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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 B. Gould Jewelry, Inc.

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Serial No. 78836910

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B. Craig Killough of Barnwell Whaley Patterson & Helms LLC  
for B. Gould Jewelry, Inc.

Michael A. Wiener, Trademark Examining Attorney, Law Office  
108 (Andrew Lawrence, Managing Attorney)

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Before Hairston, Walsh and Bergsman, Administrative  
Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

B. Gould Jewelry, Inc. (applicant) has applied to  
register the mark CHARLESTON GATE in standard characters on  
the Principal Register for goods now identified as  
"jewelry, namely, earrings, necklaces, pins, slides, rings,  
bracelets, pendants, charms, key rings" in International  
Class 14.<sup>1</sup> The Examining Attorney has finally refused

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<sup>1</sup> Serial No. 78836910, filed March 14, 2006, claiming first use  
of the mark anywhere and first use of the mark in commerce on  
April 26, 2004.

registration on the ground that CHARLESTON GATE merely describes the identified goods under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Both applicant and the Examining Attorney have filed briefs. We affirm.

A term is merely descriptive of goods within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 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 in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods. See *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778 (Fed. Cir. 2003) (MONTANA SERIES and PHILADELPHIA CARD held merely descriptive of credit card services featuring credit cards depicting scenes or subject matter of, or relating to the state of Montana or the city of Philadelphia); *In re Busch Entertainment Corp.*, 60 USPQ2d 1130 (TTAB 2000) (EGYPT held merely descriptive of amusement park services; namely an area within an amusement park). See generally *In re H.U.D.D.L.E.*, 216 USPQ 358, 359

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(TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services identified in the application, and the possible significance that the term would have to the average purchaser or user of the goods or services. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The question whether a mark is merely descriptive is *not* determined by asking whether one can guess from the mark what the goods are, but rather by asking, when the mark is seen on or in connection with the goods, whether it immediately conveys information about their nature. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998).

The Examining Attorney argues that CHARLESTON GATE is merely descriptive of "jewelry, namely, earrings, necklaces, pins, slides, rings, bracelets, pendants, charms, key rings" because the goods "... contain the designs of the famous gates of Charleston, South Carolina, or replications thereof." Examining Attorney's Brief at 4. The Examining Attorney states further, "The city of Charleston, South Carolina, is famous for the design of the

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large hand-crafted gates built over centuries that dot the city. The term 'CHARLESTON GATE' refers to those gates and the renowned designs of those gates." *Id.*

The Examining Attorney has provided substantial evidence to support this position.

For example, an excerpt from virtualtourist.com states, "Charleston Gate Jewelry is fantastic!! Although a touch on the pricey side, these items are crafted to resemble various gates and ironwork across the city..." Attachment to February 27, 2008 Office Action.

Another excerpt from g2silver.com, a site featuring applicant's goods, states, "The ornamental iron works found throughout Charleston remind us that much of Charleston's history began with influences from England and France. These delicate patterns of iron work gates have been the inspiration for the jewelry designs you will find here." Attachment to Office Action of May 3, 2007. The site also displays photos of particular iron work gates in Charleston alongside pieces of jewelry based on designs from the gates, for example, the gate at St. Michael's Episcopal Church and related rings, pendants and other jewelry. There are similar examples from South Carolina Society Hall and First Scots Presbyterian Church. The pages where these

displays appear also refer to new product offerings stating, "New Gate Designs Now Available." *Id.*

Excerpts from philipsimmons.org, a site with no apparent connection to applicant, also displays jewelry based on designs of the iron gates of Charleston. For example, a brooch and an earring set are displayed with the explanation, "This Walkway gate is the entrance of Philip Simmons Garden from 91 Anson Street, Charleston SC. Simmons designed this gate in 1992." *Id.* The excerpt indicates further that Philip Simmons was a renown Charleston ironworker, born in 1912. This is an example of a continuing tradition in the creation of iron work gates in recent times and the creation of jewelry based on the gate design.

An excerpt from croghansjewelbox.com associated with Croghan's Jewel Box, a jewelry store in Charleston, includes a photo of various pieces of jewelry with the following statement: "Remember your wedding in Charleston with gate jewelry as your bridesmaid gift. Gate designs from historic churches and homes are reproduced in this jewelry..." *Id.*

Excerpts from bcdservices.com also show jewelry items based on Charleston gate designs, for example, the First Scots Cuff Bracelet, Society Hall Cuff Bracelet, Society

Hall Post Earrings, and others. *Id.* It is unclear whether these goods are associated with applicant.

