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Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re P.I. Engineering

Serial No. 76404455

John G. Posa of Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. for P.I. Engineering.

James A. Rauen, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Walters, Bottorff and Holtzman, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark RAILDRIVER (in typed form) for goods identified in the application as "electronic train controllers" in Class 9.¹

At issue in this appeal is the Trademark Examining Attorney's final refusal to register the mark on the ground

¹ Serial No. 76404455, filed on May 7, 2002. The application is based on applicant's asserted bona fide intent to use the mark in commerce.

that it is merely descriptive of the identified goods. See Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). The appeal has been fully briefed, but no oral hearing was requested. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, 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. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is 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 or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); see also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applicant has submitted a printout from its website which illustrates what the identified goods are and how they operate. As applicant states in its brief:

The product is a unit with levers, switches and buttons, that interfaces to a computer running a train simulator such as the Microsoft train simulator which has been available for some time. Rather than use the computer's generic interface consisting of the keyboard, mouse and so forth, Appellant's rail driver product provides levers, switches and buttons that make the enthusiast feel like they are driving the simulated train on the screen of the computer using a throttle and reverser, and brake lever specialized for such purposes.

(Brief at 3.) Applicant's website also includes the following language describing the product:

RailDriver Train Cab Controllers put levers, switches, and buttons in your hands to make you feel like you're driving a train, not a computer. Programmable keys put commands on the RailDriver, so you can put the keyboard away. Drive your train with a throttle and reverser, not a keyboard. Apply your brakes with levers, not a mouse.

The Trademark Examining Attorney has submitted evidence which shows that train operators are also called "rail drivers." See, e.g., the following excerpts from articles retrieved from the NEXIS electronic database:

The union representing bus and rail drivers, the United Transportation Union, would not comment. Tension between the UTU and AFSCME emerged during the nearly monthlong strike in 2000, when some AFSCME members crossed the drivers' picket lines.
(Los Angeles Times, August 7, 2002);

Goldy Norton, spokesman for the United Transportation Union, the union of MTA bus and rail drivers, said the union remains opposed to transit zones...
(Daily News (Los Angeles, CA), December 4, 2001);

... indefinitely postponed the April 3 opening of the Hiawatha light-rail line. ... If there is a strike, training for rail drivers would stop.
(Star Tribune (Minneapolis, MN), February 18, 2004);

The scenario was the same the last time MTA had a strike ... in September/October 2000, when bus

and rail drivers hit the picket lines. Back then, MTA's only trains were the Red Line subway, the Long Beach Blue Line and the Metro Green Line.

(San Gabriel Valley Tribune, January 22, 2004);

The Gold Line was dealt an unenviable blow in October, when MTA mechanics went on strike, and bus and rail drivers followed suit. The work stoppage lasted until late November, with Gold Line trains resuming service after a 37-day disruption.

(Pasadena Star-News, December 27, 2003);

MTA buses and trains, including the Gold Line, stopped running on Oct. 14 when MTA mechanics walked off the job and bus and rail drivers joined them.

(Pasadena Star-News, October 21, 2003);

We find that this NEXIS evidence establishes that train operators are and can be called "rail drivers." Contrary to applicant's argument, it is not dispositive that the NEXIS stories all appear to use "rail drivers" to refer to public employees who operate trains as part of a public transportation system. If "rail driver" accurately describes or names the drivers of public transportation system trains, there is no reason it would not also be understood to describe or name drivers of any other type of train as well.

Next, we find that applicant's mark RAILDRIVER is legally equivalent to "rail driver." The meaning or commercial impression of the term is not altered or

otherwise affected by its compression from two words into one word. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (SCREENWIPE legally equivalent to "screen wipe"); *In re Planalytics Inc.*, *supra* (GASBUYER legally equivalent to "gas buyer").

We find that RAILDRIVER is merely descriptive of applicant's product because it directly informs purchasers of a key feature and purpose of the product, i.e., that the product allows the user to simulate the experience of being a rail driver. As applicant's website states, the controllers "make you feel like you're driving a train, not a computer." The purpose of applicant's product, which is used in conjunction with train simulator software, is to allow the user to play or assume a particular role or persona, i.e., that of a rail driver (as opposed to a pilot, or a race car driver). RAILDRIVER directly describes that role or persona, and thus merely describes a key feature and purpose of the product.

It is not dispositive that the "rail driver" role that applicant's product enables the user to assume is a simulation, i.e., that the product merely allows the user to *pretend* to be a rail driver. The purpose of the goods is to create just such a simulation, and RAILDRIVER immediately informs purchasers of that fact. *Cf. In re*

Guylay, supra, where the court affirmed the Board's decision holding APPLE PIE to be merely descriptive of potpourri with a simulated apple pie scent; it was not dispositive that the potpourri's scent was only simulated and not derived from actual apple pie. Likewise, in *In re J & D Brauner, Inc.*, 173 USPQ 441 (TTAB 1972), the mark THE BUTCHER BLOCK was held to be merely descriptive of "furniture for household use, namely, tables, serving carts, kitchen counters and cabinet tops comprised of protective decorative material, and desks," notwithstanding that the goods were not and would not be mistaken for actual butcher blocks, but were instead merely covered with a laminated decorative board designed to simulate the appearance of a butcher's block.

For the reasons discussed above, we find that RAILDRIVER is merely descriptive of the "electronic train controllers" identified in applicant's application, and that registration of applicant's mark therefore is barred under Trademark Act Section 2(e)(1). Competitors marketing products similar to applicant's, the purpose of which is to enable the user to pretend to be a "rail driver," must be free to use RAILDRIVER in connection with such goods.

Decision: The refusal to register is affirmed.