

This Opinion Is Not a  
Precedent of the TTAB

Mailed: August 9, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re RPH Engineering, LLC*

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Serial No. 87166080

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Joseph Shapiro of Strong & Hanni,  
for RPH Engineering, LLC.

Jeffrey S. DeFord, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

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Before Mermelstein, Hightower, and Coggins,  
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Applicant RPH Engineering, LLC seeks registration on the Principal Register of  
LYNKD, in standard characters, for the following goods in International Class 9:

Electronic monitoring, security, and communication devices that can be configured through a mobile device application to perform user functions for the management and control of home and business security; electronic devices configured to provide electronic message alerts via the Internet notifying individuals of a changed status or condition of one or more sensors; computer application software for mobile phones and downloadable mobile applications featuring technology

enabling users to remotely view, monitor, program, operate and control security devices.<sup>1</sup>

Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that LYNKD is merely descriptive of them.

The appeal is fully briefed. We affirm the refusal to register.

## I. Applicable Law

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register which, when used in connection with the applicant's goods, is merely descriptive of them. "A term is merely descriptive 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) (quoting *In re Bayer A.G.*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Words that are merely descriptive must be left free for competitive use. *See In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978); *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001). 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 – here, the average person seeking to protect a home or other property – because of the manner of its use or intended use. *Chamber of Commerce*, 102 USPQ2d at 1219.

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<sup>1</sup> Application Serial No. 87166080 was filed on September 9, 2016 based on Applicant's allegation of a bona fide intention to use the mark in commerce pursuant to Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

## II. Analysis

The record consists of a dictionary definition of the adjective “linked” meaning “Connected, especially by or as if by links,”<sup>2</sup> and printouts from Applicant’s website at <https://www.lynkcd.com>, including the following:

Motion

Sound

Temperature

Light

Acceleration

Panic Button

VISION

SOUND the alarm with LYNKD Siren

RAIN

Prevent flood and water damage with LYNKD Rain

I/O

Automate your devices with LYNKD I/O

Temp Control

Control your thermostat with LYNKD Temp Control

74°F

LYNKD is a device that allows you to see, hear and feel things anywhere even if you can't be there! LYNKD is loaded with tech so anyone can monitor, secure and protect anything remotely. By using your smart phone, available WiFi, and our cloud based service, you can LYNK anything! Just simply answer a few questions and LYNKD will do all the rest. Wa-lah, instant smart home!!

© 2016 by LYNKD.

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<sup>2</sup> December 23, 2016 Office Action at TSDR 2-3, from the online version of THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2016).

<sup>3</sup> July 17, 2017 Final Office Action at TSDR 3.

The text on the page from Applicant's website includes the sentence: "By using your smart phone, available WiFi, and our cloud based service, you can LYNK anything!"<sup>4</sup>

Applicant does not dispute that its goods are "linked," the phonetic equivalent of LYNKD, but argues that being "linked" is not a significant feature of them:

The LYNKD mark is not merely descriptive because the "linked" aspect of Applicant's goods, i.e., being configurable and monitorable via a mobile phone, is not a significant aspect of Applicant's goods, but is merely an expected feature of technology device[s] in the age of the Internet of things.

Appeal Brief at 2, 4 TTABVue 3.

Essentially, Applicant contends that LYNKD is not merely descriptive of its goods because many other goods also are "linked." This argument is unpersuasive. It is clear from the description of goods that linkage to mobile devices enabling remote control is a key feature and function of Applicant's electronic monitoring and security devices. Whether other goods share this feature and function is not dispositive. Indeed, Applicant's argument underscores the fact that registration would be inconsistent with the rights of competitors to use the term "linked" in marketing their own goods.

The case on which Applicant bases its argument, *In re Hutchinson Tech. Inc.*, 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988), is not to the contrary. In that case, HUTCHINSON TECHNOLOGY was determined to be not primarily merely a surname and "technology" not merely descriptive of the applicant's electronic and mechanical computer components, despite applicant Hutchinson's concession that the term "technology" was commonly used in connection with similar goods. The court

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<sup>4</sup> *Id.*

found that, “[a]t most, all that may be concluded from Hutchinson’s concession is that a mark including the term ‘technology,’ which mark is used on computer products, is a weak mark for those goods.” *Id.* at 1492.

Here, in contrast, Applicant argues not that LYNKD (or “linked”) is a commonly used term, but that the goods of others share the feature of being “linked.” That a word describing a feature of Applicant’s goods also may describe other goods makes it no less descriptive. A term, moreover, “may be merely descriptive even if it does not describe the full scope and extent of the applicant’s goods or services.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (quotation omitted); *see also Chamber of Commerce*, 102 USPQ2d at 1219 (“A mark ‘need not recite each feature of the relevant goods or services in detail to be descriptive,’ it need only describe a single feature or attribute.”) (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)).

Applicant also contends that “LYNKD is a very broad term which could include many categories of goods.” *Id.* at 3, 4 TTABVUE 4. This argument, too, is not dispositive. We must assess 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.” *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (finding SNAP SIMPLY SAFER merely descriptive for cannulae, needles, and syringes) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

We find that LYNKD conveys information about the features and function of Applicant's identified goods. *See In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017) (affirming finding that FIRST TUESDAY is merely descriptive of lottery services and games because "the evidence shows that the mark is less an identifier of the source of goods or services and more a description of a feature or characteristic of those goods or services").

### III. Conclusion

Based on the record in its entirety, we find that a consumer of Applicant's goods would immediately understand LYNKD to convey information about those goods, that is, that they are configurable and monitorable through mobile devices – i.e., "linked." Because the proposed mark immediately conveys knowledge about the features and function of Applicant's goods, it is merely descriptive under Trademark Act Section 2(e)(1).

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