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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re True Value Company

Serial No. 78841512
Serial No. 78841539
Serial No. 78841557

Christopher J. Schulte, of Merchant & Gould P.C., for True Value Company.

Katy Halmen, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).¹

Before Rogers, Walsh and Ritchie de Larena, Administrative Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark Judge:

True Value Company, applicant herein, filed three applications seeking to register "MASTER PLUMBER" on the Principal Register for goods identified as follows:

1. "Sump pumps; Utility pumps, namely, centrifugal pumps, electric pumps, oil drain

¹ Examining attorney Richard White presented the oral argument for the Office.

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

pumps, pneumatic pumps, water pumps for spas, baths, whirlpools, swimming pools, aquariums, water filtering units, suction pumps; Disposals, namely, food waste disposals and garbage disposals;" in International Class 7.²

2. "Laundry sinks and faucets; kitchen sinks; water filters; regulating accessories for water supply, namely, metered valves; sink repair parts, namely, kitchen sink sprayers; plumbing fittings, namely, sink strainers; plumbing fixtures, namely, sink traps, sink sprayers; faucet repair parts, namely, water faucet spout, shower faucet extensions, faucet aerators, faucet sprayers; drain repair parts, namely, strainers for plumbing drains; toilet repair parts, namely, toilet tank balls, toilet tank flappers, toilet tanks; water heaters for domestic use and accessories therefore;" in International Class 11.³

3. a) "Ventilating ducts of metal, namely, dryer vents;" in International Class 6.

b) "Plastic hoses for plumbing use, namely, washer hoses; plastic tubes for plumbing use, namely plastic tubing for sink and washer discharge;" in International Class 17.

c) "Non-metal ventilating ducts, namely, dryer vents;" in International Class 19.⁴

The trademark examining attorney issued a final refusal in each of the three applications on the ground

² Serial No. 78841512, filed on March 20, 2006, based on Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), alleging a bona fide intent to use the mark in commerce.

³ Serial No. 78841539, filed on March 20, 2006, based on Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), alleging a bona fide intent to use the mark in commerce.

⁴ Serial No. 78841557, filed on March 20, 2006, based on Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), alleging a bona fide intent to use the mark in commerce.

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

that the mark is merely descriptive of the identified goods. Trademark Act Section 2(e)(1), 15 U.S.C.

§1052(e)(1). Applicant appealed the final refusals. Both parties filed briefs. Applicant and the examining attorney took part in an oral hearing in these cases on July 22, 2008. The Board scheduled these three cases along with several of applicant's pending *ex parte* appeals that contain the term "MASTER" in the marks for a single hearing. In this decision, we have limited our focus to the three *ex parte* appeals in which applicant seeks to register the mark "MASTER PLUMBER." These three appeals involve common questions of law and fact, and are appropriate for consolidation. Upon careful consideration of the evidence of record and the arguments of counsel, we reverse the refusal to register in each of the three applications.

A term is deemed to be merely descriptive of goods or services, 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 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

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

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

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

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). On the other hand, if a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services, then the mark is suggestive. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

We consider a composite mark in its entirety. The composite is registrable if as a unitary mark it has a separate, non-descriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (holding SUGAR & SPICE not merely descriptive of bakery products). Thus we consider whether the words "MASTER PLUMBER" have a descriptive meaning as a unitary phrase. The examining attorney argues that "the term MASTER PLUMBER merely describes an intended user of the goods" set forth in applicant's recitals. In particular, the examining attorney submitted evidence and argument to show that there exists a designation called "master plumber" that describes a professional, licensed plumber, and that "master plumbers" use the goods set forth in the recitals of these

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

three applications. A sampling of the examining attorney's evidence includes the following excerpts:

"We repair . . . Water Heaters, Garbage Disposals, Faucets, Pipes, . . . Call our master plumbers today for expert plumbing repair services."⁵

"O]wner and master plumber since 1980 . . . Our repair specialist can fix leaks, grease traps, faucets, drainpipes, kitchen sinks, bathtubs, and showers. We also offer services for tankless water heaters and gas or electric water heater installations."⁶

"With 3 Master Plumbers on our staff with combined field expertise totaling over 91 years we have seen just about anything your plumbing could throw at us and know exactly how to fix it . . . The truck of a well prepared service plumber should have enough basics to handle most common emergencies: copper tubing, faucet parts, replacement hoses, rubber washings, fittings and standard tools."⁷

To support her argument that applicant's "MASTER PLUMBER" mark is merely descriptive of the identified goods in the three applications, the examining attorney cites *In re Camel Manufacturing Co., Inc.*, 222 USPQ 1031 (TTAB 1984). The Board in that case held the mark "MOUNTAIN CAMPER" to be merely descriptive under Section 2(e)(1) of "retail and mail order services in the field of outdoor

⁵ Evidence submitted by the Examining Attorney in the Denial of the Request for Reconsideration in Application No. 78841512. Printout from website located at www.jmgplumbing.com.

⁶ Evidence submitted by the examining attorney in the Denial of the Request for Reconsideration in Application No. 78841539. Printout from website located at www.houstonmasterplumber.com.

⁷ Evidence submitted by the Examining Attorney in the Denial of the Request for Reconsideration in Application No. 78841557. Printout from website located at www.dayornightplumbing.com.

