

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CPI Plastics Group Ltd.

Serial No. 76551611

Robert C. Bertin of Swidler Berlin LLP for CPI Plastics
Group Ltd.

Nicholas K. D. Altree, Trademark Examining Attorney, Law
Office 107 (J. Leslie Bishop, Managing Attorney).

Before Quinn, Zervas, and Bergsman, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

CPI Plastics Group Ltd. filed an application to
register the mark THE ULTIMATE LINER for "plastic garbage
bags."¹ Registration was refused on the ground that THE
ULTIMATE LINER used in connection with "plastic garbage
bags" is merely descriptive. Section 2(e)(1) of the Lanham
Act, 15 U.S.C. §1052(e)(1). When the refusal was made

¹ Application Serial No. 76551611, filed October 16, 2003,
claiming December 10, 1973 as the date of first use anywhere and
the date of first use in interstate commerce.

final, applicant appealed. Both applicant and the examining attorney filed briefs. We affirm.

The examining attorney contends that the mark THE ULTIMATE LINER used in connection with plastic garbage bags is merely descriptive because it comprises the combination of a laudatory term ("Ultimate") and a generic term ("Liner"). The examining attorney supports the refusal with the following evidence:

1. A dictionary definition of the word "Ultimate" as "representing or exhibiting the greatest possible development of sophistication."²
2. Excerpts from applicant's web site that reference applicant's plastic garbage bags as "industrial strength bags." According to the examining attorney, applicant's advertising message is that the plastic garbage bags "exhibit the greatest possible development" in garbage bags;³
3. Ten registrations from the Supplemental Register that demonstrate the laudatory nature of the word "Ultimate" when used to modify a generic word; and,
4. Two third-party web sites (www.business-supply.com and www.royalbag.com) that show use of the word "Liner" to describe plastic garbage bags. The plastic garbage bags advertised by Business-Supply.com are listed under the heading "Trash Bags & Liners." The products identified as "liners" are also referred to as "bags" (e.g., "Sparco High Density Can Liners" are "Translucent trash bags"). The plastic garbage bags advertised by RoyalBag.com are listed under the heading "Garbage bags/Trash liners." All of the individual products are identified as "liners."

² The American Heritage Dictionary of the English Language, (3d ed. 1992) (electronic version).

³ Examining Attorney's Brief, p. 3.

Applicant argues that its mark is not merely descriptive because THE ULTIMATE LINER does not directly convey knowledge about applicant's plastic garbage bags. Applicant contends that the word "Liner" has numerous meanings other than "a lining; or material used as a lining" such as the following:

- One that draws or makes a line;
- A commercial ship or aircraft;
- A line drive; or,
- One who makes or puts in linings.⁴

In addition, applicant contends that consumers are just as likely to associate the term "liner" with shower curtains or highlighting markers. In view of the foregoing, applicant concludes that consumers would be required to investigate further to determine the meaning of the word "Liner."

Applicant argues that the word "Ultimate" also has many meanings other than the laudatory meaning of "representing or exhibiting the greatest development or sophistication," such as the following:

- Fundamental;
- Greatest in size or significance;

⁴ Webster's Ninth Collegiate Dictionary, p. 638 (1990)

Serial No. 76551611

Most remote in time or space; or,
Eventual.⁵

In view of the foregoing, applicant argues that it is not possible for consumers to understand the true nature of applicant's goods without further investigation. "A consumer who encounters the Applicant's mark will not *immediately* know what the goods are used for, what (if anything) they line, or what element or aspect of the liner is ultimate. Thus, consumers are unable to deduce *immediately* upon seeing Applicant's mark that "THE ULTIMATE LINER" refers to plastic garbage bags."⁶ (Emphasis in the original). In other words, a consumer must undertake an multi-stage reasoning process.

Applicant also points out that the use of the word "Ultimate" to describe its plastic garbage bags does not specifically identify any particular quality, characteristic, or feature of applicant's products. Since the quality of the products is not clear, applicant concludes that the mark must be suggestive.

Applicant asserts that the examining attorney improperly analyzed its mark by considering each word separately. When viewed in its entirety, applicant

⁵ *Id.* at 1194.

