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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Midtown Technology

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Serial No. 75/894,264

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Cynthia S. Murphy of Renner, Otto, Boisselle & Sklar, LLP  
for Midtown Technology.

Idi Aisha Clarke, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney).

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Before Hanak, Walters and Chapman, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

On January 11, 2000, Midtown Technology (an Ohio  
limited liability company) filed an application to register  
the mark MESSAGE WRAPS on the Principal Register for goods  
amended to read "electric massage apparatus" in  
International Class 10. The application is based on  
applicant's assertion of a bona fide intention to use the  
mark in commerce.

The Examining Attorney refused registration on the ground that applicant's mark, MASSAGE WRAPS, is merely descriptive of applicant's goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

When the refusal was made final, applicant appealed to this Board. Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

The test for determining whether a mark is merely descriptive is whether the term or phrase immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.* 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used or is intended to be used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re*

Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); and In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991). That is, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant contends that the mark MASSAGE WRAPS is not merely descriptive because the composite mark, as a whole, evokes a unique and creative commercial impression. Specifically, applicant argues that the combination of the two words "conjures the image of totally surrounding oneself in the gift of a massage and thereby being insulated, at least temporarily, from the problems of everyday life"; that "this 'gift-wrapped' vision connoted by applicant's mark creates a separate non-descriptive meaning beyond the dictionary definitions of its separate terms" (brief, p. 4); and that when a mark connotes two meanings - one possibly descriptive and the other suggestive of some other association - the mark is not merely descriptive.

The Examining Attorney's position is that the phrase "MASSAGE WRAPS is merely descriptive of a wrap that

massages the area of the body that is covered; or a wrap used during massages" (Final Office action, p. 2); that the two words together do not form a unique incongruous phrase that creates a separate commercial impression; and that applicant has not shown that the words mean anything other than the plain meaning of the two words in the context of applicant's goods.

The Examining Attorney relies on (i) The American Heritage Dictionary (Third Edition 1992) definition of "wrap" as "a garment to be wrapped or folded about a person"; (ii) applicant's own explanation of its goods as "the apparatus includes a garment for enclosing the body part (e.g., leg, arm, back, etc.,) and the garment has a plurality of mechanisms arranged in rows..." (applicant's brief, p. 2); and (iii) copies of information retrieved from a computer database search to show that the wording "massage wrap(s)" is used descriptively, examples of which are reproduced below:

Headline: Guide to Great Outdoors Fair Exhibits

...Manufacturers' agent: gel insoles, gel thermal massage wraps... "The San Francisco Chronicle," March 3, 1993; and

Back Reliever Lumbar Massage Wrap  
Finally, an affordable, effective lumbar massage wrap....

"www.comfortliving.com."

We agree with the Examining Attorney that the asserted mark MASSAGE WRAPS immediately describes a characteristic or feature of the goods on which applicant intends to use its mark. The term immediately informs consumers that applicant's goods, "electric massage apparatus," consist of a wrap or garment which covers some part of the body and is then utilized to massage that area.

Moreover, the term does not create an incongruous or creative or unique mark. We are not persuaded by applicant's argument that the purchasing public would think of the concept of "gift-wrapping" oneself and insulating oneself from the problems of everyday life. Rather, we believe consumers will relate MASSAGE WRAPS to the garment which covers a portion of the body and then massages that portion of the body.

Applicant's mark, MASSAGE WRAPS, if used on applicant's identified goods ("electric massage apparatus"), immediately describes, without need of conjecture or speculation, the nature of applicant's goods, as discussed above. Nothing requires the exercise of imagination or 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 phrase MASSAGE WRAPS

as it pertains to applicant's goods. See *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996); and *In re Time Solutions, Inc.*, 33 USPQ2d 1156 (TTAB 1994).

Finally, we find that here the phrase unquestionably projects a merely descriptive connotation, and we believe that competitors have a competitive need to use this term. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994), and cases cited therein. See also, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2001).

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