

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

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Paper No. 10  
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re T.M. Shea Products, Inc.

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Serial No. 76/279,120

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Douglas J. McEvoy of Gifford, Krass, Groh, Sprinkle,  
Andersen & Citkowski, P.C. for T.M. Shea Products, Inc.

Susan R. Stiglitz, Trademark Examining Attorney, Law Office  
103 (Daniel Vanovese, Acting Managing Attorney).

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Before Cissel, Seeherman and Bottorff, Administrative  
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register  
of the mark PROMOSTRIPS (in typed form) for goods  
identified in the application, as amended, as "elongated  
cardboard strip merchandising displays for use with  
existing gondola display units and other existing

merchandise supporting structures for merchandising products," in Class 16.<sup>1</sup>

The Trademark Examining Attorney has refused registration on the ground of mere descriptiveness. See Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). When the refusal was made final, applicant filed this appeal. The appeal is fully briefed, but no oral hearing was requested. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act 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. See, e.g., *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, 217-18 (CCPA 1978). 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 intended to be used) on or in connection with those goods or services, and the possible significance that the term would have to the

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<sup>1</sup> Serial No. 76/279,120, filed July 2, 2001. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

average purchaser of the goods or services because of the manner of such use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Finally, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corporation*, 226 USPQ 365, 366 (TTAB 1985).

Applying these principles in the present case, we find that PROMOSTRIPS is merely descriptive of the goods identified in the application.

The dictionary evidence submitted by the Trademark Examining Attorney shows that "promo" is short for "promotional," the adjectival form of "promotion," which itself is defined as "the act of furthering the growth or development of something; especially : the furtherance of the acceptance and sale of merchandise through advertising, publicity, or discounting."<sup>2</sup> Applicant's goods are "merchandising displays," and we find that the word "promotional" or its shorthand and legal equivalent, "promo," directly describes this feature, function or purpose of applicant's goods. Applicant admits as much in

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<sup>2</sup> Merriam Webster's Collegiate Dictionary (online edition accessed at [www.webster.com/cgi-bin/dictionary](http://www.webster.com/cgi-bin/dictionary)).

its reply brief: "In fact, the term 'promotion' can connotate [sic - connote] a number of different meanings, only one of which being directly related to products utilized in merchandising displays." (Emphasis added.)

This direct descriptive significance of the term as applied to applicant's goods suffices to render the term merely descriptive; it is not dispositive or material that, as applicant further contends, the term "can also reference a wide variety of wholly unrelated goods and services." *In re Bright-Crest, Ltd., supra.*

Likewise, the term STRIPS is merely descriptive of a feature or characteristic of applicant's goods, i.e., their physical form or shape. Indeed, applicant's goods are identified in the application itself as "elongated cardboard strips." (Emphasis added.) The Trademark Examining Attorney's dictionary evidence shows that "strip" is defined as "a long narrow piece, usually of uniform width."<sup>3</sup> Applicant, in its reply brief, essentially admits that this definition is directly applicable to applicant's goods: "With further regard to the term STRIPS, it is submitted that this term also potentially refers to any of a great number of different definitions, only one of which

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<sup>3</sup> Merriam Webster's Collegiate Dictionary (online edition accessed at [www.webster.com/cgi-bin/dictionary](http://www.webster.com/cgi-bin/dictionary)).

is a cardboard strip merchandising display." (Emphasis added.) Again, it is this merely descriptive significance of the term as applied to applicant's goods that is relevant here; it is immaterial that the term may have other meanings in different contexts. *In re Bright-Crest, Ltd., supra.*

Thus, applicant's mark is composed of two terms, PROMO and STRIPS, each of which is merely descriptive as applied to applicant's goods. We find that these terms are as merely descriptive when considered together as they are when considered separately. That is, combining PROMO and STRIPS (whether into the two-word composite PROMO STRIPS or into the compound term PROMOSTRIPS) does not create a composite which is incongruous or unusual, and does not vitiate the mere descriptiveness of the two terms considered separately.

PROMOSTRIPS is the legal equivalent of "promotional strips," a term which the evidence of record shows to be used in a merely descriptive manner in the advertising and merchandising field. See, for example, the printout from the website of a merchandising display company called MDI<sup>4</sup>, which refers to a "free-standing display unit" comprising a

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<sup>4</sup> Accessed by the Trademark Examining Attorney at <http://www.mdiworldwide.com/cus-r-bl.htm>

"three-sided promotional kiosk," one side of which "has a divider track to accommodate one 18"H graphic, and tracks to hold 8 promotional strips." (Emphasis added.) See also the following excerpts of articles obtained from the Nexis database and made of record by the Trademark Examining Attorney:

Milkcaps were found in or on specially marked packages flagged by a promotional strip. (Marketing News, September 9, 1996);

...Billboards and signs seem to suggest a fashion convention more than an athletic event. There are plugs for jewelry, luggage, leather goods, Swiss watches, skimpy bathing suits and filmy lingerie. Court Central is surrounded by a collage of promotional strips for upscale apparel... (The New York Times, May 24, 1992).

For the reasons discussed above, we find that PROMOSTRIPS is merely descriptive of the goods identified in the application. We have carefully considered applicant's arguments to the contrary, including any arguments not specifically discussed in this decision, but we are not persuaded of a different result.<sup>5</sup>

Decision: The refusal to register is affirmed.

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<sup>5</sup> However, we have not considered the third-party registration evidence attached to applicant's reply brief or applicant's arguments with respect thereto, inasmuch as that evidence is untimely. See Trademark Rule 2.142(d). Even if that evidence had been made of record properly, it would not warrant a different result in this case.