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

equipment and apparel." However, the Board did not base its decision in that case merely on the existence of "mountain campers" as a possible class of consumer of applicant's goods. Rather, the Board clearly noted that "we embrace the holding that a mark is merely descriptive if it describes the type of individuals to whom an appreciable number or all of a party's goods or services are directed." *Id.*

Applicant has shown that not to be the case here. Applicant has pointed to numerous articles that tout applicant's goods as being targeted to "do-it-yourself" homeowners. A sampling of applicant's evidence includes the following excerpts:

"In 1994, Bryant became the general manager of the True Value Home Center, a True Value operation opened by his family to better serve the needs of do-it-yourself homeowners." *Sierra Star* July 21, 2006.

"After listening to customer focus groups for months, True Value is targeting not bargain-hunters or advice-seekers but the 'do-it-yourself' enthusiasts who already account for an estimated 43 percent of its sales." *Associated Press Online* March 27, 2006.

"ei software Inc. works with a variety of home-improvement suppliers - Pittsburgh Paints, Raynor Garage Doors, True Value Co. - to provide visualization tools for the do-it-yourself type." *Newsday* March 30, 2006.

"Painting inside the home is now one of the most popular do-it-yourself projects according to national hardware group True Value Hardware." *Herbert River Express (Australia)* April 27, 2002.

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

"Products, tools, and DIY sheets are at Mitre 10, True Value, Stratco, Home Depot . . ." Nationwide News Pty. Limited June 20, 2004.

"Its products are sold in 20,000 retail locations nationwide, including Home Depot, Lowes, True Value, and Ace Hardware. 'They're mostly DIY products," Broderick said, "and 85 percent of what we distribute goes home in DIYer's cars." National Home Center News October 8, 2001.

"I was referred by the local True Value Hardware, a do-it-yourself gold mine in its own right, to an outfit . . ." The Seattle Times August 8, 1999.

Accordingly, applicant argues that the term "MASTER PLUMBER" does not describe applicant's intended consumers, or at least not "an appreciable number" of them as required by the Board in *In re Camel Manufacturing Co., Inc., supra*, 222 USPQ 1031. Rather, applicant argues, the mark is suggestive of the professional quality that a do-it-yourself homeowner can obtain from applicant's products. Applicant relies on several prior Board rulings that distinguish between goods targeted to professionals, and goods targeted to a general consumer who wishes to have professional-style results. See *In re Chesebrough-Pond's Inc.*, 163 USPQ 244 (TTAB 1969). The Board in *Chesebrough-Pond's* reversed the examining attorney's requirement of a disclaimer of the term "MANICURIST" in the mark "MANICURIST BY CUTEX" for "nail polish." As the Board explained, finding the nail polish in its typical channels of trade,

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

consumers would not expect that the product is intended only for professional manicurists. Rather, they would hope that by using the product they may obtain a professional result. *Id.* The same conclusion was reached in the non-citable case relied upon by applicant, *In re Omega Research, Inc.*, Serial No. 74/546,080 (TTAB 1997).⁸ There, the Board reversed a 2(e)(1) refusal to register the mark "WALL STREET ANALYST" for "computer software to assist in making investment decisions." The Board reasoned that while a professional "wall street analyst" could use the applicant's product, it was intended for do-it-yourself investors who wished for professional results. Accordingly, as in *Chesebrough-Pond's*, the mark in *Omega* was held not "merely descriptive" but suggestive.

The examining attorney argues that *Omega Research* is not analogous to the present case, asserting that the examining attorney there, unlike here, had failed to demonstrate a nexus between the user identified in the mark and the services identified in the application. It is true that the examining attorney here has provided ample

⁸ We do not base our decision in these cases on this non-citable case, but discuss it merely as an example of similar Board rulings and because applicant has relied on it in briefing these cases.

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

evidence of the existence of a group of possible consumers known as "master plumbers," and of the possibility that they may use applicant's identified goods. However, as in *Chesebrough-Pond's*, that is not the critical point in these cases. The question, rather, is whether an "appreciable number or all" of applicant's goods are directed towards "master plumbers." See *In re Camel Manufacturing Co., Inc.*, *supra*, 222 USPQ 1031. Applicant has submitted probative evidence that they are not. Furthermore, there is nothing in the identifications of goods in these applications which limits the class of consumers to "master plumbers," nor is there anything inherent in the nature of the listed items which would limit their use to "master plumbers." Rather, the goods appear to be goods which "do-it yourselfers" or others who are not master plumbers could and would purchase. These potential purchasers would likely constitute the overwhelming majority of purchasers, and these purchasers would likely perceive the suggestive meaning of the mark posited by applicant.

Furthermore, we note that unlike a Section 2(d) analysis, any doubts regarding the application of Section 2(e)(1) are to be resolved in favor of the applicant. *In re Conductive Services, Inc.*, 220 USPQ 84, 86 (TTAB 1983)

Serial No. 78841512

Serial No. 78841539

Serial No. 78841557

(observing, "[w]e recognize that the suggestive/descriptive dichotomy can require the drawing of fine lines and often involves a good measure of subjective judgment.").

Accordingly, we find that applicant's "MASTER PLUMBER" mark is suggestive, and we reverse the Section 2(e)(1) refusals of these three applications.

Decision: We reverse the refusals to register in Application Nos. 78841512, 78841539, and 78841557.