

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 13, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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*Navico Group Americas LLC*¹

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Serial No. 97646216
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Nichole Hayden of Nelson Mullins Riley & Scarborough LLP,
for Navico Group Americas LLC.

J. Ian Dible, Trademark Examining Attorney, Law Office 111,²
Chris Doninger, Managing Attorney.

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Before Lykos, Coggins, and Lavache,
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

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¹ Navico, Inc. owned the underlying application when the notice of appeal was filed, but it subsequently assigned the application to Navico Group Americas LLC through an assignment executed on April 3, 2024, and recorded in the USPTO on June 12, 2024, under Reel/Frame 8476/0446. Based on information in the assignment documents, we presume that Nichole Hayden, who originally represented Navico, Inc. in this proceeding is also acting as counsel for Navico Group Americas LLC.

² Examination of the underlying application was reassigned from the original examining attorney to the above-named examining attorney during the pendency of the application. We also note that, while the Examining Attorney's supplemental brief contains only the Managing Attorney's signature, the USPTO's internal prosecution history information indicates that the above-named examining attorney issued the brief, as well as other submissions to the Board.

Navico Group Americas LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark **DEPTH ROUTING** (ROUTING disclaimed) for, as amended, “Downloadable computer software designed for use with electronic marine multifunction display interfaces that provides customized autopilot navigation within a region; Recorded computer software that provides customized autopilot navigation within a region, sold as a component feature of electronic marine multifunction display interface hardware,” in International Class 9.³

The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of Applicant’s identified goods. After the Examining Attorney issued a final refusal under Section 2(e)(1), Applicant appealed and both Applicant and the Examining Attorney filed briefs.⁴

For the reasons explained below, we affirm the refusal to register.

I. Evidentiary Objection

Before turning to our analysis, we first consider the Examining Attorney’s objection to Applicant’s attempted introduction into the record of two foreign registrations owned by Applicant, as well as three third-party registrations.

³ Application Serial No. 97646216 was filed October 25, 2022, based on an intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

⁴ After the submission of Applicant’s and the Examining Attorney’s briefs, Applicant filed a request for remand to address an outstanding requirement for an acceptable identification of goods, prompting the Examining Attorney to issue a subsequent final Office action. The subsequent final Office action indicated that Applicant’s amendment to the identification satisfied the outstanding requirement, but the Examining Attorney otherwise maintained the final refusal under Section 2(e)(1). After issuance of the subsequent final Office action, the appeal resumed and the Examining Attorney filed a supplemental brief.

Applicant had not previously made these registrations of record and references them for the first time in its brief. The Examining Attorney has not considered these registrations and requests that we disregard them as untimely introduced.

The record in an appeal must be complete prior to the filing of the appeal. 37 C.F.R. § 2.142(d); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.01 (2024). Moreover, the Board does not take judicial notice of third-party registrations, or of registrations owned by an applicant that are not the subject of the appeal. TBMP § 1208.02. To properly introduce such registrations into the record, a copy of each registration must be submitted prior the filing of the appeal or with a request for remand; the mere listing of registrations either before or after filing of the appeal is not sufficient to make them of record. *Id.*; TBMP § 1207.02. Because Applicant has not timely or properly introduced the referenced registrations into the record, we sustain the Examining Attorney's objection to the registrations and have not considered them.⁵

II. Analysis

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act bars registration of a mark that is merely descriptive when used on or in connection with an applicant's identified goods. 15 U.S.C. § 1052(e)(1). A term is merely

⁵ Even if the foreign registrations were timely and properly submitted, they would be of limited probative value because they are not evidence of the use, registrability, or ownership of the subject mark in the United States. *Bureau Nat'l Interprofessionnel Du Cognac v. Int'l Better Drinks Corp.*, Opp. No. 91072088, 1988 TTAB LEXIS 13, at *31-32 (TTAB 1988) (“[A]n applicant's ownership of a foreign registration of its mark is immaterial to applicant's right to register the mark in the United States; similarly, an opposer's right to object to the registration of a mark in the United States is independent of whatever foreign trademark rights the parties may have.”); TBMP § 704.03(b)(1)(A).

