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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Jones Investment Co. Inc.

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Serial No. 77249189

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Nancy Dodderidge for Jones Investment Co. Inc.

Kapil K. Bhanot, Trademark Examining Attorney, Law Office  
108 (Andrew Lawrence, Managing Attorney).

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Before Quinn, Grendel and Drost, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Jones Investment Co. Inc. filed, on August 7, 2007,  
intent-to-use application Serial No. 77249189 to register  
the mark GREEN INDIGO for "bottoms; [and] tops."

The trademark examining attorney refused registration  
under Section 2(e)(1) of the Trademark Act, 15 U.S.C.  
§1052(e)(1), on the ground that applicant's mark, when  
applied to applicant's goods, is merely descriptive  
thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

The examining attorney maintains that applicant's mark "describes a specific characteristic of the goods, namely that they may come in the colors GREEN or INDIGO." (Brief, p. 2). In support of the refusal, the examining attorney submitted dictionary definitions of the terms "green" and "indigo," and excerpts of third-party websites showing that green and indigo are common colors for clothing items. Although the examining attorney acknowledges that the terms have multiple meanings, "the primary use of the terms in clothing are [sic] to describe colors." (Brief, p. 4). Lastly, the examining attorney asserts that the terms "green" and "indigo" must remain free for use by competitors in the clothing field so they can accurately describe color options to consumers.

Applicant argues that the terms "green" and "indigo" have meanings (even in the same context, namely clothing) other than as color names and, when used in combination to form applicant's mark, are incongruous. Applicant "has taken a seemingly incongruous combination of colors to signal to consumers to look beyond their meanings as primary colors alone." (Response, March 5, 2008). Applicant goes on to state that it does not intend to offer

only green and indigo colored clothing, and that its mark is suggestive of "a fresh, youthful and environmentally-friendly" jeans wear line. With respect to the term "green," applicant points to the existence of environmentally-aware clothing, as shown by its evidence of a Google search report and corresponding excerpts of third-party websites for "green clothing," with the first ten hits relating to such clothing. As for "indigo," applicant contends that this term "further plays upon the earthy-vibe" conveyed by the mark as a whole. More specifically, applicant asserts that its use of the term plays upon its meaning as a dye made from plants to suggest an earth-conscious vibe for its clothing. "By combining two seemingly incongruous colors, GREEN INDIGO requires thought and perception on behalf of consumers to comprehend the earthy connotations of the mark and the youthful, hip and fresh undertones of the jeans wear line." (Brief, p. 6). Applicant has supplied dictionary definitions of the words comprising its mark.

The examining attorney bears the burden of showing that a mark is merely descriptive of the relevant goods and/or services. *In re Merrill, Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). A mark is descriptive if it "forthwith conveys an

immediate idea of the ingredients, qualities or characteristics of the goods [and/or services]."

*Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976) (emphasis added). See *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the qualities, features or characteristics of the goods and/or services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981). See *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949, 952 (TTAB 1981); *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

Of particular importance to the analysis in the present case is the principle that when two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely

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descriptive. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs]; *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) [FOOD & BEVERAGE ONLINE merely descriptive of news information services for the food processing industry]; and *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) [SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays].

The term "green" obviously is a color name. The term also has other meanings, in particular "environmentally sound or beneficial; young; full of life and vigor; fresh." The term "indigo" is defined in pertinent part as "any of various shrubs or herbs of the genus *Indigofera* in the pea family, having odd-pinnate leaves and usually red or purple flowers in axillary racemes; a blue dye obtained from these plants or produced synthetically." ([www.dictionary.com](http://www.dictionary.com)).

Given the dictionary definitions of record, the individual words comprising applicant's mark have commonly understood meanings that are merely descriptive for clothing. We do not believe, however, that the specific

combination of the words GREEN INDIGO results in a designation which, when considered in its entirety, is merely descriptive of applicant's goods. That is to say, applicant's mark, as intended to be used in connection with clothing, does not convey an immediate idea about the goods with any degree of particularity. Whether the term "green" is perceived as the name of a color, a term designating an environmentally-friendly product or a term projecting a fresh or youthful image, its combination with the term "indigo" does not result in a merely descriptive designation. The mark GREEN INDIGO requires imagination, thought and perception to reach any conclusion as to the nature of the goods. A consumer must engage in mature thought or follow a multi-stage reasoning process to determine any specific attributes of applicant's product: first, a consumer must connect the term "green" to a color, an environmental message or youth, and then must connect "indigo" to either a plant or a dye, let alone color. After making these respective connections, the consumer is then forced to make some sense out of the various meanings conveyed by the incongruous combination of the two terms. This need to resort to imagination renders the mark only suggestive. In sum, the significance of the incongruous combination GREEN INDIGO as a whole, when considered in the

context of the goods, is somewhat vague and unclear, and we find that the mark is suggestive of environmentally-friendly clothing that uses natural dye extracted from indigo plants.

The prohibition against registration of merely descriptive designations is intended to prevent one party from precluding all others from fair use of descriptive terminology in connection with goods and/or services that are described thereby. We acknowledge that the record includes a single third-party use of "Green Indigo" in connection with pajamas ("Green Indigo Paisley Jacquard Silk Pajama"). A closer examination of this evidence, however, shows that it is hardly probative of the examining attorney's position. Contrary to the examining attorney's contention, this use is not "green indigo" as a color name; rather, the use of "Green" in this context is a reference to the name of the clothing manufacturer, namely "Mary Green." Accordingly, nothing in the record suggests that others in the clothing field have used or would need to use the two-word combination GREEN INDIGO to describe their goods. We agree with applicant's assessment that applicant's mark, if registered, would not "preclude others from using the terms 'green' or 'indigo' in a descriptive manner to describe a color in which a clothing item might

be offered." (Reply Brief, p. 2). That the record is devoid of any evidence of descriptive use of "green indigo" in the clothing industry is indicative that applicant's mark is only suggestive. See *Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co.*, 186 USPQ 557 (TTAB 1975), *aff'd*, 189 USPQ 348 (CCPA 1976).

The Board has noted on a number of prior occasions that there is a thin line of demarcation between a suggestive and a merely descriptive designation. To the extent that any of the examining attorney's arguments and evidence raise doubts about the merely descriptive character of applicant's mark, such doubts are to be resolved in applicant's favor and the mark should be published, thus allowing a third party to file an opposition and develop a more comprehensive record. See *e.g.*, *In re Atavio*, 25 USPQ2d 1361 (TTAB 1992); *In re Morton-Norwich Products, Inc.*, 209 USPQ 791 (TTAB 1981); and *In re Gourmet Bakers, Inc.*, supra.

**Decision:** The refusal to register is reversed.