

**THIS DISPOSITION
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Hearing:
August 11, 2005

Mailed:
December 7, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Automobile Association, Inc.

Serial No. 75719651

Lawrence E. Laubscher, Jr. of Laubscher & Laubscher for
American Automobile Association, Inc.

J. Brett Golden, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Quinn, Hohein and Zervas, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

American Automobile Association, Inc. has appealed
from the final refusal of the examining attorney to
register on the Principal Register the term MAYDAY (in
standard character form) as a trademark for the following
goods, as amended: "electronic transceivers for vehicles
for requesting emergency police, fire, and rescue service,

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emergency road service, and for requesting and receiving travel information" in International Class 9.¹

The examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

§1052(e)(1), on the grounds that, when used on applicant's goods, the mark MAYDAY would be merely descriptive of such goods.

Both applicant and the examining attorney have fully briefed the case. An oral hearing was held before the Board on August 11, 2005.

The examining attorney contends that the mark "is merely descriptive, and not suggestive, of a use or function of the identified goods." In support thereof, he relies in part on the dictionary definition of "mayday" as "an international radiotelephone signal word used by aircraft and ships in distress" from *The American Heritage Dictionary of the English Language* (3d ed. 1992), maintaining that "mayday" "is commonly used to describe a distress signal or request for emergency assistance from the user of a motor vehicle." He also relies on various Internet articles which describe "mayday systems,"

¹ Application Serial No. 75719651, which was filed on June 4, 1999, based on applicant's assertion of its bona fide intention to use the mark in commerce.

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contending that "mayday" "has become a term of art used in the automotive and emergency response industries to describe a system or equipment that incorporates global positioning, satellite and wireless telecommunications, and emergency response technologies in order to determine the location of and communicate with a motor vehicle and its operator in an emergency situation." Specifically, he maintains that "in the context of applicant's goods ... MAYDAY immediately and unambiguously describes a system or equipment that is used by the operator of a motor vehicle to request emergency assistance and communicate with emergency response personnel."

Applicant has argued against the refusal to register under Section 2(e)(1), contending that while "[a]pplicant readily agrees that [mayday] is an international radio-telephone signal word used as a distress call," the term "is, at most, suggestive of [applicant's] goods." According to applicant, to be merely descriptive, "a mark must have no other meaning or function"; that, in this case, there are multiple meanings of "mayday" as evidenced in Internet search results using the Google and Yahoo search engines which were submitted by applicant in response to the examining attorney's initial refusal under

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Section 2(e)(1); and that "the consuming public is exposed to a plethora of uses of 'mayday.'" (Brief at pp. 4 - 6.)

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 Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

We first consider the Internet evidence of record and the examining attorney's contention that "mayday" "has become a term of art used in the automotive and emergency response industries." The record in this case includes the following Internet evidence:

From www.cts.umn.edu, University of Minnesota Center for Transportation Studies:

Mayday equipment is on the verge of becoming a standard feature in many vehicles. In fact, more

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than two million vehicles are expected to have Mayday features available by next year.

From www.comcare.org, ComCARE Alliance:

Similar to safety benefits provided by the proper use of seat belts and airbags, telematics Mayday systems represent the next generation of I-vehicle safety technology. Mayday systems automatically notify a private call center, such as GM OnStar, ATX Technologies, or AAA Response, that a vehicle's airbag has been deployed, or an emergency call button has been pushed.

From www.its.dot.gov, ITS U.S. Department of Transportation:

Title: Mayday Systems

* * *

Current

Status: Mn/DOT is seeking to identify new opportunities to continue the development of its Mayday system.

From www.iacptechnology.org - article entitled "Intelligent Transportation Systems: A Traffic Incident Management Tool":²

In-vehicle technologies such as Mayday are becoming more and more prevalent. These systems are most commonly marketed as OnStar (General Motors), RESCU (Ford/Lincoln), and RESPONSE (AAA). Mayday systems enable vehicle operators to have direct verbal communication with private call centers regarding requests for traveling directions or mechanical assistance, or notification of crashes.

² Because a URL was not provided for this article, we are not certain from where it came. However, we consider this article because applicant has not raised a specific objection to the article on this basis.

