

This Opinion is not a
Precedent of the TTAB

Mailed: September 17, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re IOIP Holdings, LLC
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Serial No. 87250432
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Gerard T. Gallagher of Barnes & Thornburg LLP
for IOIP Holdings, LLC.

Sarah Hopkins, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

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Before Zervas, Cataldo and Lynch,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

IOIP Holdings, LLC (“Applicant”) seeks registration on the Principal Register of the proposed standard character mark ICE BLIND for “ice fishing houses not primarily of metal” in International Class 19.¹

The Examining Attorney determined that ICE BLIND is merely descriptive of a characteristic or feature of Applicant’s identified goods, and refused registration of

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¹ Application Serial No. 87250432 was filed on November 29, 2016, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon an allegation of a *bona fide* intention to use the proposed mark in commerce.

Applicant's proposed mark pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

After the Examining Attorney made the refusal final, Applicant appealed to this Board and requested reconsideration. The Examining Attorney denied the request for reconsideration, the appeal was resumed and both Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them." 15 U.S.C. § 1052(e)(1). 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) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). "On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978); *see also In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

Whether a mark is merely descriptive is determined in relation to the goods for which registration is sought, not in the abstract or on the basis of guesswork. Descriptiveness must be evaluated "in relation to the particular goods for which

registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831). In other words, we evaluate whether someone who knows what the goods 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); *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

When two (or more) merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive. *See e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services).

The Examining Attorney argues that the proposed mark “merely describes a key feature of the Applicant’s goods, namely, the Applicant’s ice fishing shelters are used

on the ice to conceal outdoor enthusiasts that are fishing from the elements and fish below.”² As evidence, the record contains the following dictionary definition of the two defined terms in the proposed mark:

Ice

“a surface, layer, or mass of frozen water.”³

Blind

“a shelter for concealing hunters, photographers, or observers of wildlife.”⁴

We also take judicial notice of the definition of “wildlife” from the Merriam-Webster Online Dictionary, “living things and especially mammals, birds, and fishes that are neither human nor domesticated.”⁵

Additionally, the Examining Attorney relies on third-party webpages using the term “blind” to refer to “shelters” in the context of ice fishing to conclude that “the word blind appears to be widely used to refer to a shelter used by outdoor enthusiasts and a consumer is likely to know that a blind refers to a shelter.”⁶ Furthermore, the Examining Attorney contends that “a consumer is likely to understand that an

² 9 TTABVUE 4.

³ The American Heritage Dictionary (Houghton Mifflin Harcourt Pub. Co. 2018), Jan. 10, 2016 Office Action, TSDR 10.

⁴ The American Heritage Dictionary, Feb. 26, 2018 Office Action, TSDR 5.

⁵ <https://www.merriam-webster.com/dictionary/wildlife>. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁶ 9 TTABVUE 6.

additional term before the word 'blind' is merely describing the type of blind ... such as: hunting blind, fishing blind, ground blind, layout blind”:

- <http://www.gandermountain.com/Hunting/Blinds/Ground-Blinds>
Listing “ground blind,” “5-sided hub blind,” “doghouse blind,” “hunting blind,” “permanent blind” and “layout blind.”⁷
- <http://www.sportsmansguide.com/productlist/hunting/hunting-blinds/ground-blinds?d=115&c=413&s=412>
Listing “hub blind,” “sanctuary blind” and “arcane blind.”⁸
- <http://www.cabelas.com/category/Shelters-Sleds/104561280.uts>
Offering “Ice Fishing Shelters” and “Ice Shelters.”⁹
- <https://shopping.shadetreepowersports.com>
“Fishing blind ACTION Labrador Ice Fishing Shelter.”¹⁰
- http://www.outdoorblog.net/outinmichigan/2013/12103/ducksbucks_cartblind/
“Ice Fishing in the Duck and Bucks Cart Blind on Lake St. Clair.”¹¹
- http://www.marksqualitymarine.com/custompage3.asp?pg=banks_outdoor_blinds
“Banks Outdoor Blinds” ... “We also make Ice Fishing Easy!”¹² Also lists a link to “ICE BLINDS, Wall Insulation, Camo Curtain Kit, Floor Mat.”¹³

⁷ Jan 10, 2016 Office Action, TSDR 8.

⁸ Jan 10, 2016 Office Action, TSDR 9.

⁹ Jan. 10, 2016 Office Action, TSDR 11.

¹⁰ Jul. 28, 2017 Office Action, TSDR 19.

¹¹ Jul. 28, 2017 Office Action, TSDR 21.

¹² Jul. 28, 2017 Office Action, TSDR 25.

¹³ Jul. 28, 2017 Office Action, TSDR 30.

- https://www.alibaba.com/product-detail/2-PERSON-ICE-SHELTER-ice-shelter_60722172819.html
Referring to a 2 person “ice shelter/ice fishing shelter” as a “blind.”¹⁴

- atvcabs.net
“Fishing Blind has four windows including one in entry door.”¹⁵

- <https://www.bigsportsmansoutlet.com/>
“Badgerland Hunting and Fishing Blinds.”¹⁶

- <http://www.mikesbaiton8.com/ice.fishing.html>
“These portable ice fishing shelters are also hunting blinds. With a sled base and rigid hitch, transitioning the Stump Ice from frozen ice to land has never been easier.”¹⁷

- <https://www.sportsmanguide.com>
“Crossover Hunt - N - Fish Combo Ice Shelter/Blind.”¹⁸

The Examining Attorney also points to Applicant’s website which refers to the goods as “blinds” and quotes a customer, “THE WEATHER IS NO LONGER A CONSIDERATION FOR ME TO HUNT OR NOT. I HAVE SHADOW HUNTER BLINDS!!”¹⁹

Applicant challenges the probative value of the Examining Attorney’s evidence, arguing that some of the third-party webpages that use the term “blinds” do not do so in the context of ice fishing or they do not refer to ice fishing shelters as blinds but

¹⁴ Feb. 26, 2018 Office Action, TSDR 17-18.

