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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Universal Fastener Outsourcing, LLC

Serial No. 77048831

S. Christian Gunn of Keisling Pieper & Scott PLC for
Universal Fastener Outsourcing, LLC.

Simon Teng, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).¹

Before Walsh, Cataldo and Mermelstein, Administrative
Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Universal Fastener Outsourcing, LLC (applicant) has
applied to register the mark HYBRID in standard characters
on the Principal Register for goods now identified as
"metal fasteners with threaded portions driven by a nail
gun" in International Class 6.² The Examining Attorney has

¹ A different Examining Attorney was responsible for this
application prior to this appeal.

² Application Serial No. 77048831, filed November 21, 2006,
based on a claim of a bona fide intention to use the mark in
commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

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finally refused registration on the grounds that the mark merely describes the goods under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Applicant has appealed. Both applicant and the Examining Attorney have filed briefs.

We affirm.

A term is merely descriptive of goods 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. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 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 in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods. *See In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods identified in the application, and the possible significance that the term would have to the average purchaser of the goods. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB

1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

The Examining Attorney states, "The word 'hybrid' immediately conveys to consumers that Applicant's metal fasteners are hybrids of screws and nails and can be used as either." Examining Attorney's Brief at 2. Later the Examining Attorney adds, "Here, the evidence of record shows the term HYBRID in the context of Applicant's goods to mean a fastener having the qualities of a screw and nail." *Id.* at 4.

The *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003), in relevant part, defines "hybrid" as "... **b** : something (as a power plant, vehicle or electronic circuit) that has two different types of components performing essentially the same function..."³

The Examining Attorney has submitted excerpts from applicant's web site which include the following statement:

Universal Fastener Outsourcing now has one of the most exciting products in the market today - the UFO Ballistic NailScrew®. The UFO Ballistic NailScrew® is a Hybrid™ Fastener - a specially designed screw that you drive with your pneumatic nailer! NailScrews® combine the advantages of collated nails (ease and speed of installation)

³ The Board may take judicial notice of dictionary definitions. See *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).

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with the best aspects of screws (quality and adjustability)...

Attachment to January 11, 2008 Office Action.

An excerpt from palletenterprise.com includes the exact same description of the product. *Id.*

An excerpt from 911-nails.com also discusses applicant's product. It states:

The UFO Ballistic NailScrew® is a nail/screw Hybrid™ Fastener that brings together the best qualities of both nails and screws. UFO Ballistic NailScrew® can be economically driven in with a pneumatic nail gun, have holding power approaching that of a screw, and offer the added advantage of being capable of being removed after installation by screwing them back out with a screw driver.

...

We will update progress on our website as we begin the ICC approval process. In the meantime, don't be stuck in Nail vs. Screw Paradigm Paralysis...

Attachment to August 2, 2007 Final Office Action.

We also note that the applicant identified its goods as "metal threaded fastener which can be used like a screw or a nail" in the application as filed. Applicant amended to the current identification on its own, without being required to do so. Applicant explains its amendment as follows:

Applicant's amended identification does not expand or broaden the identification; it clarifies that the goods are threaded and they are of such a nature that they can be driven by a

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nail gun, and thus include composite elements of both a power driven nail and a threaded screw.

Applicant's December 4, 2007 Request for Reconsideration.

Applicant presents a number of arguments in support of its position that HYBRID is suggestive and not merely descriptive of the identified goods. We find none of the arguments persuasive. We will address the principal arguments.

Applicant criticizes the Examining Attorney's reliance on a broad definition of "hybrid" to support the refusal, implying that only a definition which is specific to its product would be relevant. Applicant states:

... The Examining Attorney adopted a broad, non-specific dictionary definition to define "hybrid" as "containing mixed elements, made up of different aspects or components." However, a purchaser must have his own concept of "hybrid" and imagination, thought or perception to conclude that the goods have two different functions or element sources. Supporting that the fastener is a hybrid of elements still does not tell the consumer how it operates, what functions it has or what the specific elements are...

Applicant's Brief at 3.

Later applicant argues further:

Because the term "hybrid" has multiple connotations to members of the purchasing public, it, therefore, cannot be said to be "merely descriptive" or immediately convey the thought of Applicant's goods. As mentioned in Applicant's previous response, "hybrid" can refer to a type of automobile, such as the Toyota Prius.

"Hybrid" refers to a cross-breed of plants or animals, such as the mule. "Hybrid" can also refer to a mix of elements such as oxygen and other chemicals, which flow through a ventilator or similar device..

Id. at 5.

Applicant also argues that competitors do not need to use "hybrid" to describe the identified goods because there are other terms available, and that there is no evidence that anyone else has used the term in relation to the identified goods. *Id.* at 6-7.

First, contrary to applicant's arguments, we must, of course, determine whether HYBRID is merely descriptive as applied to the identified goods, not in a vacuum. *In re Bright-Crest, Ltd.*, 204 USPQ at 593. Both the original identification and the amended identification identify "something ... that has two different types of components performing essentially the same function," that is, a nail/screw, a hybrid product. Thus, when we consider the mark in relation to the identified goods, we conclude that the mark is merely descriptive.

Also with regard to the dictionary evidence, as a general rule, the mere absence of a dictionary entry for the relevant term does not necessarily lead to the conclusion that the term is not merely descriptive. *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977). In this

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case, the dictionary definitions, though general in nature, do establish the merely descriptive meaning of HYBRID as applied to the identified goods, as well as other types of goods.

Also, the fact that a term has a meaning in another context does not lead to the conclusion that the term is merely descriptive in the relevant context. *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1034 (TTAB 2007). In this case the "other" uses of HYBRID are both consistent with and support the conclusion that HYBRID is merely descriptive as applied to the identified goods. The use of HYBRID in many varied fields, like automobiles and botany, indicates that the potential purchasers would be conditioned to understand its meaning as applied to the identified goods.

Moreover, it is applicant's own usage, noted above, which explicitly discloses the readily apparent merely descriptive significance of HYBRID as applied to the identified services. *See In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987).

Furthermore, the fact that applicant may be the first to use HYBRID in the field of fasteners by no means leads to the conclusion that HYBRID is not merely descriptive here. *In re Acuson*, 225 USPQ 790 (TTAB 1985) (COMPUTED

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SONOGRAPHY held merely descriptive of ultrasonic imaging instruments); *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983) (SHOOTING, HUNTING, OUTDOOR TRADE SHOW AND CONFERENCE held generic for conducting and arranging trade shows in the hunting, shooting and outdoor sports products field).

Accordingly, after considering all of the evidence of record and all arguments presented by applicant, we conclude that HYBRID is merely descriptive of "metal fasteners with threaded portions driven by a nail gun." *In re Hunter Fan Co.*, 78 USPQ2d 1474 (TTAB 2006) (ERGONOMIC held merely descriptive of "ceiling fans") *In re Alpha Analytics Investment Group LLC*, 62 USPQ2d 1852 (TTAB 2002) (ALPHA ANALYTICS DIGITAL FUTURE FUND held merely descriptive of financial services, namely, investment advisory services and mutual fund investment services). Although we have not specifically discussed all of the arguments in applicant's brief, we have considered each of them carefully.

Finally, applicant closes its brief by stating, "Applicant reserves and maintains its right to amend to the Supplemental Register should this Board refuse registration on the Principal Register." Applicant's Brief at 8. Applicant has no such right for purposes of this

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application. As the Examining Attorney correctly points out, Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g), provides that "an application which has been considered and decided on appeal will not be reopened..." except in limited circumstances not relevant here.

Decision: We affirm the refusal to register under Trademark Act Section 2(e)(1).