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From www.virginiadot.org:

Estimates are that Mayday systems could cut response times from an average of more than 9 minutes to less than 5 minutes.

From www.ur.ku.edu, The University of Kansas Office of University Relations:

But work is under way on a system called Mayday, which would summon help automatically in an emergency such as this.

From www.smarttrek.org:

The advantage of wireless technology - mobility - has made it impossible for emergency dispatchers to find wireless 911 callers who don't know their location. XYPoint and Bartizan will provide two versions of mayday systems to send accident locations electronically to emergency and roadside response centers.

From U.S. Department of Transportation, "Intelligent Transportation Systems Standards Fact Sheet," dated August 2000:

Systems that are used to alert emergency response agencies that an individual vehicle has been involved in an accident are commonly referred to as "mayday systems." Unfortunately, the 30 or so different mayday systems that have been installed in many vehicles recently cannot communicate with each other, nor are they comparable with existing national, state, or local level emergency (911) response agencies.

From the foregoing, it is apparent that "mayday" is a term used to identify or describe a system for alerting emergency police, fire and rescue professionals of a motor vehicle in distress, and that a communication device which sends a distress signal to such professionals, such as an

electronic transceiver, is used in such a system. Thus, one use or function of the goods identified in the application is with mayday systems. The examining attorney therefore has made a prima facie case based on the Internet evidence that the applied-for mark merely describes a use or function of the goods.

Applicant contends that the Internet evidence submitted by the examining attorney "can be tied to a single source. Specifically, Minnesota Guidestar initiated the project in the 1990's called Mayday Plus ... The Mayday Plus project was an intelligent transportation systems (ITS) initiative to provide innovative solutions to transportation problems." (Reply at pp. 1 - 2.)³ Even if applicant's contention is true, the record reflects use of "mayday" in connection with "mayday systems" or alone, and not only as "Mayday Plus" or always with "Mayday Plus." Additionally, the evidence shows use of "mayday systems" without capitalization in some Internet articles. While Minnesota Guidestar may have initiated a study called "Mayday Plus" in 1995,⁴ it is certainly possible - and in

³ Applicant has also provided with its reply brief additional evidence taken from the Internet. This additional evidence is untimely and is not further considered because under Trademark Rule 2.142(d), the record in an application should be completed prior to filing an appeal.

⁴ See submission from www.inform.enterprise.prog.org, stating "[i]n 1995, MN/DOT developed a concept, implemented, tested and

this case, apparent, in view of the Internet evidence obtained by the examining attorney in 2004 - that "mayday" has gained broader meaning over nine years and identifies a system for alerting emergency response agencies that an individual vehicle has been in an accident. Additionally, the record reflects use of "Mayday system[s]" by entities such as the federal Department of Transportation, the University of Minnesota and the University of Kansas.

Applicant also contends that "whether a proposed mark is merely descriptive must be evaluated from the standpoint of the prospective purchaser of the goods" (quoting from *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978)); that the Internet evidence is from federal and state departments of transportation; and that the "jargon used by those employed in a specific industry should not be unequivocally linked to the consumer unless there is sufficient evidence to create this link." (Reply at pp. 4 - 5.) Applicant's argument is not well taken. First, we are not aware of any reason why the articles of record would not be reviewed by automobile manufacturers who, as potential purchasers of applicant's goods, are

subsequently evaluated its Mayday Plus project through a unique public-private effort. The goals of this 11 county project were"

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considering whether to include electronic transceivers in their vehicles. Second, there is no reason to suggest that potential purchasers of applicant's goods such as automobile manufacturers or individuals would not access the same Internet articles introduced by the examining attorney in determining whether to install an electronic transceiver in a vehicle and participate in a "mayday system."

The examining attorney has also relied on a dictionary definition of "mayday." The dictionary definition of record provides that "mayday" is "used by aircraft and ships in distress." However, applicant's identification of goods includes the limitation "for ... emergency road service." Also, the Internet evidence of record does not concern use of the term in connection with aircraft or ships. Thus, there is an incongruity between the dictionary definition of record on one hand, and the identified goods and the Internet articles on the other hand.

