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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Float, Incorporated*

Serial No. 75/474,362

Jim Zegeer, Esq. for *Float, Incorporated*.

Douglas M. Lee, Trademark Examining Attorney, Law Office 108
(*David Shallant*, Managing Attorney).

Before *Cissel, Hohein* and *Rogers*, Administrative Trademark
Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

Float, Incorporated has filed an application to register the term "FLOAT" for a "motor vehicle flood protection device, namely, a unitary flexible plastic waterproof container that can be sealed to enclose a motor vehicle to protect it from flood damage."¹

¹ Ser. No. 75/474,362, filed on April 27, 1998, which is based on an allegation of a bona fide intention to use such term in commerce.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "FLOAT" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used or will be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser

of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant asserts that the "mark FLOAT does not immediately tell potential purchasers only what the goods are or what their function is or what their characteristics are or what their use is."² Instead, according to applicant:

The mark FLOAT is at best only suggestive of applicant's goods. The flexible plastic container, which in its normal state as sold to a customer, is in a flat packaged condition, does not float unless it is opened and a vehicle placed in it and sealed. Thus, it is not merely the goods ... that floats [sic] but the goods filled with air and the vehicle that floats [sic]. In fact, it is the air itself that

² Applicant also argues that the "mark FLOAT has not been found to be in common usage in the trade or elsewhere in the description of the same or related goods" and that "[i]n fact it has not been found that there are any goods on the market comparable to or the equivalent of applicant's goods." However, as the Examining Attorney accurately observes, "applicant has not provided any evidence to support its position" and the absence of evidence from the record is not evidence of absence of nonuse by third-parties of the word "float" for goods of the kind offered by applicant. Furthermore, as the Examining Attorney correctly points out, it has consistently been held that it is not necessary for a term to be in common usage in a particular field or industry in order for it to be merely descriptive. See, e.g., In re Central Sprinkler Co., 49 USPQ2d 1194, 1199 (TTAB 1998); In re Tekdyne Inc., 33 USPQ2d 1949, 1953 (TTAB 1994); In re Eden Foods Inc., 24 USPQ2d 1757, 1761 (TTAB 1992); In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983); and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

causes the vehicle to float, and the air is not in the goods when sold. Accordingly, it takes thought, imagination and contemplation to arrive at a feature of the goods when in use, namely, floating. Floating is not an attribute to the goods when it [sic] does not have a vehicle in it. It is more likely than not that the goods themselves, namely, a flexible plastic container which in its normal state is sold to a customer in a flat packaged condition does not float -- it is the air in the package that causes it to float.

We agree with the Examining Attorney, however, that the term "FLOAT" is merely descriptive of applicant's motor vehicle flood protection devices because, to customers for such goods, it immediately describes, without conjecture or speculation, "the primary function of the goods, namely, a device that allows a motor vehicle to float in a sealed plastic waterproof container as a means of protection from flood damage." In support thereof, the Examining Attorney notes that the definition of record from The American Heritage Dictionary of the English Language (3rd ed. 1992) defines "float" as a verb meaning, inter alia, "[t]o remain suspended within or on the surface of a fluid without sinking" and "[t]o cause to remain suspended without sinking or falling," while such term as a noun is defined, in relevant part, as "[s]omething that floats, as: .
a. A raft. **b.** A buoy. **c.** A life preserver. **d.** A buoyant object, such as a cork, used to hold a net or fishing line afloat. **e.** A landing platform attached to a wharf and floating

on the water. f. A floating ball attached to a lever to regulate the water level in a tank."³ Likewise, we judicially notice, as requested by the Examining Attorney in his brief, that The Random House College Dictionary (rev. ed. 1980) lists "float" as a verb meaning "to rest or remain on the surface of a liquid; be buoyant" and as a noun signifying, among other things, "17. something that floats, as a raft. 18. something for buoying up. 19. an inflated bag to sustain a person in water; life preserver."⁴