⁶ Applicant's Brief, p. 5.

contends that the mark THE ULTIMATE LINER creates a separate, non-descriptive commercial impression. Applicant supports this conclusion by pointing out that there is no evidence that THE ULTIMATE LINER has any meaning in the relevant industry or that plastic garbage bags are commonly referred to as THE ULTIMATE LINER.⁷

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services with which it is used, or intended to be used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, or is intended to be used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811,

⁷ While applicant did not submit any evidence, it stated "that the Principal Register is replete with marks including the term 'ULTIMATE.'" (Applicant's Brief, p. 8). The Board does not take judicial notice of registrations merely because they reside in the Patent and Trademark Office. *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974). Since applicant did not make any registrations of record, we have not considered the argument as it relates to registered marks. Even had the registrations been made of record, we would not have been persuaded that the examining attorney's refusal on the facts presented in this case was erroneous. In determining issues of descriptiveness, prior decisions are of little value because each case must be determined on its own facts. *In re Quick-Print Copy Shop, Inc.*, 616 F.2d 523, 205 UPSQ 505, 507 (CCPA 1980).

Serial No. 76551611

200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the goods or services are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 UPSQ 365, 366 (TTAB 1985).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. See, *In re Tower Tech, Inc.*, *supra* (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD &

Serial No. 76551611

BEVERAGE ONLINE merely descriptive of new information services in the food processing industry).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive. *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978). *See also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

We agree with the examining attorney that the words "The," "Ultimate," and "Liner" together have descriptive significance when used in connection with applicant's plastic garbage bags. The components of the mark are common words with readily understood meanings, which when combined, produce a mark with merely descriptive significance. The fact that applicant may be the first and possibly the only user of this designation does not alter the significance of THE ULTIMATE LINER and bestow upon applicant any proprietary rights. *In re Pharmaceutical Innovations, Inc.*, 217 USPQ 365, 367 (TTAB 1983); *In re Cosmetic Factory, Inc.*, 208 USPQ 443, 447 (TTAB 1980).

In view of the two websites that show use of the word "Liner" in reference to a garbage bag, we find that the

Serial No. 76551611

word "Liner" is a synonym for a garbage bag. When used in connection with plastic garbage bags, consumers immediately understand the significance or meaning of the word "Liner" without having to resort to thought, logic, or a multi-stage reasoning process. Consumers are likely to view the word "Liner" as a descriptive word signifying a garbage bag.

Contrary to applicant's argument, the fact that the word "Liner" has more than one meaning is not controlling because descriptiveness is determined in relation to the goods for which registration is sought. *In re Chopper Industries*, 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 205 USPQ 591, 593 (TTAB 1979). So long as any one of the meanings of a word is descriptive, the word may be considered to be merely descriptive. *In re Chopper Industries, supra*. "The question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc., supra*. One of the definitions of "Liner" is "something serving as a lining."⁸ In this case, we have no doubt that person who is familiar with applicant's plastic

⁸ Dictionary.com Unabridged (V.1.1.) based on the Random House Unabridged Dictionary (2006). The Board may take judicial notice of dictionary definitions. *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 5050 (Fed. Cir. 1983).

Serial No. 76551611

garbage bags will understand, without resort to imagination, conjecture, or speculation, that the word "Liner" refers to a garbage bag because garbage bags line trash cans.

In the context of the mark sought to be registered, "Ultimate" is a laudatory term. Laudatory or "puffing" marks are regarded as a condensed form of describing the character or quality of the goods. 2 McCarthy On Trademarks and Unfair Competition §11:17 (4th ed. 2006). See also, *Burmel Handkerchief Corp. v. Cluett, Peabody & Co., Inc.*, 127 F.2d 318, 53 USPQ 369, 372 (CCPA 1942) ("Such expressions are a condensed form of describing in detail the outstanding character or quality of the objects to which they are applied"). As applied to THE ULTIMATE LINER, the word "Ultimate" describes, in a condensed fashion, every characteristic as to material, quality, and durability that the best plastic garbage bags should have.

Contrary to applicant's arguments, there is nothing of record to support applicant's contention that the word "Ultimate" has any meaning other than one that would describe the characteristics of a plastic garbage bag. Applicant's advertising states that THE ULTIMATE LINER are "industrial strength bags" thereby demonstrating use consistent with a characteristic of a garbage bag.

Serial No. 76551611

Although, as stated in *In re Nett Designs, Inc.*, 236 F3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), the word "Ultimate" may be suggestive or descriptive depending upon context and other factors affecting public perception, based on the record before us, the mark THE ULTIMATE LINER, used in connection with plastic garbage bags, is an expression of preeminence that immediately describes a high quality garbage bag without the need for any imagination, conjecture, or speculation.

In view of the foregoing, we find that the mark THE ULTIMATE LINER used in connection with plastic garbage bags is merely descriptive.

Decision: The refusal to register is affirmed.