

**THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Children's Factory, Inc.

Serial No. 76503184

Paul M. Denk, Esq. for the Children's Factory, Inc.

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(Odette Bonnet, Managing Attorney).

Before Quinn, Hohein and Holtzman, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by The Children's Factory,
Inc. to register the mark PUZZLE SEATING for "a specially
designed bench for use within a nursery."¹

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

¹ Application Serial No. 76503184, filed March 31, 2003, based on
an allegation of a bona fide intention to use the mark in
commerce.

When the refusal to register was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant argues that its mark is highly suggestive "of some type of seat that may exhibit something puzzling." (Brief, p. 3). Applicant states that its bench "is not a puzzle, nor does it have any shape of a puzzle." (Brief, p. 4). Applicant points to the existence of four third-party registrations of composite marks featuring the word PUZZLE, but without any disclaimer of this term.

The examining attorney maintains that the applied-for mark is merely descriptive of applicant's type of bench that, as shown by the Internet evidence, may be in the shape of large puzzle pieces that interlock together. In addition to excerpts of web pages retrieved from the Internet, the examining attorney submitted dictionary definitions of the words "puzzle," "jigsaw puzzle" and "seating."²

Before turning to the merits of the refusal, our attention is directed to an evidentiary matter. Attached

² The dictionary definitions accompanying the appeal brief were retrieved from the Internet. There is nothing to indicate, however, that certain of these on-line resources are also available in printed format. Thus, we decline to take judicial notice of them. In re CyberFinancial.Net Inc., 65 USPQ2d 1789, 1791 n. 3 (TTAB 2002).

to applicant's brief are copies of four third-party registrations. Only two of the registrations were in the record prior to the appeal, and the examining attorney objected to the late introduction of the additional registrations cited in applicant's brief. The examining attorney went on to discuss, in any event, all of the third-party registration evidence, according it only very limited probative value.

Trademark Rule 2.142(d) provides that the record in an application should be complete prior to the filing of an appeal. Additional evidence filed after appeal normally will be given no consideration. Thus, the two additional registrations, namely Registration Nos. 1067708 and 1327015, do not form part of the record and, thus, have not been considered in reaching our decision. We hasten to add that, in any event, this additional evidence is not persuasive of a different result (see discussion, infra).

A term is 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). 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. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

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 is intended to 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 or intended use. That a term may have other meanings in different contexts is not controlling. *In re Polo International Inc.*, 51 USPQ2d 1061 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that:

....the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the

goods or services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998).

The term "puzzle" is defined as "something, such as a game, toy, or problem that requires ingenuity and often persistence in solving or assembling." The American Heritage Dictionary of the English Language (4th ed. 2000). During examination, the examining attorney relied upon a dictionary listing of the term "seating" showing it defined as "the places provided for people to sit, especially in a public building or a vehicle." MSN Encarta World English Dictionary (North American ed. 2004). The examining attorney also properly introduced a definition of the term "jigsaw puzzle" meaning "a puzzle of small irregularly cut pieces that are to be fitted together to form a picture; also, something suggesting a jigsaw puzzle." Merriam-Webster Online Dictionary (2003).

Also of record are several excerpts retrieved from third-party websites showing the existence of furniture, including seats and chairs, shaped like pieces of a jigsaw puzzle. The websites refer to these types of products as "puzzle furniture," essentially comprising parts that look like pieces of a jigsaw puzzle that, during assembly, are

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interlocked together. A representative picture of "puzzle" products offered for sale by various entities is shown below (www.KidFurniture.com).



In addition, the excerpts of various websites read, in part, as follows:

Puzzle Seating
Molded Puzzle Seating Pieces
Circular Puzzle Settee
Puzzle Circle Sitter
(www.KidFurniture.com)

Bells 'N Whistles Dalmation Puzzle
Chair
This beautifully playful designed chair
goes together like a puzzle!
(www.littlekidstuff.com)

Puzzle Bookshelf
The puzzle bookcase from Kidkraft is a
great way to organize your child's
favorite books, puzzles or games.
Bright red, blue and green shelves are
designed to fit perfectly into each
other, adding a colorful feature to
your child's bedroom.
(www.babiesfirstchoice.com)

Little Rock 'n Puzzle
What a great idea! Beautifully
detailed, sturdy and durable this

puzzle furniture is sure to keep the youngster busy. They are simple to build as there are no screws or nails. All the pieces are interlocking....
(www.playhousekits.com)

Circular Puzzle Settee
4 Puzzle Curve pieces form a 36"
diameter circle x 12"h
(www.bizchair.com)

Puzzle Seat
(www.roomstogokids.com)

Puzzle Furniture
All our molded puzzle furniture pieces interlock top or bottom together and hold fast with no pinch points.
(www.tinytoddlers.com)

Applicant has failed to offer any specific response to the Internet evidence.

Based on the evidence of record, we conclude that the term PUZZLE SEATING sought to be registered is merely descriptive when applied to benches comprised of parts resembling pieces of a jigsaw puzzle.³ The term immediately describes, without conjecture or speculation, a significant characteristic or feature of the goods, namely, that applicant's seating comprises parts shaped like pieces of a jigsaw puzzle.

³ Although applicant states, as noted earlier, that its bench "is not a puzzle, nor does it have the shape of a puzzle," the identification of goods in the involved application is not limited in such manner. Thus, we must presume that applicant's benches include the type of furniture commonly referred to as "puzzle furniture."

The third-party registrations of PUZZLE marks relied upon by applicant are not persuasive of a different result. While uniform treatment under the statute is an administrative goal, our task in this appeal is to determine, based on the record before us, whether applicant's particular matter sought to be registered is merely descriptive. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPq2d 1564, 1566 (Fed. Cir. 2001) ["Even if prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."]; and *In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001).

We conclude that the applied-for mark PUZZLE SEATING, when applied to "a specially designed bench for use within a nursery," is merely descriptive of the goods; that is, seating in the form of puzzle pieces that interlock together.

Decision: The refusal to register is affirmed.