

This Opinion Is Not a  
Precedent of the TTAB

Mailed: November 15, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

—————  
Trademark Trial and Appeal Board  
—————

*In re Portland Chess Shop LLC*  
—————

Application Serial No. 90433730  
—————

Zachary C. Strebeck of Legal Moves PC, for Portland Chess Shop LLC.

Andrea Cornwell, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

—————  
**NOTICE OF CORRECTION**

**By the Board:**

On November 10, 2022, the Board issued a final decision affirming the above-styled ex parte appeal. The mark at issue is BEST KNIGHT GAMES. The posted decision incorrectly refers to Applicant's mark as BLACK KNIGHT GAMES on pages 1, 2, and 3. A corrected copy of the Board's final decision is attached.

Applicant's time for filing a request for reconsideration, an appeal, or commencing a civil action regarding the Board's November 10, 2022 decision continues to run from the November 10, 2022 mailing date of that decision. *See* Trademark Rule 2.145(d)(1), 37 C.F.R. § 2.145(d)(1).

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: November 10, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

—————  
Trademark Trial and Appeal Board

—————  
*In re Portland Chess Shop LLC*

—————  
Application Serial No. 90433730

Zachary C. Strebeck of Legal Moves PC, for Portland Chess Shop LLC.

Andrea Cornwell, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

—————  
Before Zervas, Taylor, and Bergsman,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Portland Chess Shop LLC (“Applicant”) seeks registration on the Principal Register of the mark BEST KNIGHT GAMES (in standard characters) for “board games; card games; checkers games; chess games; dice games; equipment sold as a unit for playing board games; go games; parlor games; puzzle games; strategy games; tabletop games; chess equipment and accessories; chess clocks; chess timers,” in

International Class 28.<sup>1</sup> Applicant disclaims the exclusive right to use the word “Games.”

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 when BEST KNIGHT GAMES is used to identify the products in Applicant’s description of goods, it is merely descriptive.

BEST KNIGHT GAMES is immediately understood as describing applicant’s goods, which are (a) the highest-quality and most desirable (BEST) equipment for playing board, card, checkers, chess, and other games (GAMES), including chess pieces with heads typically shaped like a horse’s head (KNIGHT), and/or (b) the highest-quality and most desirable (BEST) equipment for playing board, card, checkers, chess, and other games (GAMES) relating to mounted men-at-arms with special military rank (KNIGHT).<sup>2</sup>

When we refer to the prosecution history, we cite to the USPTO Trademark Status and Document Retrieval (TSDR) system in the downloadable .pdf format.

When we refer to the briefs, we cite to TTABVUE, the Board’s online docket system.

## I. Preliminary Issue

Before proceeding to the merits of the refusal, we address a preliminary matter. Applicant’s October 28, 2021, November 10, 2021, and March 1, 2022 Requests for

---

<sup>1</sup> Serial No. 90433730 was filed on December 30, 2020, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s bona fide intention to use the mark in commerce.

<sup>2</sup> Examining Attorney’s Brief (11 TTABVUE 6).

Reconsideration are essentially the same. Applicant's submission of the arguments and evidence in triplicate is cumulative. Suffice it to say, the arguments and evidence do not become more persuasive and probative the more times they are filed.

## II. Whether BEST KNIGHT GAMES is merely descriptive

### A. Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), 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," unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).<sup>3</sup>

"A term is deemed to be merely descriptive of goods or 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 goods or services." *In re Fallon*, 2020 USPQ2d 11249, at \*7 (TTAB 2020) (quoting *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018) (citing *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012)); *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015); and *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978)). "A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods." *In re Fat Boys Water Sports LLC*, 118 USPQ2d

---

<sup>3</sup> Applicant does not claim that its proposed mark has acquired distinctiveness.

1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

“[A] mark need not be merely descriptive of all recited goods or services in an application. A descriptiveness refusal is proper ‘if the mark is descriptive of any of the [goods] for which registration is sought.’” *Chamber of Commerce*, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)). Accordingly, the Examining Attorney need only show that the proposed mark is merely descriptive of one of the products listed in the application.

“Whether a mark is merely descriptive is ‘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,’” *Fallon*, 2020 USPQ2d 11249, at \*7 (quoting *Chamber of Commerce*, 102 USPQ2d at 1219) (internal quotation omitted), and “not in the abstract or on the basis of guesswork.” *Id.* (quoting *Fat Boys*, 118 USPQ2d at 1513) (citing *Abcor Dev.*, 200 USPQ at 218)). “We ask ‘whether someone who knows what the goods and services are will understand the mark to convey information about them.’” *Id.* (quoting *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (internal quotation omitted)). A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone

who knows what the goods or services are to reach a conclusion about their nature from the mark. *Id.* (citing *Fat Boys*, 118 USPQ2d at 1515).

