

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
January 31, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brilliant Design, LLC

Serial No. 77842712

William Squire of Carella Byrne Bain Gilfillan Cecchi for
Brilliant Design, LLC.

Patrick W. Shanahan, Trademark Examining Attorney, Law
Office 116 (Michael W. Baird, Managing Attorney).

Before Taylor, Bergsman and Wolfson,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Brilliant Design, LLC ("applicant") filed an intent-to-use application on the Principal Register for the mark PETTICOAT VINTAGE, in standard character form, for "women's clothing, namely, skirts, pants, denims in the nature of vests, jumpers, pants, shorts, skirts, and dresses made of denim, tee shirts, knit tops, sweaters, jackets, shorts, and knit dresses," in Class 25. Applicant disclaimed the exclusive right to use the word "Petticoat."

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(1) of the Trademark Act

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of 1946, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive and, in the alternative, on the ground that applicant's mark is deceptively misdescriptive. The examining attorney argues that the mark PETTICOAT VINTAGE "immediately informs the consumer that the goods are in the nature of women's skirts and related garments which are classical or of an enduring style."¹ In the alternative, the examining attorney argues that if applicant's clothing is not vintage in nature or style, the mark PETTICOAT VINTAGE misdescribes the nature or style of applicant's clothing because consumers are likely to believe that the clothing is of a vintage style.²

Applicant argues, on the other hand, that when the mark PETTICOAT VINTAGE is viewed in its entirety, the odd juxtaposition of the words makes the mark suggestive; that is, the term PETTICOAT VINTAGE is meaningless because "Petticoat" is an adjective modifying the noun "Vintage" and there is no such thing as a "Petticoat Vintage."³

The examining attorney submitted the evidence listed below to support the refusals:

1. "Petticoat" is defined as follows:

¹ Examining Attorney's Brief, unnumbered page 5.

² Examining Attorney's Brief, unnumbered page 6.

³ Applicant's Reply Brief, p. 2.

1: a skirt worn by women, girls or young children as a: an outer skirt formerly worn by women and small children b: a fancy skirt made to show below a draped-up overskirt c: an underskirt usually a little shorter than outer clothing and often made with a ruffled, pleated or lace edge.⁴

2. "Vintage" is defined, *inter alia*, as follows:

2: of old, recognized, and enduring interest, importance, or quality: CLASSIC.⁵

3. Eleven registrations for clothing in which the mark consists in part of the word "Vintage" and the registrants have disclaimed the exclusive right to use the word "Vintage."⁶ One registration for clothing in which the mark consists in part of the word "Vintage" on the Supplemental Register.⁷

4. An excerpt from the ZAZZLE website (zazzle.com) advertising the sale of "Vintage t-shirts."⁸

Vintage T-Shirt

Retro is alive. Hit the roller disco in one of our vintage t-shirts. Designs from the 70's and 80's, and distressed images that look like you've owned the shirt for years, give you that Old School feel. For real authenticity, put the design on a distressed Tee.

⁴ Merriam-Webster Online (Merriam-webster.com) attached to the January 5, 2010 Office Action.

⁵ Merriam-Webster Online (Merriam-webster.com) attached to the July 25, 2010 Office Action.

⁶ January 10, 2005 Office Action.

⁷ January 10, 2005 Office Action.

⁸ January 10, 2010 Office Action.

Choose from thousands of designs or create your own vintage tee. Our vintage shirts are guaranteed to look old and worn out right out of the box or your money back.

5. An excerpt from the NELDA'S VINTAGE CLOTHING website (*neldasvintageclothing.com*) advertising "a large selection of authentic vintage clothing and new styles that have vintage flair."⁹

6. Copies of 11 registrations for retail clothing store services in which the marks consist in part of the word "Vintage" and the registrants have disclaimed the exclusive right to use the word "Vintage."¹⁰ Two registrations for retail clothing store services in which the marks consist in part of the word "Vintage" issued on the Supplemental Register.¹¹

7. An excerpt from the GOOGLE search engine displaying the use of the term "Vintage Denim" for several manufacturers, including ORVIS, TRUE RELIGION and LAND'S END.¹²

8. An excerpt from the TARGET website (*target.com*) advertising the sale of BLUE STAR VINTAGE DENIM JEANS.¹³

⁹ January 10, 2010 Office Action.

¹⁰ July 25, 2010 Office Action.

¹¹ July 25, 2010 Office Action.

¹² July 25, 2010 Office Action.

¹³ July 25, 2010 Office Action.

