

This Opinion Is Not a
Precedent of the TTAB

Mailed: March 5, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re David Lloyd Kremer

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Application Serial No. 87805208

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Timothy A. Czaja of Dicke, Billig & Czaja, PLLC for David Lloyd Kremer.

Louis Kolodner, Trademark Examining Attorney, Law Office 122,
Kevin Mittler, Managing Attorney.

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Before Bergsman, Goodman and Larkin, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

David Lloyd Kremer (Applicant) seeks registration on the Principal Register of the mark CAMO CORN, in standard characters, for “foodstuffs for animals, namely, corn feed for consumption by animals,” in International Class 31.¹

The Examining Attorney refused to register Applicant’s mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that CAMO CORN for “foodstuffs for animals, namely, corn feed for consumption by animals” is merely

¹ Serial No. 87805208 filed February 21, 2018, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce.

descriptive. According to the Examining Attorney, CAMO CORN is merely descriptive for the identified goods because (i) CAMO is the abbreviation for the word “camouflage,” (ii) CORN is the ingredient of the product, (iii) the individual components of the mark retain their descriptive meaning in relation to the goods, and (iv) CAMO CORN immediately conveys the fact that the goods are camouflaged corn.²

Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register that, when used in connection with an applicant’s goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). “A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)). We “must consider the mark as a whole and do so **in the context of the goods or services at issue.**” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (emphasis added); *In re Calphalon*, 122 USPQ2d 1153, 1162 (TTAB 2017). Indeed, “[t]he 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*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

² Examining Attorney’s Brief (7 TTABVUE 3-4 and 7).

“The major reasons for not protecting such [merely descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.” *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)).

It is the examining attorney’s burden to show that a term is merely descriptive of an applicant’s goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Once a prima facie case is established, the burden of rebuttal shifts to Applicant. *Id.*

We now turn to the evidence of record. The Examining Attorney submitted the evidence listed below to show that CAMO CORN is merely descriptive:

- Merriam-Webster.com defines “Camo” as “camouflage.”³
- Merriam-Webster.com defines “Camouflage” as, inter alia, “the concealment by means of disguise – The rabbit’s white fur acts as camouflage in the snow.”⁴

³ June 8, 2018 Office Action (TSDR 12). *See also* Acronym Finder (acronymfinder.com) (“CAMO stands for Camouflage”) (December 19, 2018 Office Action (TSDR 7)); OXFORD LIVING DICTIONARIES (oxforddictionaries.com/definition/us/camo) (“short for camouflage”) (December 19, 2018 Office Action (TSDR 9)).

All citations to the examination record refer to the Trademark Status and Document Retrieval system (TSDR) in the downloadable .pdf format.

⁴ June 8, 2018 Office Action (TSDR 20).

- Mike Hanback's Big Deer blog (mikehanback.com)⁵

Camouflage Bait Corn (July 11, 2011)

A Georgia company is producing Camo Corn – dyed green and brown, with a mold inhibitor and an additive called Buck Sweet, an attractant to pull in the deer.

* * *

I love American ingenuity. I believe the hunters who are making camo corn come from southern Georgia, where baiting for deer was just made legal on a private lands. ...

Also, in other states where “corning” is legal, a pile of camo kernels would not be visible to other legit hunters. People could not see your bait, think “this must be a good spot” and move in your hunt area.

Followers of the blog posted the following relevant comments:⁶

- Next thing will beat a camoed out feeder.
- Many guys who use corn, use a lot of it. They are not going to pay significantly more for the camo version that does the same thing.
- Let's see: regular corn, \$5 a bag: camo corn \$15 a bag. Nope don't think so. This is a huge scam. Some people think that hunters will buy anything that's camo.
- The camo will def keep the crows from finding and feasting on your bait pile. ... [Y]ou can also use molasses covered corn which costs about half the camo stuff does.

- Whitetail Wisdom blog (deeranddeerhunting.com) (June 24, 2011)⁷

Camo Clothes, Bow ... Corn?

A Georgia company is now marketing a product that deer find irresistible, but wardens will have a hard time finding.

⁵ *Id.* at TSDR 7.

⁶ *Id.* at TSDR 8-9.

⁷ *Id.* at TSDR 10.

It's called "Camo Corn," and that about says it all.
(Emphasis added).