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 Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 963 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 874 (Fed. Cir. 2015).⁶

Descriptiveness must be assessed not in the abstract, but “in relation to the goods 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 because of the manner of its use or intended use.” *Bayer*, 488 F.3d at 964 (citing *In re Abcor Dev.*, 588 F.2d 811, 813 (CCPA 1978)). Here, we must consider the perception of the average purchaser of recorded or downloadable computer software that provides customized autopilot navigation within a region, designed for use with, or otherwise sold as a component feature of, electronic marine multifunction display interfaces.⁷

Evidence of the relevant purchasers’ understanding of a term or phrase “may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers[,] and other publications.” *Real*

⁶ As part of an internal Board pilot program to broaden acceptable forms of legal citation in Board cases, citations in this opinion are in a form recommended in TBMP § 101.03. 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 by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For opinions of the Board, this opinion cites to the Lexis legal database and cites only precedential decisions. Practitioners should also adhere to the guidance at TBMP § 101.03.

⁷ Based on the plain meaning of Applicant’s identification of goods, Applicant’s software goods are not for standalone use, but instead are to be used in connection with electronic marine multifunction display interface hardware. That is, Applicant’s software goods are used to operate such interface hardware. Thus, consumers of Applicant’s software goods are presumably consumers of this interface hardware.

Foods Pty Ltd. v. Frito-Lay N. Am., Inc., 906 F.3d 965, 974 (Fed. Cir. 2018) (quoting *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018)). “These sources may include [w]ebsites, publications and use ‘in labels, packages, or in advertising materials directed to the goods.’” *In re N.C. Lottery*, 866 F.3d 1363, 1368 (Fed. Cir. 2017) (quoting *Abcor*, 588 F.2d at 814). And evidence of an applicant’s own usage beyond those noted above may also be considered when determining descriptiveness. *See In re Omniome, Inc.*, Ser. No. 87661190, 2019 TTAB LEXIS 414, at *14 (TTAB 2019).

Turning to our analysis, with a proposed mark like DEPTH ROUTING, we first consider the meaning of the component terms, and then determine whether the proposed mark as a whole is merely descriptive. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1255 (Fed. Cir. 2012). If DEPTH and ROUTING are each individually merely descriptive of the goods, we assess whether their combination in “Applicant’s mark ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *14-15 (TTAB 2016) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1175 (Fed. Cir. 2003)); *see also Nat’l Shooting Sports Found., Inc.*, Ser. No. 73254912, 1983 TTAB LEXIS 69, at *5 (TTAB 1983) (“Combinations of merely descriptive components have been found registrable if the juxtaposition of the words is inventive or evokes a unique commercial impression . . . or if the term has a bizarre or incongruous meaning as applied to the goods”). If each component “retains its merely descriptive significance

in relation to the goods, the combination results in a composite that is itself merely descriptive.” *Fat Boys*, 2016 TTAB LEXIS 150, at *15 (citing *In re Tower Tech., Inc.*, Ser. No. 75709532, 2002 TTAB LEXIS 300, at *10 (TTAB 2002)).

Here, Applicant’s goods are “Downloadable computer software designed for use with electronic marine multifunction display interfaces that provides customized autopilot navigation within a region; Recorded computer software that provides customized autopilot navigation within a region, sold as a component feature of electronic marine multifunction display interface hardware.”