¹⁵ Jul. 28, 2017 Office Action, TSDR 50.

¹⁶ Jul. 28, 2017 Office Action, TSDR 43, 44.

¹⁷ Jul. 28, 2017 Office Action, TSDR 46.

¹⁸ Jul. 28, 2017 Office Action, TSDR 49.

¹⁹ Jul. 6, 2017 Resp., TSDR 7.

refer to the “products” as “ice shelters”; that they offer ice fishing shelters on separate pages from the ones where hunting blinds are offered (and those pages are accessed through separate links); and that only one product was referred to as an “ice blind” (see www.marksqualitymarine.com webpage) with “ice blind” used in all capital letters (hence suggesting trademark use), on an inactive site.

Applicant’s arguments fail to persuade us. The evidence supports the Examining Attorney’s position that the term “ice blind” is merely descriptive of a feature of Applicant’s goods. ICE in the proposed mark informs the purchaser that the “ice fishing houses not primarily of metal” are intended for use on “ice.” “Blind” in the proposed mark is a defined term referring to a shelter for concealing hunters of wildlife, which include fish. Applicant stated in its response to the First Office Action, “Applicant’s goods will be used in connection with ice fishing and placed on the ice. ... The purpose is to provide shelter while ice fishing.”²⁰ Applicant lists its goods under the caption “blinds” on its website and states, “[b]uilt with the same quality and workmanship of our premium hard-sided blinds, the Shadow Hunter Ice Blind Kit IB56GK allows sportsmen the same comfortable Shadow Hunter experience on the ice.”²¹ The evidence confirms that shelters known as “blinds” are used in connection with activities such as ice fishing, which occurs on frozen water commonly known as “ice,” and the evidence also depicts or refers to blinds used for a variety of purposes, including hunting and fishing. The fact that there is limited evidence of the use of

²⁰ Jul. 6, 2017 Resp., TSDR 1.

²¹ Jul. 6, 2017 Resp., TSDR 7.

combined term “ice blind” does not defeat the Section 2(e)(1) refusal. Even if an applicant is the first or only user of a merely descriptive designation, the designation is not necessarily incongruous or distinctive. *See In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1514 (TTAB 2016) (“The fact that Applicant may be the first or only user of a term does not render that term distinctive ...”). We find that purchasers would immediately understand ICE BLIND as a combination of two merely descriptive terms, the first term indicating to purchasers that the shelters are for use on ice and the second term indicating to purchasers that the goods are a shelter for concealing an individual.

Applicant allows that “[a]t most, the evidence of record establishes that the terms ‘ice’ and ‘blind’ may, individually, have minimal descriptive significance.” However, Applicant further argues that “the mere fact that individual terms of a composite mark may be descriptive does not make the mark as a whole merely descriptive.”²² Citing *In re Intelligent Medical Systems, Inc.*, 5 USPQ2d 1674, 1675 (TTAB 1987) (“[t]he fact that the word ‘intelligent’ is, for the sake of argument, descriptive of a component within applicant's electronic thermometers (i.e., the electronic processor) does not automatically mean that this word is ‘merely descriptive’ of the electronic thermometers themselves”), Applicant argues, “the mark ICE BLIND could be interpreted as a play on the term ‘snow blind,’ which is a ‘temporary loss of vision and

²² 7 TTABVUE 9.

inflammation of the conjunctiva and cornea, caused by exposure of the eyes to bright sunlight and ultraviolet rays reflected from snow or ice.”²³

We reject Applicant’s argument which is implausible and not supported by any evidence from consumers on whether they would interpret the proposed mark in the manner proposed by Applicant. In this case, the third-party evidence discussed above shows that the terms in Applicant’s mark have recognized meanings in connection with the goods, and Applicant points to no evidence indicating otherwise. Thus, we find Applicant’s contention unavailing. *See In re Franklin Cnty. Historical Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012) (“That a term may have other meanings in different contexts is not controlling”). We find that when the terms “ice” and “blind” are combined, “the mark as a whole, *i.e.*, the combination of the individual parts,” does not convey “any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *In re Oppedahl & Larson*, 71 USPQ2d at 1372. From the perspective of a prospective purchaser or user of Applicant’s ice fishing houses (not primarily of metal), “because ... the combination of the terms does not result in a composite that alters the meaning of [any] of the elements ... refusal on the ground of descriptiveness is appropriate.” *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1341 (TTAB 2009).

²³ 7 TTABVUE 10.

Applicant also argues that any doubt regarding descriptiveness should be resolved on applicant's behalf. The record in the present case leaves us with no doubt that the proposed mark is merely descriptive.

Upon consideration of all of the Examining Attorney's and Applicant's arguments and evidence in the record, including the arguments and evidence not specifically discussed in our opinion, we affirm the Examining Attorney's refusal to register Applicant's proposed mark under Section 2(e)(1) of the Trademark Act.

Decision: The refusal to register Applicant's proposed mark is affirmed.