

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Worldwide, Inc.

Serial No. 77091118

Malcolm B. Wittenberg of Dergosits & Noah LLP for
Worldwise, Inc.

Christina Sobral, Trademark Examining Attorney, Law Office
109 (Dan Vavonese, Managing Attorney).

Before Seeherman, Walters, and Wellington, Administrative
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark PLAY STATION (in standard character form) for
goods identified as "pet furniture" in International Class
20.¹

¹ Serial No. 77091118, filed January 25, 2007. 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).

At issue in this appeal is the Trademark Examining Attorney's refusal to register the mark on the ground that it is merely descriptive of the identified goods.

Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

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). 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 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. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, if the mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class. *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988), *aff'd* without pub. op., 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

On the record before us, as discussed below, we have applied the aforesaid principles to the present case and find that applicant's mark PLAY STATION is merely descriptive of the goods identified in the application i.e., pet furniture.

The Examining Attorney has made of record copies of screenshots from applicant's website advertising pet furniture for cats under the mark PLAY STATION.² On its website, applicant describes its goods as an "indoor/outdoor activity center" and touts them as providing a "customizable hideaway for feline fun and adventure...It's also a comfy refuge for cats that play or sleep outdoors."

² Attached to Examining Attorney's May 15, 2007 Office Action.

The evidence of record also shows third-party use of the terms "play station" or "station" in connection with pet furniture for cats.³ One online retail website describes a "Deluxe Cat Amusement Center" as having "[m]ultiple levels on a dual tower play station." Other products are described as having "catnip stations" attached to the pet furniture. The website evidence also demonstrates that such products are categorized as "cat furniture" or "cat designer furniture"; thus, the identification of goods in the subject application, pet furniture, encompasses these types of products.

In view of this evidence that "play station" is a term used for furniture for cats which are activity centers and/or provide amusement and rest, we find that the mark PLAY STATION immediately describes a type of furniture for pet cats. There is no exercise of the imagination, cogitation, or mental processing required in order for prospective consumers to readily perceive the merely descriptive significance of PLAY STATION as it pertains to pet furniture for cats. Although applicant's goods are identified as "pet furniture," and therefore may include furniture for other pets for which PLAY STATION may not be

³ Attached to Examining Attorney's June 27, 2007 Office Action.

descriptive, this does not affect the fact that PLAY STATION is merely descriptive of pet furniture for cats.

Applicant has put forth several arguments as to why it believes the mark PLAY STATION is not merely descriptive. We have considered these arguments, but find them to be unpersuasive. First, applicant argues that PLAY STATION "could mean a number of things which a user could enjoy and not necessarily pet furniture." Brief, p. 2. Applicant offers the example that "a PLAY STATION could be, when applied to pets, an assembly of play toys...without any element of furniture being involved." This argument ignores the fact that the identification of goods recites, "pet furniture"; therefore, the descriptiveness question is decided based on whether someone who knows the goods are pet furniture (not "an assembly of play toys") will understand PLAY STATION as directly conveying information about the pet furniture.

Applicant also posits that pet furniture sold under applicant's mark "may not even be something that lends itself to pet play. Pet furniture can be nothing more than shelter..." This argument is not well taken in view of the third-party website evidence and applicant's own website which clearly establish that the identification "pet furniture" encompasses goods that provide an apparatus for

cats to play. Thus, applicant's mark is descriptive of a type of pet furniture. The fact that "pet furniture" may encompass other goods that solely provide shelter for pets (and have no play features) is irrelevant.

Finally, applicant has likened its mark to the marks in the line of cases holding that the combination of descriptive terms may result in an overall commercial impression or connotation that is not merely descriptive of the goods or services. Applicant also states that "the combination of words 'play' and 'station' provides a unique composite as to the goods identified in the application." Brief, p. 4. We disagree with applicant's contentions. We have not arrived at our conclusion that the mark is merely descriptive because the individual words are descriptive, and that the combination of them is equally descriptive. The record shows that "play station" has a recognized meaning in the industry as describing certain types of furniture for cats.

In view of the above, we find that the evidence establishes that PLAY STATION is merely descriptive of pet furniture.

Decision: The refusal to register is affirmed.