

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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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 Jeco Inc.

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Serial No. 86972193

James Slominski, Esq. for Jeco Inc.

Katherine S. Chang, Trademark Examining Attorney, Law Office 115 (Daniel Brody, Managing Attorney).

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Before Ritchie, Adlin, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Jeco Inc. (“Applicant”) filed an application for registration on the Principal Register of the designation BAZAAR HOME in standard characters as a mark for “Retail and online retail store services featuring furniture, home décor items, bedding and kitchenware,” in International Class 35.¹

The Examining Attorney refused registration on the ground that Applicant’s applied-for mark is merely descriptive of Applicant’s services, under Section 2(e)(1)

¹ Application Serial No. 86972193 was filed on April 12, 2016 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), on the basis of Applicant’s asserted *bona fide* intent to use the mark in commerce.

of the Trademark Act, 15 U.S.C. § 1052(e)(1). When the refusal was made final, Applicant appealed to this Board. The case is fully briefed.

A mark is merely descriptive of 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 services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *see also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark is merely descriptive is determined in relation to the services for which registration is sought and the context in which the mark is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, we evaluate whether someone who knows what the 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). 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*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Further, a mark need not describe every one of the identified services in an application in order to be considered merely descriptive. A descriptiveness refusal is proper with respect to all of the identified services in an International Class if the mark is descriptive of any of the services in that class. *In re Chamber of*

Commerce, 102 USPQ2d at 1219; *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

Applicant's mark is composed of two commonplace words: BAZAAR and HOME. Applicant and the Examining Attorney have offered various definitions of these words, among which we note the following as most pertinent to our analysis:

bazaar:

noun

1. a marketplace or shopping quarter, especially one in the Middle East.
2. a sale of miscellaneous contributed articles to benefit some charity, cause, organization, etc.
3. a store in which many kinds of goods are offered for sale; department store.

home:

noun

1. a house, apartment, or other shelter that is the usual residence of a person, family, or household.

...

adjective

12. of, relating to, or connected with one's home or country; domestic: *home products*.²

The Examining Attorney has also made of record five U.S. registrations of marks for retail store services featuring household goods in which the mark includes the term HOME, and in which the registrant has disclaimed the exclusive right to use

² Definitions from <dictionary.com>, Applicant's response of November 30, 2016 at 6, 10.

HOME apart from the mark as a whole.³ These registrations may illustrate the manner in which the expression HOME is used in the marketplace and suggest that HOME has a meaning in the field of retail stores. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015).

The Examining Attorney's position is that each of the individual words BAZAAR and HOME is merely descriptive of Applicant's services, and that "the combination of the two descriptive words, BAZAAR and HOME, creates no new commercial impression or incongruity, and no imagination is required to understand the nature of the services." The Examining Attorney contends that "the term 'bazaar home' refers to a store in which many kinds of goods for a residence are offered for sale."⁴ That the two words are, individually, descriptive in the context of Applicant's services is clear from the dictionary definition of BAZAAR as a type of store, such as a department store; the fact that Applicant's identification of services indicates that "home décor items" are featured in Applicant's stores;⁵ and the dictionary evidence showing the phrase "home products" as an example of the use of HOME as an adjective.

³ Office Action of December 2, 2016 at 4-19.

⁴ Examining Attorney's brief, 6 TTABVUE 4.

⁵ *See generally, In re Taylor & Francis (Publishers) Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) (PSYCHOLOGY PRESS & Design found merely descriptive of nonfiction books in the field of psychology, in part because the applicant's "identification of goods expressly states that the series of non-fiction books upon which applicant uses its mark are 'in the field of psychology.' The word PSYCHOLOGY therefore is merely descriptive of the subject matter of applicant's books, as identified in the application ...").

