(s) Shop items

Get \$50 off instantly: Pay \$0.00 ~~\$19.99~~ upon approval for the Amazon Rewards Visa Card. No annual fee.

Brand	Infowush
Unit Count	1.00 Count
Color	Red
Size	15 Inch

**About this item**

- **[Lobster Microwave Heating Pad ]** Different from other heating pads, this lobster heating pad has no cords, saving you from getting tangled in wires when you want to rest. Simply remove the insert from the plush lobster and microwave for 90 seconds, to provide instant relief to your lower belly and back at that time of the month.
- **[Various Scents ]** This adorable lobster's microwave heating pad has a double scent of wheat and lavender for a longer-lasting heat, that will keep you warm through the little guy's material. Lavender has a fresh floral scent to soothe your fatigue and improve sleep.
- **[Smooth Fabric ]** The Menstrual Lobster Heating Pad is made of skin-friendly, high-quality soft fabric, providing ultimate comfort for your daily use. The Lobster Doll has Velcro on the back for easy access to the inner pot.
- **[Multiple Applications]** The cute plush heating pad can relieve cramps, headaches, back pain, joint pain, and even warm your feet and hands when you're cold. Can be bought as a gift for your girlfriend/wife/occasional friend/daughter/or yourself.
- **[Special Note]** The heating insert does contain wheat and lavender, so avoid this product if you have allergies.

February 7, 2023 Office action at TSDR 5 (Amazon, amazon.com).

F. Third-party listings of heating pads in a variety of shapes, including animal shapes

The Examining Attorney provided additional examples of third-party heating pads in the shape of animals or other untraditional shapes, including the following:






Warmies Microwavable  
French Lavender  
Scented Plush

AMAZON

\$15

AT AMAZON →



Therapeutic Wrap

Why not count your sheep at night with an actual sheep resting on your belly? This microwavable plushie is called a "warmie" and it's filled with dried lavender which will bring on all of that much-needed zen. The wrap can also double as a cold pack - just pop it in a plastic bag and pop in the freezer. One happy customer said, "The combination of heat wrap plus adorable fluffy lamb & soothing lavender is what saves me. I feel less cruddy when I'm in pain since this thing is just so cute. Recently my entire heating system in my apartment broke down, and cuddling up to this little lamb at night helped me get some sleep even when I was freezing."

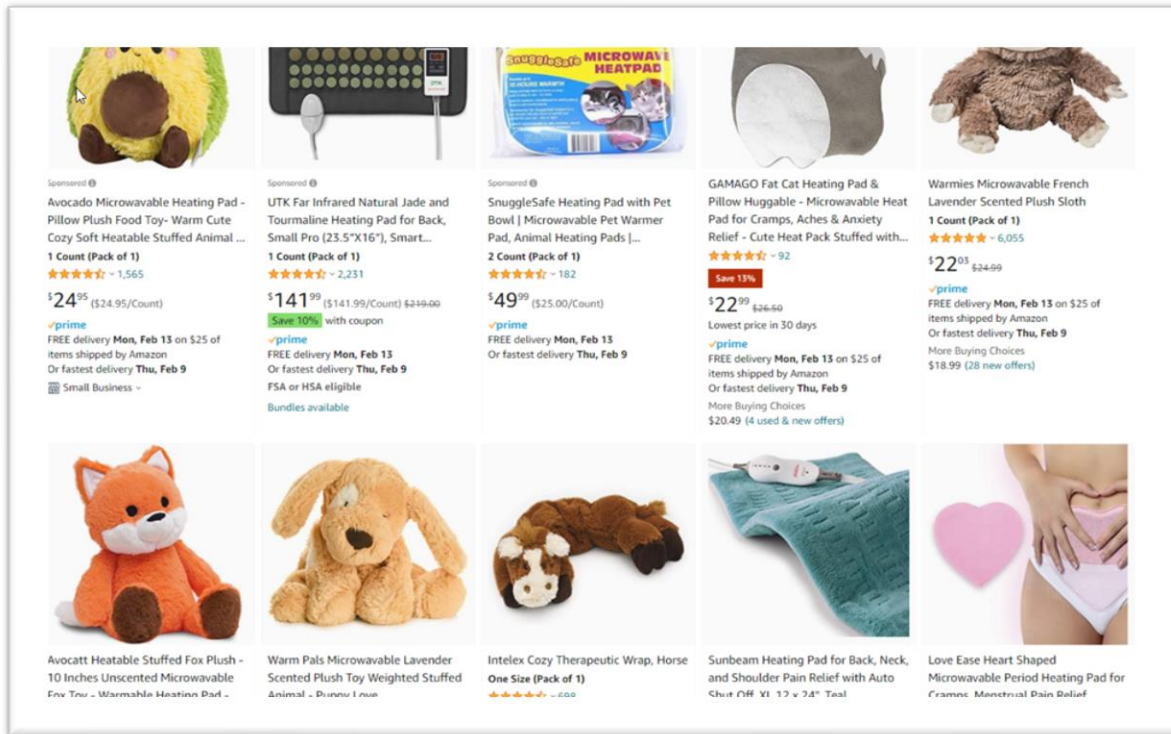
:



