

**This Opinion is Not a  
Precedent of the TTAB**

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**United States Patent and Trademark Office**  
Trademark Trial and Appeal Board

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*In re MVP Group International, Inc.*

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Serial No. 85078518

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Before Kuhlke, Lykos and Shaw, Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

MVP Group International, Inc. (“applicant”) filed an application to register the mark ECO WICK in standard character format for “candles; scented candles” in International Class 6.<sup>1</sup> During *ex parte* prosecution of the application, applicant disclaimed the term WICK apart from the mark as shown.

The Trademark Examining Attorney has refused registration of the mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of applicant’s goods. Upon final refusal of registration, applicant filed a request for reconsideration and timely

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<sup>1</sup> Application Serial No. 85078518, filed July 6, 2010, alleging a bona fide intent to use the mark in commerce pursuant to Section 1(b) of the Trademark Act.

appeal. Both applicant and the examining attorney filed briefs. For the reasons discussed herein, the Board affirms the refusal to register.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. *In re Gyulay*, 3 USPQ2d at 1009-10. 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 the 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 (TTAB 1979).

We find that applicant's mark immediately conveys to prospective purchasers a significant feature of the identified goods, namely that applicant's candles are comprised of an ecologically friendly wick or "eco wick."

A “compound mark,” which consists of two or more words combined to create a single word, is merely descriptive if (1) the individual words are descriptive and retain their descriptive meaning within the compound mark, and (2) the compound mark has no unique or incongruous meaning as applied to the goods and/or services. *See In re Cox Enters.*, 82 USPQ2d 1040, 1043 (TTAB 2007) (holding THEATL the equivalent of THE ATL, a common nickname for the city of Atlanta, merely descriptive of publications featuring news and information about Atlanta); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002) (holding SMARTTOWER merely descriptive of highly automated cooling towers); *In re Entenmann’s, Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990) (holding OATNUT merely descriptive of bread containing oats and hazelnuts), *aff’d per curiam*, 928 F.2d 411 (Fed. Cir. 1991). While applicant’s mark does not consist of a single compound word mark, the same logic applies here with regard to applicant’s mark ECO WICK. The examining attorney has made of record definitions of the terms “eco” and “wick.” The dictionary defines the term “eco” as “denoting ecology or ecological.” [www.collinslanguage.com](http://www.collinslanguage.com) (Oct. 19, 2010 Office Action). The word “wick” is defined as a bundle of fibers or a loosely twisted, braided, or woven cord, tape, or tube usually of soft spun cotton threads that by capillary attraction draws up to be burned a steady supply of the oil in lamps or the melted tallow or wax in candles.” [www.merriam-webster.com](http://www.merriam-webster.com) (Oct. 19, 2010 Office Action). The examining attorney submitted further evidence that the term “eco” is “mostly used

as a prefix” and is “added to an existing word to create another word with a new meaning, mostly related to ecology—for example eco-system, eco-toursim, eco-label etc. suggesting that a product is less damaging to the environment.” Excerpt from “What is Eco” [www.nigelecostore.com](http://www.nigelecostore.com) (Oct. 19, 2010 Office Action). Here, applicant has combined the two descriptive terms “eco” and “wick” to create a mark with no other unique or incongruous meaning in relation to the goods other than a candle made with a wick possessing ecologically beneficial properties. Thus, the combination of the two terms “eco wick” immediately conveys to prospective consumers that the wicks of the candles applicant intends to sell are less damaging to the environment.

The record further corroborates our determination by showing that many candles are now manufactured with environmentally friendly burning wicks which have lower soot emissions when burned. Much of the evidence obtained by the examining attorney from third-party websites touts this environmentally advantageous feature of candles manufactured by competitors in the industry:

- no lead or zinc cored wicks – ever! all our wicks are made of either cotton, paper or hemp. [www.ecocandle.com](http://www.ecocandle.com) (Oct. 19, 2010 Office Action);

Our candle wicks are made with cotton and paper and contain no lead, zinc or metal of any kind. [www.greenhousesoycompany.com](http://www.greenhousesoycompany.com) (Oct. 19, 2010 Office Action); and

Wicks Can be Eco-Friendly....Since soy candle making supplies such as soft wax, bright dyes, and sweet fragrances can all be totally eco-friendly, an environmentally sensitive chandler will want to put eco-friendly wicks on his or her list of soy candle making....

Searching for eco candle wicks? Excerpt from “Soy Candle Making Supplies- Wick to Wax” obtained from [www.ezinearticles.com](http://www.ezinearticles.com) (Oct. 19, 2010 Office Action).