- Predator Control Group "Camouflage [sic] Corn Camo Deer Whitetail Buck

Grain (Amazon.com).⁸ The product description reads as follows:

Green/Brown easy mix, concentrate for 25lbs corn or grain Works for deer and turkey. Directions for Camouflage Corn: Put 25lbs of deer corn, whole or cracked in bucket or tub. Pour in Camouflage Corn Concentrate. Fill container with water till a few inches over corn. 2 days later, drain corn and keep mixture to color more corn. Let corn dry or go use. That simple!⁹

- YouTube (youtube.com) (March 3, 2018)

Camouflage corn, how to make, deer hunting, deer turkey feeding

Camouflage Corn, how to make it and why. This is a simple product to use and make from Predator Control Group. The two main reasons we came up with Camouflage Corn is the [sic] stop all the Trail corn stealing from people seeing bright yellow, easy to see corn pile, then stealing the trail Cam. The other is for guys on hunting leases that spend money to deed deer and see what is on the lease. Then a cheap hunter sets up on another's corn pile and a [sic] ruins the hunting possibly for the hunter that steps up and feeds. This is not meant to be used where baiting is not legal.¹⁰

- Lone Star website (lonestarfeed.com) advertising the sale of 2023 – Camo Deer

Corn.¹¹

⁸ December 19, 2018 Office Action (TSDR 21). *See also* Axtroonline.com *Id.* at TSDR 33.

⁹ *Id.* at TSDR 23.

¹⁰ *Id.* at TSDR 27.

¹¹ *Id.* at TSDR 31.

To rebut the evidence submitted by the Examining Attorney, Applicant submitted copies of six third-party registrations incorporating the term “Camo” as part of the mark. We list the third-party registrations below:¹²

Mark	Reg. No.	Goods
CAMOCAM	4791420	Digital cameras and accessories
CAMO AMMO (“Ammo” disclaimed)	4157365	Ammunition
CAMO PLUGS (“Plugs” disclaimed)	2808860	Ear plug for hearing protection for nonmedical use
CAMOLIGHT	2751207	Flashlight
CAMO POTS (“Pots” disclaimed)	3963780	Plant and flower pots made of fabric
CAMOFUDGE	3913802	Candy, cookies, fudge, ice cream, pasta, popcorn, and salsa

The evidence shows that “Camo” is the abbreviation of the word “Camouflage” and that camouflaged corn is corn that is colored or disguised to blend into the surrounding landscape. “It’s called “Camo Corn,” and that about says it all.”¹³ In this case, each component of the mark retains its descriptive significance in relation to the goods at issue and, thus, the mark CAMO CORN as a whole is merely descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004) (if the individual elements of a composite mark are merely descriptive, the USPTO must determine whether the mark as whole – the combination of the components – is merely descriptive); *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1955 (TTAB 2018). In other words, consumers encountering Applicant’s mark CAMO

¹² December 10, 2018 Response to Office Action (TSDR 7-12).

¹³ June 8, 2018 Office Action (TSDR 10).

CORN used in connection with corn feed for animals will immediately know that the product is camouflaged corn.

Applicant argues that the above-noted evidence “does not constitute ‘proof’ that ‘camo corn’ immediately conveys the idea that the goods are ‘camouflaged corn.’”¹⁴ As noted above, “camo” is the abbreviation of the word “camouflage” and “camouflage” means “concealment by means of disguise.” Thus, the meaning of the composite mark CAMO CORN is disguised corn, a product used by hunters to conceal their baited corn patches from birds and other hunters (e.g., “the hunters who are making camo corn come from southern Georgia, where baiting for deer was just made legal on a private lands,” “The camo will def keep the crows from finding and feasting on your bait pile,” and “The two main reasons we came up with Camouflage Corn is the [sic] stop all the Trail corn stealing from people seeing bright yellow, easy to see corn pile.”). The above-noted evidence supports this finding of fact. Moreover, competitors use variations of “camo corn” to describe their products (i.e., Predator Control Group sells camouflage corn and Lone Star sells camo deer corn showing third-party use of similar terms for similar products).

Also, Applicant contends that the third-party registrations for camo-formative marks “is compelling evidence supporting the registrability of Applicant’s mark.”¹⁵ However, it is well settled that “[t]he Board must decide each case on its own merits.” *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (citing

¹⁴ Applicant’s Brief, p. 7 (5 TTABVUE 8).

¹⁵ Applicant’s Brief, p. 7 (5 TTABVUE 8).

In re Owens-Corning Fiberglas Corp., 774 F.2d 1116, 227 USPQ 417 424 (Fed. Cir. 1985)). Even if some prior registrations had some characteristics similar to CAMO CORN, the USPTO's allowance of such registrations does not bind the Board, or entitle Applicant to register its proposed mark. *Nett Designs*, 57 USPQ2d at 1566.¹⁶

Upon consideration of the applicable law, the evidence and the arguments of Applicant and the Examining Attorney, we find that Applicant's proposed mark CAMO CORN is merely descriptive under Section 2(e)(1).

Decision: The refusal of registration of Applicant's mark CAMO CORN is affirmed.

¹⁶ Even when we consider the third-party registrations, Applicant's reliance on CAMO AMMO for ammunition, CAMO PLUGS for earplugs, CAMO POTS for plant and flowerpots, and CAMOFUDGE for fudge is misplaced. Without more evidence regarding the products identified by the marks and the prosecution history of the registrations, it is not clear how the term "Camo" is merely descriptive of the products in the respective descriptions of goods (e.g., what is camouflaged fudge?).