Warmies  
Microwavable Lavender  
Scented Plush

There's no way a unicorn can't make you feel better. The microwavable aspect is a bonus. This heat pad is ultra soft, cuddly, and is the perfect size. Another Mama on Amazon said, "I've only had it for a few days but I'm already so glad I bought my warm pal. I have a lot of stomach trouble, and I was so excited to get this so that I could have something warm to soothe my stomach pain and cuddle with. It did not disappoint. My toddler loves it too. In fact, the warm pal helped her calm down tonight when she had a major unexplained bout of crying. Great for little ones and

February 7, 2023 Office action at TSDR 17. Scary Mommy, scarymommy.com.



February 7, 2023 Office action at TSDR 19 (Amazon, amazon.com).

G. Third-party articles about relieving menstrual pain

The Examining Attorney and Applicant provided articles relating to relieving menstruation pain and cramps by using heating pads. Examples include the following:

Menstrual cramps can cause havoc with your stomach and lower back. The discomfort might range from minor to excruciating. ...

Menstruation pain has long gotten alleviated by heating pads. They're great for pain treatment because they improve circulation, which helps to relax constricted or tight muscles. Heating pads have a similar impact on uterine muscles when used to ease period cramps, allowing them to relax more. The primary reason why heat therapy is so effective for pain is that it naturally increases blood flow to the location of discomfort which relaxes the muscles.

February 7, 2023 Office action at TSDR 14 (Sacks Thyme sacksthyme.com).

Anyone who menstruates knows that the painful cramps that often coincide with your period can be agonizing. Yes, you can always take a painkiller, but heating pads for cramps are also extremely useful for easing lower abdomen and back pain related to menstruation.

May 16, 2023 Denial of reconsideration at TSDR 13 (Allure Allure.com).

Cramps occur when the tissue that lines the uterus, the endometrium, produces chemicals known as prostaglandins. ... “These substances cause the uterine muscle to contract and expel the uterine lining each month during menstruation, [which causes] the cramps that women feel.” They can be mild or very severe, and though ibuprofen may help, so can heating pads.

February 7, 2023 Office action at TSDR 12 (PopSugar Popsugar.com).

## II. Arguments

Applicant argues that the Examining Attorney’s evidence as to crustacean-shaped heating pads does not support a finding that the marketplace generally understands crustacean-shaped heating pads to be used for menstruation. 6 TTABVUE 11. Applicant contends that the evidence provided by the Examining Attorney of crustacean-shaped heating pads pertains to either Applicant’s goods, or counterfeit goods, or illicit copies. 6 TTABVUE 11. Applicant submits that the Examining Attorney’s evidence “does not meet the burden of proof” for mere descriptiveness. 6 TTABVUE 10.