When shopping for candles, environmentally conscious consumers specifically look for products with “eco wick” features when making purchasing decisions. See for example the following:

The wick of a candle is just as important as the type of candle wax. When you burn a chemically processed or metallicly reinforced wick, it can release large amounts of soot into the air you breathe, possibly causing harmful side effects. “BsaB Cotton Wicks v. Others” [www.bsabcandles.com](http://www.bsabcandles.com) (Oct. 19, 2010 Office Action); and

Some paraffin candle makers are still using lead core wicks which when heated emit lead particulates into the air, which can then be inhaled. 100% of the lead that is inhaled is absorbed into the bloodstream..... “Green Promise: Organic Candle Suppliers” Jan. 25, 2009 obtained from [www.greenpromise.com](http://www.greenpromise.com) (Oct. 19, 2010 Office Action).

This evidence shows that this feature of applicant’s goods is “significant” within the statutory meaning of merely descriptive marks.

Applicant argues that the applied-for mark ECO WICK is suggestive because prospective consumers “would not automatically and instinctively reach a conclusion as to the specific nature of the identified goods” and that any such conclusion would require “imagination and multistage reasoning.” Applicant’s Brief, p. 10. We disagree. Determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978). *See, e.g., In re Polo Int’l Inc.*, 51 USPQ2d 1061 (TTAB 1999)

(finding DOC in DOC-CONTROL would be understood to refer to the “documents” managed by applicant’s software, not “doctor” as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of “computer programs recorded on disk” where relevant trade used the denomination “concurrent” as a descriptor of a particular type of operating system). In other words, the issue is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc., supra*, 64 USPQ2d at 1316-1317 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). As aptly put by the examining attorney:

[T]he applicant’s use of the term “eco” in relation to candles is not unique. In light of the common use of the term by third parties in identifying favorable features of candle and eco-friendly products, it would be perceived by the industry and by consumers, as identifying or describing the same or similar features of the applicant’s candle product—possessing eco or ecologically friendly wicks.

May 18, 2011 Office Action.

Applicant contends that the examining attorney has focused in his analysis on an incorrect description of the goods. As applicant maintains, the identification of goods reads “candles; scented candles” and not “candles with ecologically friendly wicks” or candles which cause “little or no adverse environmental impact.” This argument reflects a misunderstanding of the standard for evaluating descriptiveness. As often stated by the Board, we are bound by the language set forth in the identification of goods. *Cf. Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed.

Cir. 1990) (in making Section 2(d) determinations, the Board is bound by the parties' respective identifications). As such, applicant's unrestricted identification necessarily encompasses all types of "candles" and "scented candles," including those with "eco wicks" or ecologically friendly wicks. Thus, applicant's assertion that its products are not designed to be ecologically friendly is of no avail.

Applicant contends that competitors do not need to use the term "eco wick" to describe their products because alternative terms are available such as "ecological candles" or "ecologically friendly candles." Whether or not other terms are available to describe applicant's goods is not relevant to our analysis. Even if no other competitors are using the precise term "eco wick" to describe their own brand of candles, this does not render a mark inherently distinctive when the only significance projected by the term is merely descriptive. *See In re Thomas Nelson, Inc.*, 97 USPQ2d 1712, 1717 (TTAB 2011), *citing In re Hunter Fan Co.*, 78 USPQ2d 1474, 1476 (TTAB 2006) ("a word need not be in common use in an industry to be descriptive, and the mere fact that an applicant is the first to use a descriptive term in connection with its goods, does not imbue the term with source-identifying significance").

Applicant points to a single third-party application Serial No. 77501939 for the mark ECOWIX in an attempt to show that the term ECO WICK has not been treated as descriptive on the register. Office records show however that this application has been abandoned. In any event, such evidence is not

persuasive however since applications are probative only of the fact that the application was filed.

Here, based on the evidence of record, we find that applicant's mark, ECO WICK, when considered in relation to "candles; scented candles" immediately informs prospective purchasers that applicant's candles are made with a wick which has "eco" or ecologically positive properties. As illustrated by the evidence discussed above, it appears that the candle manufacturing industry has evolved to incorporate wicks with little or no adverse environmental or health effects. Competitors in this field should be free to use the descriptive language "eco wick" when describing their own environmentally friendly candles to the public in advertising and marketing materials, even if applicant is the first to use that term at the present. *See In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

In sum, we find that the examining attorney has met his burden of proof that applicant's mark ECO WICK, when used in connection with the identified goods, is merely descriptive.

**Decision:** The refusal to register under Section 2(e)(1) is affirmed.