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9. An excerpt from the PAPAYA website (*papayaclothing.com*) advertising the sale of a "Floral Vintage Knit Strap Dress."¹⁴

10. An excerpt from the STOP STARING! Website (*stopstaringclothing.com*) advertising the sale of "Vintage Styles," "Vintage Dresses" and "Vintage Clothing Collection."¹⁵

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products and services it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods and services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is not whether someone presented only with the mark could guess the products listed in the description of goods. Rather, the question is whether someone who knows what the products are will understand the mark to convey

¹⁴ July 25, 2010 Office Action.

¹⁵ July 25, 2010 Office Action.

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information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

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 or services, the combination results in a composite that is itself merely descriptive. However, if the composite term creates a unique or incongruous meaning, the mark is not merely descriptive. See *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of new information services in the food processing industry). In this regard,

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we must consider the issue of descriptiveness by looking at the mark in its entirety. Common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. See *Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989).

If one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); see also, *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). Incongruity is a strong indication that a mark is suggestive rather than merely descriptive. *In re Tennis in the Round, Inc.*, 199 USPQ at 498 (the association of applicant's mark TENNIS IN THE ROUND with the phrase "theater-in-the-round" creates an incongruity because applicant's services do not involve a tennis court in the middle of an auditorium).

Finally, the issue of descriptiveness is determined by the description of goods set forth in the application, rather than in reference to the precise nature of the goods on which the mark is actually used or is intended to be

used. *In re Vehicle Information Network Inc.*, 32 USPQ2d 1542 (TTAB 1994). In this regard, the description of goods is broad enough to include "vintage" or "classic" clothing and, thus, applicant's argument that its clothing products "are not of vintage style or classic look" is not well taken.¹⁶

We start our analysis of the registrability of PETTICOAT VINTAGE by inquiring whether "Vintage" when coupled with the concededly descriptive word "petticoat" creates a trademark or merely describes a "petticoat" with particular, readily understood attributes. As indicated above, the question of whether a term is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with those goods and the possible significance that term will have to the average purchaser or user of those goods. In this case, because a "petticoat" is a skirt and "vintage" means classic, purchasers will readily perceive the term PETTICOAT VINTAGE as meaning a classic petticoat or skirt. We see no reason why purchasers would view the word "vintage, when used in connection with women's clothing, to

¹⁶ Applicant's Brief, p. 2.

mean, as applicant contends, a year wine was produced.¹⁷ The two words "Petticoat" and "Vintage" have readily understood meanings in connection with clothing, and when combined as the term PETTICOAT VINTAGE and used in connection with women's clothing, the mark merely describes skirts that have a classic style.

While applicant argues that its mark creates a unique commercial impression, we do not agree. As correctly noted by applicant, the term PETTICOAT VINTAGE is not perfect English; however, its meaning is clear and the odd combination of the words does not change the meaning of the term, nor create an incongruous term. We see no reason for consumers to think of other possible meanings of PETTICOAT VINTAGE as this would require considering the mark in the abstract, rather than in connection with women's clothing. Thus, we find that the mark PETTICOAT VINTAGE, when used in connection with women's clothing, immediately informs the purchaser, without the need for a multistep reasoning process, conjecture or speculation, that the subject clothing is of classic style and, therefore, it is merely descriptive.

Applicant argues, in essence, that the word "vintage" is so widely used that it has no descriptive significance.

¹⁷ Applicant's Reply Brief, pp. 1-2.

The mark "Vintage" when used by others in their trademarks/service marks is used as a meaningless term that conveys a certain ambience to the mark and thus to the goods and services. This meaningless term thus has acquired a new meaning in trademark/service mark usage. ... Vintage on the other hand is not generic in the trademark sense, where it is not a descriptive name of the associated goods as just noted, but generic in the sense it is a meaningless word when used in a trademark/sense.¹⁸

Applicant's argument, as best we understand it, is incorrect because it does not take into account the fact that, as established by the evidence of record, the word "Vintage" has a readily understood meaning when used in connection with clothing (*i.e.*, classic). Also, to the extent that applicant references the use of the word "Vintage" in connection with goods other than clothing, those references are not relevant to the issue before us.

With respect to the refusal on the ground that applicant's mark is deceptively misdescriptive, we find that applicant's mark is not deceptively misdescriptive. As with the issue of descriptiveness, the issue of whether a mark is deceptively misdescriptive is determined by the description of goods set forth in the application rather than what the evidence may disclose such goods to be. See

¹⁸ Applicant's Brief, p. 3.

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In re Organik Technologies Inc., 41 USPQ2d 1690, 1694 (TTAB 1997). In view of the unrestricted nature of applicant's identification of goods, we must presume that applicant's goods include vintage clothing, and therefore, applicant's mark is not deceptively misdescriptive.

Decision: The refusal to register on the ground that applicant's mark PETTICOAT VINTAGE is deceptively misdescriptive is reversed.

The refusal to register on the ground that applicant's mark PETTICOAT VINTAGE is merely descriptive is affirmed and registration is refused.