The record contains the following definitions of the proposed mark’s component terms:

- DEPTH: “the perpendicular measurement downward from a surface” or “a deep place in a body of water”;⁸ and
- ROUTING: a form of the transitive verb “route,” which means “to send by a selected route”; “route,” in turn, is defined as “a traveled way” or “a line of travel.”⁹

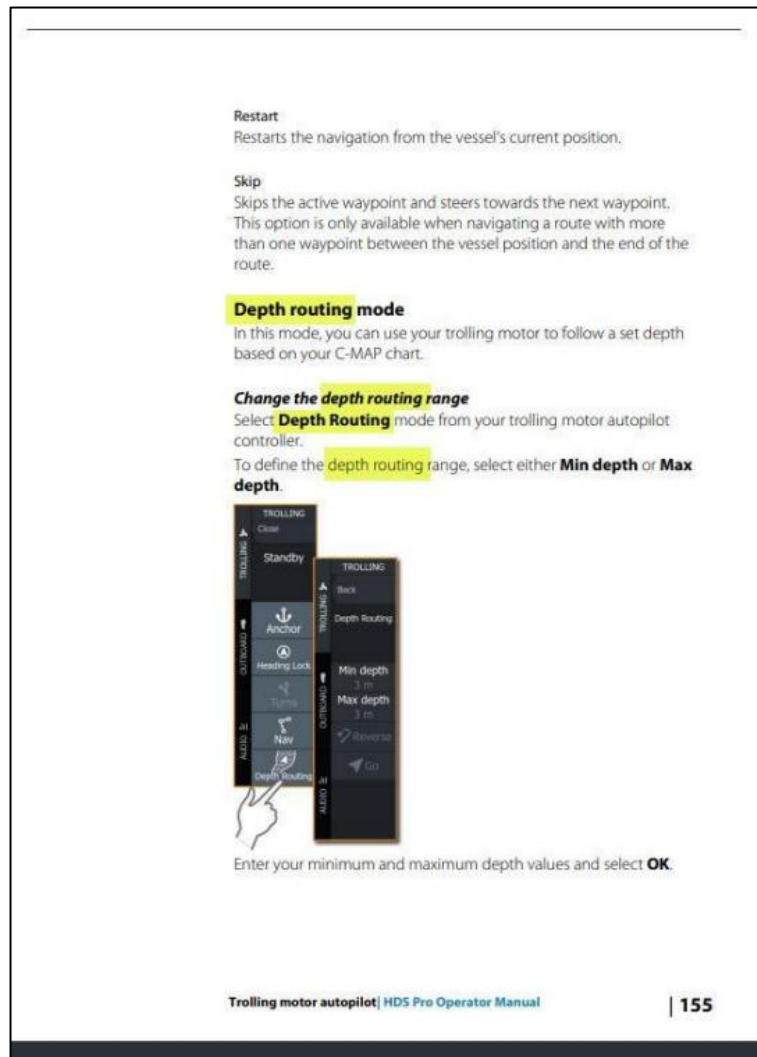
Because the application was filed under Trademark Act Section 1(b), based on Applicant’s intent to use the mark in commerce, the record contains no specimen

⁸ May 4, 2023 Nonfinal Office Action at TSDR 7 (excerpt from the online version of MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/depth> (accessed on May 4, 2023)).

The TTABVUE and Trademark Status and Document Retrieval (“TSDR”) citations in this opinion refer to the docket and electronic file database for the involved application.

⁹ August 10, 2023 Final Office Action at TSDR 6 (excerpt from the online version of MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/route> (accessed on August 9, 2023)).

showing use of the proposed mark in connection with Applicant’s identified goods. However, the Examining Attorney has provided the following screenshots showing how the wording “depth routing” is used on Applicant’s website in connection with “trolling motor autopilot” software.¹⁰



¹⁰ *Id.* at 7-8. As described in this evidence, the “trolling motor autopilot” software appears to provide an autopilot navigation function in connection with an electronic multifunction display interface hardware. Thus, we conclude that the software described in this evidence is the same type of software identified in Applicant’s identification of goods.



