

This Opinion is not a
Precedent of the TTAB

Mailed: August 15, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Classic Capital, Inc.
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Serial No. 86334513
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Paul D. Supnik, Law Office of Paul D. Supnik,
for Classic Capital, Inc.

Esther Borsuk, Trademark Examining Attorney, Law Office 103,
Michael Hamilton, Managing Attorney.

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Before Cataldo, Lykos, and Hightower,
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Applicant Classic Capital, Inc. seeks registration on the Principal Register of CLASSIC CAR CAPITAL, in standard characters, as a mark for (as amended) “consumer lending and financing services for classic, vintage and historical cars” in International Class 36.¹ The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

¹ Application Serial No. 86334513 was filed on July 11, 2014, based on Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

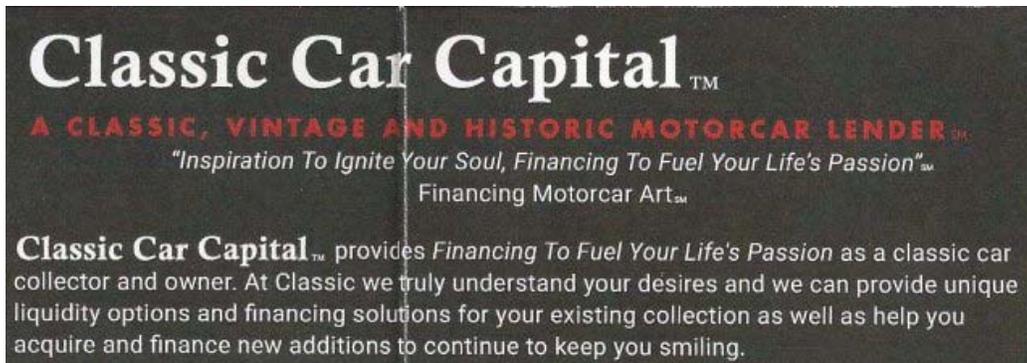
§ 1052(e)(1), on the ground that Applicant's mark is merely descriptive of Applicant's services. When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. Applicant then requested and was granted remand to the Examining Attorney to amend the recitation of services. The amendment was entered and appeal resumed once again. We affirm the refusal to register.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). Whether a mark is merely descriptive is determined in relation to the goods or services for which registration is sought, the context in which the mark is used, and the possible significance the term would have to the average consumer because of the manner of its use or intended use. *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015); *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219.

Descriptiveness is not considered in the abstract or on the basis of guesswork. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). That is, it is well-established that the 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 and services are will understand the mark to convey information about

them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech. Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). That a term may have different meanings in other contexts is not controlling. *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1933 (TTAB 2012). A mark need not immediately convey an idea of each and every specific feature of the services in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987); *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016).

Applicant does not dispute that CLASSIC CAR, the first two terms in its proposed mark, is merely descriptive in association with its services. Indeed, the generic nature of that phrase is evident both from Applicant’s identification of services – “consumer lending and financing services for classic, vintage and historical cars” – and from information Applicant submitted demonstrating the nature of its services, which states that Applicant “provides *Financing To Fuel Your Life’s Passion* as a classic car collector and owner”:²



² February 16, 2015 Response to Office Action at 2.

Rather, Applicant focuses on the term CAPITAL, arguing that it is “only slightly suggestive” of its identified services because “capital” has multiple meanings that do not have a direct relationship to consumer lending and financing for classic cars.³

The Examining Attorney submitted dictionary definitions of “capital” that include “wealth (money or property) owned or used in business by a person, corporation, etc.”⁴

The Examining Attorney also made of record several registrations, each with CAPITAL disclaimed, for services similar to Applicant’s in whole or in part, including the following:

- CHRYSLER CAPITAL for “automotive financing services”⁵
- NEXTGEAR CAPITAL for “automobile financing services”⁶
- FRANKLIN CAPITAL CORPORATION for “automobile financing services” (disclaiming CAPITAL CORPORATION)⁷
- WINDSET CAPITAL for “financing and loan services”⁸
- UPS CAPITAL for “financing services”⁹
- KALAMATA CAPITAL for “financing services”¹⁰
- HEADWAY CAPITAL for “arranging of loans; credit and loan services; financial services, namely, money lending; financing and loan services”¹¹

³ See Appeal Brief at 6, 11 TTABVUE 9.

⁴ October 29, 2014 Office Action at 2, from the online Collins American English Dictionary (www.collinsdictionary.com).

⁵ February 27, 2015 Final Office Action at 7-8 (Registration No. 4448601).

⁶ *Id.* at 9-10 (Registration No. 4518899).

⁷ *Id.* at 4-6 (Registration No. 3372290).

⁸ *Id.* at 11-13 (Registration No. 4561461).

⁹ *Id.* at 2-3 (Registration No. 3083107).

¹⁰ *Id.* at 14-15 (Registration No. 4633929).

¹¹ *Id.* at 16-17 (Registration No. 4634374).

Such third-party registrations show that CAPITAL has descriptive significance when applied to lending and financing services. *See Inst. Nat'l des Appellations D'Origine v. Vintners Int'l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006). It is thus clear from the record that CAPITAL is descriptive of loan and finance services, i.e., providing capital.

Finally, Applicant argues that the alliteration and cadence of its proposed mark render it not merely descriptive.¹² We disagree. We find the terms CLASSIC CAR CAPITAL to be highly descriptive in relation to Applicant's services and to retain the same descriptive significance in combination. Thus, the resulting combination also is merely descriptive. *See, e.g., DuoProSS*, 103 USPQ2d at 1758 (SNAP SIMPLY SAFER merely descriptive for cannulae, needles, and syringes despite alliteration); *see also In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012) ("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.").

Based on the evidence of record, we find that a consumer of lending and financing services for classic cars would immediately recognize CLASSIC CAR CAPITAL to convey information about those services. Because the proposed mark, considered as a whole, immediately conveys knowledge of features and characteristics of the Applicant's services, it is merely descriptive under Trademark Act Section 2(e)(1).

Decision: The refusal to register is affirmed.

¹² Appeal Brief at 7-8, 11 TTABVUE 10-11.