Applicant's position is that BAZAAR HOME is a *double entendre* that has many meanings, not all of which are merely descriptive of Applicant's services:

[A] person seeing or hearing **the combined words BAZAAR and HOME** ... might think it refers to a dwelling that is of a very strange or unique shape, size, or design. Or, one might think it refers to a place that sells things for charities or the elderly, or a middle-eastern themed marketplace. ... [W]hen such mental activity is required [i]n order to reach a conclusion on the services, a mark is considered to be suggestive and not merely descriptive.⁶

As we have noted above, we must consider the descriptiveness of a mark in the context of the relevant services. *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. The fact that a term may have a different meaning in another context is not controlling, *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1587 (TTAB 2014), and will not avoid a finding of mere descriptiveness when the words of the mark have clear, relevant meaning in the context of the identified services. Accordingly, the impression created by a purported *double entendre* must be sufficiently strong as to be appreciated in the context of Applicant's services. *See In re Calphalon Corp.*, 122 USPQ2d 1153, 1165 (TTAB 2017) ("The multiple interpretations that mark an expression a 'double entendre' must be associations that the public would make fairly readily, and must be readily apparent from the mark itself."). We are not persuaded that the words BAZAAR HOME create a *double entendre* that the public would appreciate. Applicant has not shown that the public would think a "bazaar home" is a strangely designed dwelling or an eldercare

⁶ Applicant's brief at 5, 4 TTABVUE 8.

facility that conducts charitable activities. These propositions are novel and irrelevant in the context of retail store services, and there is no reason to believe that they would occur to customers in a home products store. The contention that Applicant's mark would suggest "a middle-eastern themed marketplace" relies upon the Persian origin⁷ of the word "bazaar." However, as the dictionary shows, the word "bazaar" has entered the English lexicon, denoting (as it did in its Persian roots) a place for shopping; its etymology does not create a *double entendre* in the context of retail stores any more than would *patisserie* for a bakery or *bistro* for a restaurant. Applicant's suggestion that BAZAAR sounds similar to the word "bizarre" is not well taken.⁸ A similarity to this entirely different word, which is not part of the mark, does not alter the meaning of BAZAAR or of the mark as a whole. Overall, we do not agree that BAZAAR HOME creates a *double entendre* that renders it not merely descriptive.

Where, as here, a mark consists of a combination of descriptive words, we must consider "whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts." *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004). Here, it does not. Applicant's mark juxtaposes a word that describes the nature of Applicant's services (BAZAAR, meaning "store") with a word that describes a category of goods offered in the store (HOME, referring to "home products"). Placing the two words together does not

⁷ Applicant's response of November 30, 2016 at 6.

⁸ Applicant's brief at 4, 4 TTABVue 7.

alter the meaning of either term. Nor does their juxtaposition create any incongruous effect, because both terms have a clear meaning in the context of a home products store. Applicant argues that its mark “is subject to multiple, reasonable meanings,” as discussed above , and that therefore “[t]he mark does not immediately and directly convey that it only relates to retail and online store services for furniture, bedding, etc.”⁹ We disagree. In the context of Applicant’s services, one must strain the imagination to reach the alternative meanings that Applicant proposes. We find that when the mark is used in connection with Applicant’s services, the clear meaning of the mark as a whole would be immediately apparent without the exercise of “imagination, thought and perception to reach a conclusion about the nature of the ... services.” *In re N.C. Lottery*, 866 F.3d 1353, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017) (internal quotation marks omitted).

Applicant’s contention¹⁰ that there is no logical distinction between its mark and other registered HOME marks¹¹ (such as CONTAINED HOME) is unavailing. We must decide each case on its own merits and “[e]ven if some prior registrations had some characteristics similar to [applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board.” *In re Nett Designs Inc.*, 236 F.3d

⁹ Applicant’s reply brief at 1-2, 7 TTABVUE 4-5.

¹⁰ *Id.*

¹¹ Office Action of December 2, 2016 at 4-6.

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1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). In any event, we see little similarity between Applicant's mark and the third-party marks.¹²

After careful review of all of the evidence and arguments of record, including those not specifically discussed herein, we find that the designation BAZAAR HOME is merely descriptive of Applicant's services within the meaning of Trademark Act Section 2(e)(1).

Decision: The refusal of registration is AFFIRMED.

¹² The third-party marks are CONTAINED HOME; WHOLENESS HOME; ALEGRIA HOME; PEARL HOME; THE STATED HOME; and HOME SQUARE.