Applicant states that its goods are “a stylized lobster-shaped heating pad that can be warmed in a microwave oven.” 6 TTABVUE 4. Although acknowledging that heating pads are used to “relieve certain symptoms caused by menstrual cramping,”

Applicant submits that no evidence has been submitted to show that a heating pad is used “for menstruation.” 6 TTABVUE 9.

Applicant argues that MENSTRUATION CRUSTACEAN is suggestive and that imagination, thought, and multiple steps are necessary to reach a conclusion about the alleged purpose of Applicant’s goods. 6 TTABVUE 7-10. Applicant also submits that “the rhyming, incongruous qualities of MENSTRUATION CRUSTACEAN render the mark unitary” and the mark was “intentionally adopted for its humorous, rhyming cadence” and its obvious incongruity.” 6 TTABVUE 5, 7. Applicant maintains that “the very nature of this unitary incongruity captures the consumer’s attention and identifies Applicant as the source of the goods.” 6 TTABVUE 5.

While Applicant “concur[s] with the Examiner’s findings that heating pads may be used for relief of muscle discomfort and that certain consumers tout the relieving qualities of heating pads for their period pain,” it submits that “[m]uscle discomfort and period pain are not ‘menstruation’” and “neither ‘crustacean’ nor ‘menstruation’ describe heating pads.” 9 TTABVUE 7. Applicant asserts that the “goods offered under the mark MENSTRUATION CRUSTACEAN are used not for menstruation, or for feminine monthly bleeding, but for providing warmth and alleviating discomfort.” 9 TTABVUE 4.

The Examining Attorney argues “MENSTRUATION CRUSTACEAN is merely descriptive of Applicant’s heating pads because they are in the shape of a crustacean, namely, a lobster, and are used during menstruation” to relieve pain. 8 TTABVUE 3, 6. The Examining Attorney points to applicant’s own specimen as being “in the shape

of a lobster, which is a crustacean.” 8 TTABVUE 3. The Examining Attorney points to evidence in the record demonstrating “that consumers are used to encountering heating pads in different shapes used for menstruation pain” and that such pads “exist in a myriad of shapes and animal forms, including crustaceans.” 8 TTABVUE 3-5.

The Examining Attorney argues that both the individual components MENSTRUATION and CRUSTACEAN and the composite result MENSTRUATION CRUSTACEAN are descriptive of Applicant’s goods, do not require thought or imagination to discern the nature of the goods, and do not create a unique, incongruous, or nondescriptive meaning in relation to the goods. 8 TTABVUE 6, 7.

In reply, Applicant argues that “MENSTRUATION CRUSTACEAN does not merely describe heating pads” because “neither term in the mark describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods, as the specified goods are microwavable heating pads” and that “crustacean” refers to a unique product design.” 9 TTABVUE 4.

### III. Analysis

Considering the term MENSTRUATION in Applicant’s mark, this term is defined as “a cyclical discharging of blood, secretions, and tissue debris from the uterus that recurs in nonpregnant breeding-age primate females at approximately monthly intervals.” The third-party articles made of record by the Examining Attorney show that heating pads are used for “menstruation and cramps” relief, or use as a

“menstrual heating pad.” The articles also describe the “heating pads for cramps” as being useful for easing pain related to menstruation.

Based on this information we find that MENSTRUATION, as used in connection with heating pads, describes a use or purpose of the heating pads which is to relieve the pain from cramps and other pain symptoms that occur during menstruation. A term is merely descriptive if it conveys information regarding a function, or purpose, or use of the goods. *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978); *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012). *In re Stereotaxis*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005); *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1220 (Fed. Cir. 2012).

The term CRUSTACEAN is defined as “any of a large class (Crustacea) of mostly aquatic mandibulate arthropods that have a chitinous or calcareous and chitinous exoskeleton” and includes “lobsters, shrimp, crabs, wood lice, water fleas, and barnacles.”