Applicant's proposed marks consist of the words "Best," "Knight," and "Games." "We must 'consider the *commercial impression* of a mark as a whole.'" *Id.* (quoting *Real Foods*, 128 USPQ2d at 1374). "In considering [the] mark as a whole, [we] 'may not dissect the mark into isolated elements,' without consider[ing] . . . the entire mark," *id.* (quoting *Real Foods*, 128 USPQ2d at 1374) (internal quotation omitted), "but we 'may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.'" *Id.* (quoting *Real Foods*, 128 USPQ2d at 1374) (internal quotation omitted)). "Indeed, we are 'required to examine the meaning of each component individually, and then determine whether the mark as a whole is merely descriptive.'" *Id.* (quoting *DuoProSS*, 103 USPQ2d at 1758).

"Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase." *In re Omniome, Inc.*, 2020 USPQ2d 3222, at \*4 (TTAB 2019). "If the words in the proposed mark are individually descriptive of the identified goods, we must determine whether their combination 'conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.'" *Fallon*, 2020 USPQ2d 11249, at \*7 (quoting *Fat Boys*, 118 USPQ2d at 1515-16) (internal quotation omitted)). "If each word instead 'retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive.'" *Id.* (quoting *Fat*

*Boys*, 118 USPQ2d at 1516) (internal quotation omitted)). “A mark comprising a combination of merely descriptive components is registrable only if the combination of terms creates a unitary mark with a non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services.” *Omniome, Inc.*, 2020 USPQ2d 3222, at \*4.

“Whether a mark is merely descriptive or not is determined from the viewpoint of the relevant purchasing public.” *Id.*, at \*5 (quoting *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005) (internal quotation omitted)). The goods identified in the application are listed below:

- board games;
- card games;
- checkers games;
- chess games;
- dice games;
- equipment sold as a unit for playing board games;
- go games;
- parlor games;
- puzzle games;
- strategy games;
- tabletop games;
- chess equipment and accessories;
- chess clocks; and

- chess timers.

Thus, our analysis focuses on the viewpoint of consumers who play such games.

“Evidence of the public’s understanding of [a] term . . . may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers[,] and other publications.” *Fallon*, 2020 USPQ2d 11249, at \*7 (quoting *Real Foods*, 128 USPQ2d at 1374). “These sources may include [w]ebsites, publications and use in labels, packages, or in advertising materials directed to the goods [or services].” *Id.*, at \*7-8 (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017) (internal quotation omitted)). “Evidence that a term is merely descriptive similarly may come from an applicant’s own usage other than that found on its labels, packaging or advertising materials.” *Omiome*, 2020 USPQ2d 3222, at \*4.

“It is the Examining Attorney’s burden to show, prima facie, that a mark is merely descriptive of an applicant’s goods or services.” *Fallon*, 2020 USPQ2d 11249, at \*8 (quoting *Fat Boys*, 118 USPQ2d at 1513). “If such a showing is made, the burden of rebuttal shifts to the applicant.” *Id.* (quoting *Fat Boys*, 118 USPQ2d at 1513). “The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant.” *Id.* (quoting *Fat Boys*, 118 USPQ2d at 1513).

## B. Evidence of Record

We start our analysis of the facts by defining the words that comprise Applicant’s mark BEST KNIGHT GAMES. The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) defines the terms as follows:



- “Best” is defined as “excelling all others”;<sup>4</sup>
- “Knight” is defined as (i) “a mounted man-at-arms serving a feudal superior” and (ii) as a chess piece;<sup>5</sup> and
- “Game” is defined, inter alia, as an “activity engaged in for diversion or amusement: Play” and “the equipment for a game.”<sup>6</sup>

Thus, when used in connection with the products in Applicant’s description of goods listed above, consumers will perceive BEST KNIGHT GAMES as superior activities involving a medieval, mounted soldier in armor.

We now turn to the other evidence consisting of all the terms in the mark or some of its terms, to see whether BEST KNIGHT GAMES in its entirety conveys a different commercial impression than that engendered by the individual words comprising the mark discussed above. The Examining Attorney submitted the following evidence:

- Excerpts from the Gamers Decide website (gamersdecide.com) posting “The 17 Best Knight Games To Play on PC (2018-2019) (December 7, 2018).”<sup>7</sup> The author lists

---

<sup>4</sup> September 1, 2021 Office Action (TSDR 5).