In addition, the Examining Attorney notes and relies upon excerpts from applicant's patent application for its goods, including the following, which is set forth in the "BACKGROUND AND BRIEF DESCRIPTION OF THE INVENTION" (**emphasis added**):

We have discovered that when the flood water levels are about 1-2 feet or greater above ground level, the average vehicle, such as a car or pickup truck, in a sealed flexible waterproof container as disclosed herein will **float**. If the flexible

³ While applicant--notably without explanation--contends for the first time in its reply brief that "there are also other definitions that are just as applicable, namely, a float as in a parade, or float as in a balloon that floats in the air," such definitions are plainly inapposite and none of the additional meanings for the term "float" appears pertinent when considered in the context of applicant's goods.

⁴ It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 (TTAB 1981) at n. 7.

waterproof container is tethered or otherwise anchored to some fixed object such as a telephone pole, power pole, concrete slab, weights, etc., the car will be protected during flood conditions. Anchoring or otherwise tethering the container prevents the **floating** car from being damaged and damaging other objects due to the movement given it by the flowing flood waters.

We concur with the Examining Attorney's conclusion that, in light of the above evidence, the term "FLOAT" forthwith conveys a merely descriptive significance when used in connection with applicant's goods. It is obvious, as the Examining Attorney states in his brief, that (*italics in original*):

In the present case, the applicant's motor vehicle flood protection device protects an automobile from flood damage by enclosing the automobile inside a sealed plastic waterproof container which allows the automobile to *float* above the flood waters. The intended result of the usage of the applicant's motor vehicle flood protection device is to permit the automobile to remain suspended above the flood waters without sinking or falling. In addition to being [merely] descriptive of the goods when used as a verb, the term is also [merely] descriptive of the goods when used as a noun. Here, when filled with air, the applicant's goods actually operate as a float, namely, a sealed plastic waterproof container that floats.

....

In short, there is simply nothing in the term "FLOAT" which requires the exercise of imagination, cogitation, mental

processing or gathering of further information in order for purchasers of, and prospective customers for, applicant's goods to readily perceive the merely descriptive significance of the term as it pertains to applicant's goods.

With respect to applicant's remaining argument, we observe, as has the Examining Attorney, that "applicant does not appear to dispute that its goods protect automobiles from flood damage by causing the vehicle to float." Instead, applicant urges that, as mentioned previously, its flexible plastic waterproof container, when sold to a consumer, "is in a flat packaged condition" and that such product "does not float unless it is opened and a vehicle [is] placed in it and sealed." Applicant insists, furthermore, that it is not actually the product itself which floats but the air trapped inside which causes the vehicle sealed therein to float and that "the air is not in the goods when sold."

We agree with the Examining Attorney, however, that "applicant's argument has no merit" because (*italics in original*):

The fact that the goods are *sold* in a flat packaged condition is completely irrelevant. Instead, the relevant factor pertains to the fact that the intended function of the goods is to cause the automobile to float above the flood waters.

Thus, just as a raft, a buoy, a life preserver, or any other buoyant object does not float, and hence does not act as a

float, except when in use, the fact that applicant's goods do not function as a float until the protective waterproof container is sealed and floodwaters have risen sufficiently to cause the car or pickup truck enclosed therein to float as a means of protection from damage does not mean that the term "FLOAT" does not immediately describe a significant--if not *the most important*--purpose, function or use of such goods. As the Examining Attorney properly points out, it is not necessary that a term describe all of the purposes, functions, uses or features of the goods to be merely descriptive. It is enough if the term describes a single significant aspect or attribute of the goods. See, e.g., *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Accordingly, because the term "FLOAT" conveys forthwith a significant purpose, function or use of applicant's "motor vehicle flood protection device, namely, a unitary flexible plastic waterproof container that can be sealed to enclose a motor vehicle to protect it from flood damage," it is merely descriptive thereof within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.