Product listings for Applicant’s goods identify it as “a huggable, heat-up” 14-inch “plush lobster” and “cuddly crustacean” in the shape of a lobster:



Also in the record are other third-party heating pads that are in the shape of a crab or lobster.

A term or word which merely describes the form or shape of a product falls under the proscription of Section 2(e)(1) of the Trademark Act. *In re Walker Mfg. Co.*, 359 F.2d 474, 149 USPQ 528 (CCPA 1966) (CHAMBERED PIPE merely descriptive of an exhaust system consisting of a series of small tuning chambers); *J. Kohnstam, Ltd. v. Louis Marx & Co.*, 280 F.2d 437, 126 USPQ 362, 364 (CCPA 1960) (MATCHBOX SERIES merely descriptive of toys sold in boxes having the size and appearance of matchboxes); *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982) (TOOBS, the phonetic equivalent of the word “tubes,” is merely descriptive of bathroom and kitchen fixtures in the shape of tubes); *Ward & Co. v. Cridlebaugh*, 64 USPQ 513, 514 (Comm’r 1945) (HEN SPECS describes anti-picking device which in shape and general appearance resembles a pair of spectacles, or “specs” even though it has no utility to aid vision); *Ex parte The Kilgore Mfg. Co.*, 35 USPQ 392, 392-393 (Comm’r 1937) (SIX SHOOTER is the common name for a toy gun which is a simulation of a firearm even though it has no practical utility as firearm).

Therefore, CRUSTACEAN in Applicant’s mark merely describes the shape or form of Applicant’s heating pad product, which in this case is a lobster, a type of crustacean.

Applicant states that “[c]ombined, the terms MENSTRUATION CRUSTACEAN plausibly suggest a wide variety of products, not limited to a sort of aquatic creature that menstruates or to medical and hygienic products like sanitary pads, tampons,

and menstrual cups, all of which are very much outside the scope of Applicant's goods." 6 TTABVUE 10.

However, whether a designation is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which the designation is being used on or in connection with the goods, and the possible significance that the mark would have to the average purchaser of the goods because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The question is whether someone who knows what the goods are will understand the proposed mark to convey information about them. *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

We find that MENSTRUATION CRUSTACEAN does not lose its descriptive significance when combined. The record reflects that MENSTRUATION describes the use or purpose of Applicant's heating pads, i.e., to relieve menstruation pain; CRUSTACEAN is a reference to the shape or form of the heating pads which are in the form of a lobster, a type of crustacean. Applicant's product description describes its heating pad as a "period pal,"<sup>3</sup> and "cuddly crustacean." Consumers are exposed in the marketplace to heating pads for use during menstruation for menstrual cramps or pain that come in a variety of shapes and forms, including crustaceans. In relation

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<sup>3</sup> A "period" is defined as "the bleeding from a woman's uterus that happens approximately every four weeks when she is not pregnant." <https://dictionary.cambridge.org/us/dictionary/english/period> (accessed February 7, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries with regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).



to Applicant's crustacean-shaped (lobster) heating pads which can be used to relieve pain from menstrual cramps, MENSTRUATION CRUSTACEAN is merely descriptive. Therefore, no mental thought or imagination is required to understand the nature of the goods.

Applicant argues that MENSTRUATION CRUSTACEAN is not descriptive because it is a unitary mark that has a "rhyming cadence" and is incongruous. 6 TTABVUE 4. Applicant submits that "rhyming 'menstruation' with 'crustacean' while euphonous, is absurd and disarming, and so the perceptual incongruity resulting therefrom transforms an otherwise descriptive mark into a mark capable of trademark significance and capable of identifying the source of the goods." 6 TTABVUE 4.