<sup>5</sup> September 1, 2021 Office Action (TSDR 6). THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2020) further identifies the knight chess piece as being in the shape of a horse’s head. *Id.* at TSDR 9. On the other hand, the More Games Like website (moregameslike.com) refers to a “knight” as “the character with an armor suit, equipped with a sword to attack enemies and a shield to defend himself from enemies attack.” December 11, 2021 Office Action (TSDR 12). *See also* Silvergames.com, *id.* at TSDR 34 (“A knight is a person who has an honorary title of knighthood and serves a monarch or bishop. They first appeared in the medieval age and became very popular in the time of King Arthur. They are known for the battles on horseback, courage and shining armor. Knight[s] often demonstrated their fighting skills in public tournaments which usually took place near the castle. The winner would receive money, honor and even the heart of a beautiful princess.”).

<sup>6</sup> September 1, 2021 Office Action (TSDR 7).

<sup>7</sup> December 11, 2021 Office Action (TSDR 5).

what he considers “awesome Knight Games” referring to games involving knights or mounted soldiers of medieval times.<sup>8</sup>

- Excerpts from More Games Like website (moregameslike.com) posting “31 Best Knight Games for Android.”<sup>9</sup> The posting provides that “Knight Games deal with exploration, sword fighting, interacting with NPCs, and more.”<sup>10</sup>

- Excerpts from the Silvergames.com website for “Knight Games.”<sup>11</sup> The website provides the following information:

#### WHAT ARE KNIGHT GAMES?

Knight Games are medieval fighting games where you control a chevalier or fight against dozens of mounted fighters. Take a lance or your sword and fight against hordes of monsters. Build a castle and defend your kingdom against invaders in our tower defense games. Here on Silvergames.com you will find the best knight games about brave warriors and royal battles.<sup>12</sup>

The frequently asked questions posted Silvergames.com include “What are the top 5 knight games?” “What the best knight games on tablets and mobile phones?” and “What are the newest knight games on Silvergames?”<sup>13</sup>

- The Lagged website (lagged.com) has a posting for “Knight Games.”<sup>14</sup>

---

<sup>8</sup> December 11, 2021 Office Action (TSDR 7).

<sup>9</sup> December 11, 2021 Office Action (TSDR 12).

<sup>10</sup> *Id.*

<sup>11</sup> December 11, 2021 Office Action (TSDR 33).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at TSDR 35.

<sup>14</sup> December 11, 2021 Office Action (TSDR 36).

• The PCGames website (pcgamesn.com) posts “Medieval games: the best knight games on PC.”<sup>15</sup> The posting provides the following information:

Medieval games are less common than you might think. Rare is the videogame that doesn’t feature at least one sword, suit of armour [sic], or roast chicken, but they’re usually mixed in with bearded hermits slinging magic fireballs, which we’re reliably informed your average medieval peasant had very little knowledge of.<sup>16</sup>

Applicant submitted copies of 47 third-party registrations consisting of the word “Best” for a wide variety of goods and services where the registrants did not disclaim the exclusive right to use the word “Best” or make a claim of acquired distinctiveness.<sup>17</sup> For example,

• Registration No. 0882603 for the mark BEST EGG in typed drawing form for “egg washing composition,” in International Class 3.<sup>18</sup> Registrant disclaimed the exclusive right to use the word “Egg”;

• Registration No. 1399721 for the mark BEST CHOICE in typed drawing form for food products in International Classes 29, 30 and 32;<sup>19</sup> and

• Registration No. 1681009 for the mark BEST ESP in typed drawing form for “computer programs for preparing financial statements,” in International Class 9,

---

<sup>15</sup> March 22, 2022 Denial of Request for Reconsideration (TSDR 5).

<sup>16</sup> *Id.*

<sup>17</sup> October 28, 2021 Request for Reconsideration (TSDR 31-286).

<sup>18</sup> *Id.* at TSDR 31.