Applicant begins its argument by stating: "The applicant created novel and unique jewelry designs that are interpretations of wrought iron structures located in Charleston South Carolina." Applicant's Brief at 4 (footnote omitted). Applicant then argues, "It (sic) respectfully submitted that creative adaptations of obscure wrought iron structures into jewelry does not cause the Applicant's Mark to be rendered merely descriptive of Applicant's goods." *Id.* To support its argument applicant provides a dictionary definition of "gate" and, based on that definition, argues:

None of these definitions, identify, teach or disclose a feature or characteristic of Applicant's goods. The goods are not a gate; the goods do not comprise a gate; no part of the goods is a gate; the goods do not, and could not function as, or be used as, a gate. The jewelry has no feature or characteristic associated with gates that are in common use. The ornamental appearance of applicant's goods is not a feature or characteristic of a "gate" as that term is known and understood by the typical consumer.

*Id.* at 5-6.

Based on all of the evidence of record, we conclude that CHARLESTON GATE is merely descriptive of "jewelry, namely, earrings, necklaces, pins, slides, rings, bracelets, pendants, charms, key rings."

In the *MBNA* case, one similar to this case, the Court of Appeals for the Federal Circuit analyzed the issue, as follows:

The words MONTANA SERIES and PHILADELPHIA CARD are displayed prominently on MBNA's promotional materials. The appeal to regional pride and loyalties is a significant feature of MBNA's method of promoting and marketing these affinity credit cards as well as of the services themselves. Thus, to the consumers, MONTANA SERIES and PHILADELPHIA CARD immediately convey information about the specific regional affinity, or the user group to which these services are directed. One does not need "imagination, thought, and perception" to arrive at the conclusion that MONTANA SERIES is a series of cards featuring Montana and appealing to those who would like to have credit cards naming their favored state and depicting Montana scenes, and that PHILADELPHIA CARD features scenes of Philadelphia on the cards and appeals to those favoring Philadelphia and wishing to be identified with it. Thus, the two marks clearly are not suggestive. Neither are the marks arbitrary when used for the affinity credit card services because the marks describe which geographic region the affinity card concerns.

*In re MBNA America Bank N.A.*, 67 USPQ2d at 1781.

In this case, the relationship between the mark and goods is more direct than the relationship in the *MBNA* case. Jewelry is an aesthetically pleasing item of personal adornment. Thus, the design is essential to the function, that is, the aesthetic appeal, of the goods.

The evidence establishes that CHARLESTON GATE identifies the designs applicant employs in its jewelry.

The evidence also establishes that relevant consumers will recognize CHARLESTON GATE as identifying those designs. Indeed, applicant's own marketing is based on this assumption. The evidence belies applicant's claim that these designs are obscure and unknown to potential purchasers. In this regard, it is applicant's own use of CHARLESTON GATE which is most probative of the descriptive significance of the mark in relation to the goods. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987).

Applicant consistently avoids mention of "gate" designs in its argument, preferring to use terms such as "wrought iron structures." However, the evidence shows that many, if not most, of applicant's goods derive their designs from gates, rather than other types of iron works.

Also, applicant's argument based on the definition of "gate" misses the point. The Examining Attorney has not argued that the goods are gates or function as gates. Rather, when we view the CHARLESTON GATE mark as a whole and as applied to the goods, which we must, it is clear that the mark merely describes the designs which are the essential feature of the goods, jewelry. *In re Polo International Inc.*, 51 USPQ2d at 1062.

For completeness we note that we have considered the letters which applicant submitted in support of registration, that is, an exchange of letters between applicant and an alleged infringer and a letter from the Historic Charleston Foundation indicating that it executed an agreement with applicant and that it considers CHARLESTON GATE distinctive of applicant's jewelry.

The exchange of letters with the alleged infringer is not probative of the issue before us. The fact that a third party may have acquiesced to applicant's demand to cease using CHARLESTON GATE has no bearing on our determination that CHARLESTON GATE is merely descriptive. The fact that another party was using CHARLESTON GATE to identify its goods may even be construed as support for our determination that CHARLESTON GATE is merely descriptive, though we have not relied on the letters for this purpose.

As to the Foundation letter, we likewise find it not probative. Applicant's position in this application is that CHARLESTON GATE is inherently distinctive. The letter is ambiguous on this point. That is, it merely expresses an opinion that CHARLESTON GATE is "distinctive of their [applicant's] jewelry" without specifying whether it is inherently so or whether it acquired distinctiveness. It is entirely understandable that the Foundation may not

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appreciate the significance of this legal distinction, a distinction we must recognize in considering this evidence. In any event, we find this evidence unpersuasive when considered along with the other evidence in this case.

Accordingly, we conclude that CHARLESTON GATE is merely descriptive of "jewelry, namely, earrings, necklaces, pins, slides, rings, bracelets, pendants, charms, key rings."

**Decision:** We affirm the refusal under Trademark Act Section 2(e)(1).