The first of these screenshots references a “Depth routing mode” and states that “[i]n this mode, you can use your trolling motor to **follow a set depth** based on your C-MAP chart.”¹¹ It also explains how to “[c]hange the depth routing mode.”¹² The second screenshot explains how to “activate depth routing mode” and “control the

¹¹ *Id.* at 7 (emphasis added). According to an excerpt from lowrance.com, “C-MAP® charts . . . include full-featured vector charts, custom depth shading, high-resolution coastal coverage and 1-foot contours on more than 27,000 lakes across the U.S. and Canada.” May 4, 2023 Nonfinal Office Action at TSDR 18.

¹² August 10, 2023 Final Office Action at TSDR 7.

depth routing speed.”¹³ In addition, Applicant has provided an excerpt from lowrance.com, which is apparently controlled by Applicant,¹⁴ listing “Depth Routing” among the “[e]xpanded controls for the Trolling Motors,” along with “Orbit Waypoints” and “Anchor at a distance.”¹⁵

Based on this evidence, we find that each component term in the proposed mark merely describes a function or feature of Applicant’s marine autopilot navigation software. Specifically, DEPTH merely indicates that the software’s relevant function or feature involves or concerns a measure of deepness, in this case the deepness of water. As to the term ROUTING, Applicant has disclaimed it,¹⁶ reflecting an apparent concession that it is merely descriptive. *See, e.g., In re Six Continents Ltd.*, Ser. No. 88430142, 2022 TTAB LEXIS 35, at *23 (TTAB 2022) (noting that the disclaimer of SUITES in ATWELL SUITES mark “is a concession that ‘Suites’ is not inherently distinctive”) (citing *In re DNI Holdings Ltd.*, Ser. No. 76331011, 2005 TTAB LEXIS 515, at *25 (TTAB 2005) (“[I]t has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term . . . at the time of the disclaimer.”)). Indeed, we find that ROUTING merely indicates that the software’s relevant function or feature involves or concerns the plotting of a course of travel.

¹³ *Id.* at 8.

¹⁴ An excerpt from lowrance.com indicates that Lowrance is a “part of Navico” that offers marine electronics, including trolling motors. May 4, 2023 Nonfinal Office Action at TSDR 19.

¹⁵ August 3, 2023 Response to Office Action at TSDR 4.

¹⁶ April 11, 2023 Response to Office Action at TSDR 1.

When these individually descriptive components, DEPTH and ROUTING, are combined, the result, DEPTH ROUTING, is also merely descriptive when considered in the context of the identified goods. *See DuoProSS*, 695 F.3d at 1255 (assessing the descriptiveness of the combined individual terms as a whole). Specifically, the proposed mark, as a whole, immediately and directly conveys to the relevant purchasers that Applicant’s software allows the user to plot a course of travel based on the depth of the body of water being traversed. This conclusion is reinforced by Applicant’s own operator manual, indicating that Applicant’s software allows one to “use your trolling motor to follow a set depth” and “define the depth routing range” by “enter[ing] your minimum and maximum depth values” and to set waypoints in “navigating a route.”¹⁷

Applicant, nonetheless, contends that the proposed mark is not merely descriptive because “the unitary mark DEPTH ROUTING does not directly or immediately convey knowledge of a quality, feature, or characteristic of [Applicant’s] [g]oods.”¹⁸ Applicant argues that, instead, the mark is “at least suggestive,” focusing on the definitions of the component terms in the mark and asserting that “DEPTH could relate to the depth of anything” and that “ROUTING has several definitions which could be relevant given [Applicant’s] goods.”¹⁹ According to Applicant, because of these various potential meanings of the component terms, consumers encountering

¹⁷ *Id.* at 7-8.

¹⁸ Appeal Brief, 4 TTABVUE 10.