To be considered a unitary mark, the elements of the mark in question must be so merged "that the mark has a distinct meaning of its own independent of the meaning of its constituent elements." *Dena Corp. v. Belvedere Int'l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (EUROPEAN FORMULA above a circular design on a dark background was not a unitary mark); *In re EBS Data Processing, Inc.*, 212 USPQ 964, 966 (TTAB 1981) ("[I]f the elements are so merged together that they cannot be regarded as separable elements, the mark is a single unitary mark and not a composite mark and no disclaimer is necessary.").

In rare cases, alliterative marks, or those with a rhyming or other sound pattern, can encourage persons encountering the mark to perceive the mark as a whole. *See, e.g., In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983) (finding LIGHT N' LIVELY to

be a unitary term not subject to disclaimer because the mark “as a whole has a suggestive significance which is distinctly different from the merely descriptive significance of the term ‘LIGHT’ per se,” which is “lost in the mark as a whole”). It is well-established, however, that a rhyming pattern in and of itself does not render a mark unitary. For example, in *In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1476 (TTAB 2007), the Board found that the rhyming pattern of ZOGGS TOGGS imparts no new or different meaning to TOGGS apart from its meaning as a generic term for clothing.

As to incongruity, “it must be shown that in combination the descriptiveness of the individual words has been diminished, that the combination creates a term so incongruous or unusual as to possess no definitive meaning or significance other than that of an identifying mark for the goods.” *In re Medical Disposables Co.*, 25 USPQ2d 1801, 1804 (TTAB 1992) (citing *In re Calspan Technology Prods., Inc.*, 197 USPQ 647 (TTAB 1977)); *see e.g.*, *In re Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB 2017) (incongruity exists, for example, where a term evokes an immediate association with something unrelated to the goods or services); *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983) (SNO-RAKE incongruous and not merely descriptive of a snow removal hand tool); *In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978) (TENNIS IN THE ROUND not merely descriptive but imaginative and fanciful because the mark creates an association with the phrase “theater-in-the-round” and is incongruous because applicant’s tennis facilities are not in fact at all analogous to those used in a “theater-in-the-round”).

We disagree with Applicant that MENSTRUATION CRUSTACEAN is a unitary mark. While the rhyming pattern employed in Applicant's mark may assist consumers' perception of the mark as a combination of both terms rather than just focusing on one, we find no separate distinct overall commercial impression as a result. The two words rhyme, but the rhyming quality imparts no new or different meaning to the terms.

We also find no incongruity. Combining the merely descriptive terms "menstruation" and "crustacean" into the composite MENSTRUATION CRUSTACEAN does not negate their mere descriptiveness, nor does it create a composite that is incongruous. MENSTRUATION CRUSTACEAN merely describes the shape or form of the heating pad, which is a crustacean (lobster), and it describes the function or purpose of the heating pads which is to relieve pain from cramps during menstruation. The combination does not result in an incongruous or unusual designation with no definitive meaning or significance other than as a mark.

In this case, consumers will still immediately understand upon seeing the mark in connection with the goods that they are used to describe a heating pad in the shape of a plush lobster that is used to relieve cramps during menstruation. Simply because an applicant may have been the first or only user of a merely descriptive designation does not necessarily render the designation incongruous or distinctive if the only significance conveyed by the term is merely descriptive, as is the case here. *See In re Phoseon Tech.*, 103 USPQ2d 1822, 1826 (TTAB 2012).

Applicant submits that doubt should be resolved in its favor. 6 TTABVue 11. While doubt is resolved for Applicant, here we have no doubt that consumers who know what the goods are will require no imagination, thought or perception to discern the nature of the goods when MENSTRUATION CRUSTACEAN is used in connection with them.

#### IV. Conclusion

MENSTRUATION CRUSTACEAN is merely descriptive of Applicant's goods in that it immediately conveys a purpose or function of the goods that are in the shape of a crustacean. No multi-stage reasoning, or mental thought is required to immediately grasp the meaning of the proposed mark in connection with the goods.

**Decision:** The refusal to register MENSTRUATION CRUSTACEAN under Section 2(e)(1) of the Trademark Act is affirmed.