The definition of "mayday" in *Webster's Third New International Dictionary* (1993), of which we take judicial

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notice,⁵ is not limited to use by aircraft or ships; it states: "an international radiotelephone signal word used as a distress call, to introduce a distress message, or by distress traffic." Applicant too has stated that it "readily agrees that this ["MAYDAY! MAYDAY!"] is an international radiotelephone signal word used as a distress call." (Brief at p. 4.) Therefore, we find that "mayday" is a term that one may use with an electronic transceiver in seeking "emergency road service." As such, "mayday," describes a feature of applicant's goods.

We next address applicant's argument, noted above, that there are multiple meanings of "mayday" and that the "consumer must employ some imagination, thought, or perception to reach a conclusion as to the nature of Applicant's goods" Applicant's argument is not persuasive because the lists of Internet search results which applicant relies on in support of its argument is not particularly probative, as the excerpts that appear in such lists are extremely truncated and we do not have the web pages themselves from which to examine the context within which the search terms are used. Also, as the examining

⁵ The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

attorney correctly notes, descriptiveness is considered in relation to the identified goods, and the fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Industries*, 222 USPQ 258 (TTAB 1984).

Applicant has also argued that "the records of the USPTO show a history of granting registration of the MAYDAY mark in connection with 'emergency' goods and services and a variety of other goods and services." Applicant refers to various third-party applications and registrations listed in its response (filed January 31, 2000) to the first Office action, and different third-party applications and registrations listed in its reply brief.

Applications, however, are only evidence that an applicant has filed for registration of a mark; thus, we do not further consider any of the applications identified by applicant. See *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002).

As for the registrations listed by applicant in its January 31, 2000 response, applicant has not provided copies of the registrations during the prosecution of this case. To make a third-party registration of record, a copy of the registration, consisting of either a copy of the paper USPTO record or a copy taken from the electronic records of

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the Office, should be submitted. Mere listings of registrations are not sufficient to make the registrations of record.

However, there are limited circumstances in which the Board will consider such listings. In particular, if an applicant includes a listing of registrations in a response to an Office action, and the examining attorney does not advise applicant that the listing is insufficient to make the registrations of record at a point when applicant can correct the error, the examining attorney will be deemed to have stipulated the registrations into the record. Because the examining attorney was silent regarding applicant's reliance on these registrations and did not advise applicant that the listing is insufficient to make the registrations of record, the registrations, namely, Registration Nos. 1256677, 1996243, 2046413 and 2085329, are considered of record. However, the Board will not consider more than the information provided by applicant, and if applicant has provided only a list of registrations numbers, the list will have very limited probative value. See TBMP § 1208.02 (2d ed. rev. 2004) and cases cited therein. Applicant only provided a list of registration numbers and stated "[t]he only common term is MAYDAY which appears in numerous applications and registration"

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Applicant did not, in its January 31, 2000 response, identify what the marks which are the subject of the registrations actually are, or even identify the goods or services set forth in the registrations.⁶ Thus, the registrations are of essentially no probative value.⁷

Also in its reply, applicant identified additional applications and registrations which contain the term MAYDAY and were not previously cited by applicant.

Applicant "requests that the Board take judicial notice" of the applications and registrations. The Board does not take judicial notice of applications and registrations. See *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). These applications and registrations are therefore given no further consideration. See Trademark Rule 2.124(d).

In view of the foregoing, we conclude that, when used in connection with applicant's goods, the term MAYDAY

⁶ Applicant, in its reply, identified the marks and subject goods. To allow applicant to introduce this evidence in the last paper filed in this case is patently unfair to the examining attorney and the examination process. In view thereof, and because pursuant to Trademark Rule 2.124(d) a record is to be completed prior to an appeal, we do not give further consideration to the additional information submitted by applicant regarding these registrations in its reply brief.

⁷ Even if applicant had included copies of the registrations with its response, we would not arrive at a different result. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Design's application, the PTO's allowance of such prior registrations does not bind the Board or this Court.").

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immediately describes, without conjecture or speculation, a significant feature, use and function of the goods, namely, that applicant's goods may be used in connection with "mayday systems."

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