¹⁹ *Id.* at 11.

the mark may conclude that Applicant's software "sends information about some 'depth' from one computer system to another," or that the software will create a route based upon some 'depth' – though which depth cannot be accurately known."²⁰ Thus, Applicant concludes, "a multi-step analysis requiring imagination, mature thought, and a little bit of pure luck on the part of the consumer is needed to associate DEPTH ROUTING with [Applicant's] [g]oods."²¹

We are not persuaded by Applicant's arguments, because they rest on the faulty premise that the mark is to be considered in the abstract. However, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *Hangzhou Mengku Tech. Co. v. Shanghai Zhenglang Tech. Co.*, Opp. No. 91272143, 2024 TTAB LEXIS 575, at *24 (TTAB 2024) (quoting *In re Am. Greetings Corp.*, Ser. No. 73284539, 1985 TTAB LEXIS 97, at *3-4 (TTAB 1985)). Again, the mark must be considered "in relation to the goods . . . for which registration is sought, the context in which the mark is used, and the possible significance that the mark is likely to have to the average purchaser encountering the goods . . . in the marketplace." *Hangzhou Mengku Tech.*, 2024 TTAB LEXIS 575, at *23-24.

Accordingly, the relevant question is "whether someone who knows what the goods are will immediately understand the mark as directly conveying information about them." *Id.* In this case, specifically, we must determine whether someone familiar with Applicant's marine autopilot navigation software will understand

²⁰ *Id.* at 12.

²¹ *Id.*

DEPTH ROUTING to convey information about the software. Based on the evidence, we find that, in the context of Applicant's goods, the meaning of the terms DEPTH and ROUTING, both separately and together, would be immediately clear to purchasers seeking such goods. And, contrary to Applicant's arguments, the fact that the component terms in Applicant's mark may have other meanings in other contexts is not relevant to our determination here. *Coach Servs. v. Triumph Learning LLC*, Opp. No. 91170112, 2010 TTAB LEXIS 383, at *52 (TTAB 2010) (“[T]hat a term may have other meanings in different contexts is not controlling.”). “[S]o long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.” *In re Mueller Sports Med., Inc.*, Ser. No. 87209946, 2018 TTAB LEXIS 156, at *18 (TTAB 2018) (quoting *In re Chopper Indus.*, Ser. No. 73273140, 1984 TTAB LEXIS 118, at *5-6 (TTAB 1984)).

We are also unpersuaded by Applicant's argument that consumers will find the proposed mark to be incongruous because “there are no roads in the water, and it is impossible to navigate through deep places in a body of water by selecting a specific road.”²² This particular interpretation of the mark relies on an out-of-context meaning of the term “routing”²³ and is at odds with the description of the “depth routing” feature in Applicant's own operator manual. In short, there is nothing in the phrase DEPTH ROUTING that purchasers of marine autopilot navigation software would perceive as incongruous, ambiguous, or even suggestive, nor does the phrase

²² *Id.* at 7-8.

²³ August 3, 2023 Response to Office Action at TSDR 2.

require further imagination, mental processing, or information gathering to understand its meaning. Rather, when DEPTH ROUTING is considered in the context of Applicant's goods, relevant purchasers will immediately recognize the readily apparent descriptive significance of the phrase.

Lastly, Applicant notes that, "to the extent there is any doubt as to whether a mark is suggestive or merely descriptive, the doubt must be resolved in [Applicant's] favor by finding the proposed mark to be suggestive."²⁴ While we agree with that general proposition, we disagree that any such doubt exists here. *See In re Berkely Lights, Inc.*, Ser. No. 88895703, 2022 TTAB LEXIS 382, at *30 (TTAB 2022) ("To be sure, when the Board has doubt on the issue of descriptiveness, it resolves such doubt in favor of the applicant. But the 'rule of doubt' applies only where the Board expresses some doubt." (citations omitted)).

III. Conclusion

We have carefully considered all of the arguments and evidence of record and find that the evidence shows Applicant's proposed mark DEPTH ROUTING, when considered as a whole, is merely descriptive of Applicant's goods.

Decision: We affirm the refusal to register Applicant's proposed **DEPTH ROUTING** mark under Trademark Act Section 2(e)(1).

²⁴ Appeal Brief, 4 TTABVUE 14.