

From: Shanoski, Joanna

Sent: 2/10/2017 11:59:11 AM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 86694262 - FLIP BACK CAP - N/A - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 2

Attachment Information:

Count: 8

Files: water bottle cap.jpg, Bluesky products.jpg, LA Times.jpg, Liquitainer.jpg, GCMedia.jpg, Staples
Glue Tape.jpg, Justice.jpg, 86694262.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86694262

MARK: FLIP BACK CAP



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: Blistex Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

CHIUSTM@LADAS.NET

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 2/10/2017

The Office has reassigned this application to the undersigned trademark examining attorney.

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a).

The following refusal(s) made final in the Office action dated 07/01/2016 are maintained and continue to be final: Descriptiveness under Trademark Act Section 2(e)(1). See TMEP §§715.03(a)(ii)(B), 715.04(a).

As further addressed below, in the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues.

Accordingly, **the request is denied.**

SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

Registration was refused because the applied-for mark merely describes a characteristic or feature of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 *et seq.*

Determining the descriptiveness of a mark is done in relation to an applicant's goods and/or services, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. See *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); TMEP §1209.01(b). Descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 488 F.3d at 963-64, 82 USPQ2d at 1831.

Two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. See *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

In the previous office action, dictionary evidence was provided showing that the term FLIP means "to turn over from one side to another or end over end". Additionally, dictionary evidence was provided showing that the term BACK means "at , to , or toward the rear or back", and that the term CAP describes "a protective cover or seal, especially one that closes off an end or a tip; bottle cap".

The applicant's goods are "Medicated lip care preparations, medicated topical preparations in the nature of balms, gels, creams for human use for lip and skin dryness, for moisturization, for lip irritations and for lip and skin care; all of the aforementioned sold with a specialized cap as a component of the goods". When the mark is applied to the goods, the consumer is immediately informed that the preparations featuring a specialized cap specifically feature a FLIP BACK CAP, which is a cover or CAP that will FLIP BACK or turn over and back toward the end or tip of the preparation container. Thus, the mark immediately describes a feature or purpose of the goods.

In the prior Office actions, evidence was provided showing that the consumer would readily understand this meaning of the mark when applied to the goods. Particularly probative evidence includes applicant's patent application. The cap is described as moving pivotally about a hinge. Such a structure would easily allow the CAP to FLIP BACK. The applicant's Field of the Invention description also specifically indicates that the CAP as being able to FLIP.

Further, containers for a wide variety of products are commonly described as having a CAP that can FLIP BACK pivotally about a hinge. See attached website evidence at:

<https://www.amazon.com/Shatterproof-Glass-Water-Bottle-Sports/product-reviews/B00EDS3P0C>

<https://www.blueskysolutionsuk.com/product-news-blog/closures-lids-caps-what-should-i-call-them/>

<http://articles.latimes.com/2014/mar/29/health/la-he-bottles-20140329>

<https://sourceoutdoor.com/en/liquitainers/21-foldable-light-waterbottle>

<http://www.gcmedica.com/productb.asp?Plt=54&Pone=10>

http://www.staples.com/Staples-Roll-On-Repositionable-Glue-Tape-1-3-inch-x-393-inch-2-Pack/product_689268

<http://www.shopjustice.com/dot-initial-water-bottle/prd-7820185>

<http://www.shopjustice.com/dot-initial-water-bottle/prd-7820185>

<http://www.strykerttops.com/fishing-boat-t-top-accessories-rod-holders-s/38.htm>

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<http://www.cigaraficionado.com/webfeatures/show/id/16270>

<https://www.truthinaging.com/review/shea-moistures-black-african-soap-lotion>

<https://januarydarling.wordpress.com/tag/beauty/>

<https://www.makeupalley.com/product/showreview.asp/ItemId=89966/skintonetype=108/AgeRange=/Ciment-Thermique/Kerastase/Hair-Treatments>

Consumers are commonly exposed to this wording to describe caps for a wide variety of products. Thus, when applied to the applicant's goods, the consumer is immediately informed of the type of cap on the preparations.

It is noted that on February 9, 2017, the Examining attorney and applicant's attorney conducted a phone conversation to discuss whether an amendment to the identification could overcome the refusal. However, no solution was reached.