<sup>19</sup> *Id.* at TSDR 40.

and “computer program manuals for preparing financial statements,” in International Class 16.<sup>20</sup>

Applicant also submitted excerpts from the websites listed below referring to “Night Games” that the authors characterized as games the entire family may play at night:

- Pinterest (pinterest.com) “5 Best Summer Night Games for the Family” posted from <sayyes.com>;<sup>21</sup>

- Icebreaker Ideas website (icebreakers.com) “15 Great Night Games for the Whole Family”;<sup>22</sup> and

- Outdoor Always website (outdooralways.com) “Top 16 Fun Night Games for the Whole Family.”<sup>23</sup>

### III. Analysis

As noted above, when BEST KNIGHT GAMES is used in connection with the products in Applicant’s description of goods, consumers will perceive BEST KNIGHT GAMES as superior activities involving a medieval, mounted soldier in armor. This finding is corroborated by the webpages posting articles referring to Knight Games, including references to “best knight games.” The term “Best Knight Games” directly conveys to consumers the nature of the game (i.e., the game involves a medieval, mounted soldier in armor).

---

<sup>20</sup> *Id.* at TSDR 59.

<sup>21</sup> October 28, 2021 Request for Reconsideration (TSDR 297 and 299).

<sup>22</sup> *Id.* at TSDR 304.

<sup>23</sup> *Id.* at TSDR 311.

Applicant argues, to the contrary, that BEST KNIGHT GAMES is suggestive.<sup>24</sup>

Here, Applicant's Mark is suggestive in relation to the applied-for goods and suggests that the products can be enjoyed at night and derive from a source that prides itself as being honorary, fun, excellent, and entertaining. Consumers will exercise thought and imagination in determining the features of the goods. While Applicant's Mark may allude to or inform the consumer of the product, it does so in a very broad sense. Moreover, it does not immediately convey information about the quality, feature, function, or characteristic of Applicant's goods to the average consumer. Thus, while Applicant's Mark may allude to a portion of the product, consumers have to use their imagination to draw a conclusion about the goods offered.<sup>25</sup>

We disagree. When the mark BEST KNIGHT GAMES is used in connection with board games, parlor games, or strategy games, consumers immediately understand that the activity (game) involves medieval mounted soldiers wearing armor (i.e., knights).

The evidence of record does not support Applicant's contention that consumers will believe that "Knight" refers to "night" because all of the references to "Knight" refer to medieval mounted soldiers in armor. None of the references to "Knight" refer to "night" or "evening." Likewise, all of the references to "Night" refer to "evening." None of the references to "Night" refer to "Knights."<sup>26</sup>

---

<sup>24</sup> Applicant's Brief, p. 10 (9 TTABVUE 11).

<sup>25</sup> *Id.* at (9 TTABVUE 11-12).

<sup>26</sup> Thus, we are not persuaded that BEST KNIGHT GAMES creates a double entendre suggesting night or evening games, as well as games involving medieval, mounted soldiers wearing armor. Applicant's Brief, pp. 19-21 (9 TTABVUE 20-22).

Applicant also contends that its use of “Best” makes the mark BEST KNIGHT GAMES registrable because its “use of ‘BEST’ does not specify what aspects, if any, are better than other similar goods.”<sup>27</sup> However, Applicant’s use of the word “Best” is laudatory. Laudatory terms, those that attribute quality or excellence to goods or services, such as Applicant’s use of “Best” in BEST KNIGHT GAMES, are merely descriptive under Section 2(e)(1) of the Trademark Act. *See In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (finding THE BEST BEER IN AMERICA so highly laudatory and descriptive as applied to beer and ale that it is incapable of acquiring distinctiveness); *In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001) (BEST and PREMIER in mark BEST! SUPPORTPLUS PREMIER merely descriptive of computer consultation and support services and thus subject to disclaimer).

Applicant counters that the USPTO permitted the registration of the third-party Best-formative registrations discussed above demonstrating that “Best” is not merely laudatory.<sup>28</sup> However, these prior registrations do not conclusively rebut our finding that “best” is descriptive in the context of Applicant’s mark BEST KNIGHT GAMES. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

The Board must decide each case on its own merits. *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 1127, 227 USPQ2 417, 424 (Fed.Cir.1985). Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.

---

<sup>27</sup> Applicant’s Brief, p. 12 (9 TTABVUE 13).

<sup>28</sup> Applicant’s Brief, p. 18 (9 TTABVUE 19).

*Nett Designs*, 57 USPQ2d at 1566. Accordingly, the third-party registrations have little persuasive value.

We find Applicant's mark BEST KNIGHT GAMES is merely descriptive when used in connection with "board games; card games; checkers games; chess games; dice games; equipment sold as a unit for playing board games; go games; parlor games; puzzle games; strategy games; tabletop games; chess equipment and accessories; chess clocks; chess timers."

**Decision:** We affirm the refusal to register.