Applicant is further advised that in light of the preceding evidence, in addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and, therefore, incapable of functioning as a source-identifier for applicant's goods. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Pennzoil Prods. Co.*, 20 USPQ2d 1753 (TTAB 1991); see TMEP §§1209.01(c) *et seq.*, 1209.02(a). Under these circumstances, neither an amendment to proceed under Trademark Act Section 2(f) nor an amendment to the Supplemental Register can be recommended. See TMEP §1209.01(c).

For the foregoing reasons, the refusal of the mark under Trademark Act Section 2(e)(1) as descriptive of a feature or characteristic of the applicant's goods is ***maintained***.

Response Information

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Joanna M. Shanoski/

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[illegible]

Closures, lids, caps... What should I call them?

22/11/2016 16:08



In our 20 years of experience in the packaging industry, we've heard a mountain of different names for those little items that go on the top of your container. Closures, lids, caps, dispensers...the list goes on. Which is correct? Well, there's not really a set of rules but it is handy to know what is generally understood by the different types.

We use the word closures as an all-encompassing term for an item which 'closes' the bottle. This can be many different types depending on the formula inside and how it needs to be dispensed / applied. Let's explore the next level in more detail.

Lids – a very general term again! But most of the industry uses this term for containers with a non-liquid product inside. The 'lid' is just a simple screw-on application to prevent product escaping the jar or bottle.

Caps – similar to lids in that people usually uses this when referring to a simple screw-on top used to prevent product coming out.

Flip tops – this is where the fun starts. A flip top is a dispenser cap for liquids – the top of the cap 'flips' back to open and then snaps shut again when not in use.

Disc tops – similar to the flip top, these are used for dispensing lotions. There is a disc in the top of the cap which pivots to open. It can then be pushed back down to seal the bottle again.

Lotion pumps – most commonly used in soap bottles there have a pump system which draws the liquid up through a dip tube when the top is pushed down.

Atomisers – another dispensing pump but these atomise the solution as it is dispensed. That is, the liquid becomes a spray mist as seen in perfume sprays.

Trigger sprays – more of an industrial application for dispensing large volumes of liquid. Commonly used for materials and can have spray, jet or foaming options.

Helpful? We hope so. One we've missed? Give us a call and we'll gladly discuss!

Tags:

[disc top](#) [flip top](#) [lotion pump](#) [triggerspray](#) [atomisers](#) [closures](#) [lids](#) [caps](#)

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SOURCE's ultimate lightweight, flexible and durable water bottle. Folds flat when empty and stands upright and stable when full. Triple-layer taste-free film. Resistant to extreme temperature: from -20°C to +100°C. BPA and Phthalate free.

DESCRIPTION
CARE & USE
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Lightweight foldable, durable water Bottle

Sterilize water, store hot soup, melt snow, deep freeze (only in 0.75 & 1 & 2 liter Liquitainer™ models).

- Folds flat when empty and stands upright and stable when full.
- Triple-layer taste-free film
- Resistant to extreme temperature: from -20°C to +100°C.
- BPA and Phthalate free.

New: Liquitainer High Performance Cap

- Superior seal resists 3 bars
- High flow rate 47 ml/second
- Active hinge flips back 170°
- Organoleptic P.E. spout

Watch: Features, Care & Use

Specifications

	0.75L/25oz	1L/35oz	2L/75oz
Capacity	0.75L/25oz	1L/35oz	2L/75oz
Dimensions	25.5cm x 13cm	31cm x 13cm	33cm x 18cm
Weight	40gr	40gr	50gr

Style:
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Suction irrigation set



Suction irrigation set

GC080702

- Transparent ergonomic hand piece - comfort design for both right and left hand use
- Color coded smooth push button pistons with dual seal to prevent leaking High flow clog free valves
- 5mm x 33cm rigid probe

- Dual spike with 3m of flexible tubing
- **Flip back cap (fluid and gas tight) facilitates the utilization of instruments up to 3.55mm or laser fibres through the hand piece**
- Smooth traumatic probe tip with 8 vents

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dot initial water bottle

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description

- Item # 7820185
- Clear plastic water bottle with black polka dots
- Silver initial on front in holographic print
- Pink flip back cap with pink crazy straw
- Holds 23 US fl oz.
- BPA free



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