

**THIS DISPOSITION 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 Hunter Fan Company

Serial No. 78144809

Valerie Walsh Johnson and Danny Awdeh of Baker, Donelson,
Bearman, Caldwell & Berkowitz, P.C. for Hunter Fan Company.

Paula B. Mays, Trademark Examining Attorney, Law Office 102
(Thomas Shaw, Managing Attorney).

Before Seeherman, Quinn and Rogers, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Hunter Fan Company has appealed from the final refusal of the Trademark Examining Attorney to register WOBBLEFREE as a trademark for "ceiling fan mounting system comprised of a non-metal trilobular ball and metal canopy and metal seat for the ball."¹ Registration has been refused pursuant

¹ Application Serial No. 78144809, filed August 12, 2002, and asserting a bona fide intention to use the mark in commerce. We note that in its appeal brief applicant states that it began using its mark in commerce on December 31, 2002; however, applicant did not file an amendment to allege use.

to 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 its identified goods.²

The appeal has been fully briefed. Applicant did not request an oral hearing.

It is the Examining Attorney's position that WOBBLEFREE is merely descriptive of applicant's goods because they describe a feature of the goods, namely, that the goods prevent wobbling of ceiling fans that are mounted using applicant's system.³ In support of her position, the Examining Attorney has submitted dictionary definitions of the words "wobble" and "free,"⁴ the most pertinent of which are as follows:⁵

² In its appeal brief applicant asserts that it "has spent significant effort in advertising and otherwise promoting the sale of its goods under its WOBBLEFREE mark." p. 1. Applicant has not made a claim that its mark has acquired distinctiveness (nor has it submitted any evidence with respect to acquired distinctiveness). Because the issue before us in this appeal is solely whether applicant's mark is inherently distinctive or merely descriptive, any assertions regarding sales and advertising are irrelevant to our determination.

³ The Examining Attorney has stated in her brief that the mark is also merely descriptive because it "literally indicates that the applicant's ceiling mounting system do [sic] not *Wobble*." P. 5 (emphasis in original). However, she goes on to assert that a "wobble free" fan assures better performance, and we have therefore considered her position to be as indicated above. Applicant, too, in arguing against the refusal, has centered its arguments on the effect of the system on the fan, rather than that the system itself does not wobble.

⁴ Cambridge International Dictionary of English, © Cambridge University Press 2002. Certain of the examples following the definition of "free" were not provided by the Examining Attorney during examination, but were included with the Examining

Wobble: v. to (cause something to) shake or move from side to side in a way that shows a lack of balance

I wouldn't use that bookcase if I were you because it wobbles whenever you put anything on it [I]
You'll spill my coffee if you wobble the table like that! [T]

Free: (Without)
Adj; not having something that is unwanted or unpleasant:

Because the organization is a charitable enterprise it is free from tax worldwide.
She'll never be completely free of the disease.
Ensure the wound is free from/of dirt before applying the bandage.

-free [used at the end of words to mean 'without']:
lead-free fuel
No working environment is entirely stress-free
The journey was surprisingly hassle-free.

Attorney's appeal brief. Although these examples were not properly made of record, the Board may take judicial notice of dictionary definitions, and we have therefore considered the entire definition, as listed above. 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).⁵ Because descriptiveness must be determined in relation to the goods at issue, and not in the abstract, see *In re Abcor Development Corp.* 588 F.2d 811, 200 USPQ 215 (CCPA 1978), *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985), we have recited only the definitions that are relevant to a ceiling fan mounting system. See *In re Polo International Inc.*, 51 USPQ2d 1061 (TTAB 1999) (because applicant's goods are computer software for document management, DOC in the mark DOC-CONTROL will be readily understood as referring to "documents" rather than to "doctor"). We also note that applicant has not suggested that other definitions for wobble or free would be appropriate to these goods.

In addition, the Examining Attorney has made of record third-party registrations for marks containing the word FREE in which FREE has been disclaimed.

Applicant has also submitted third-party registrations for marks which contain the word WOBBLE or variations thereof in which the term was not disclaimed. It has also submitted with its brief dictionary definitions⁶ of "wobble" and "free," the most pertinent of which we list below:

Wobble: [t]o move or rotate with an uneven or rocking motion or unsteadily from side to side

Free: 4.a. Not affected or restricted by a given condition or circumstance: *a healthy animal, free of disease; free from need.* b. Not subject to a given condition; exempt: *income that is free of all taxes.*

Applicant has argued that, while the mark may describe ceiling fans that do not wobble, it does not describe applicant's mounting system for such fans. "Applicant's ceiling fan mounting system *itself* is not what is free from wobble; rather, when the consumer installs a ceiling fan using a WOBBLEFREE mounting system, the *installed ceiling fan* does not shake or wobble." Brief, p. 5 (emphasis in original). Applicant reiterates in its reply brief its

⁶ The American Heritage Dictionary of the English Language, 4th ed. © 2000. Although these definitions were not made part of the record during the prosecution of the application, see Trademark Rule 2.142(d), we have taken judicial notice of them.

point that a result of using its mounting system is that ceiling fans mounted therewith do not wobble: "Rather, Applicant has consistently argued that its 'mounting systems are *not* free from wobble; rather, a consumer may use Applicant's mounting system in conjunction with a ceiling fan to make the ceiling fan free from wobble.'" p. 4 (unnumbered), quoting appeal brief at p. 2.

Although applicant takes the position that to be found merely descriptive WOBBLEFREE must convey information about a feature or characteristic of its goods, rather than of the ceiling fans mounted with its system, that is not necessarily correct. In *In re Abcor Development Corp.*, supra, the Court stated that a mark is merely descriptive if it "conveys information regarding a function, or purpose, or use of the goods." 200 USPQ at 217. Applicant's mark immediately conveys to a purchaser of its identified mounting system for ceiling fans that a purpose of the system is to prevent ceiling fans from wobbling, i.e., that fans mounted using this system will be wobble-free. In other words, applicant offers a mounting system for wobble-free fans. The fact that WOBBLEFREE does not refer to a characteristic of the mounting system itself (that the system does not wobble), but to the result of using the system, does not make the mark registrable; a

mark is considered merely descriptive if it conveys information concerning, inter alia, a quality, characteristic, function, ingredient, attribute or feature of a product, but it does not have to describe every one of these. Rather it is enough if it describes a single, significant quality, feature, etc. See *In re Venture Lending Associates*, supra.

In prior cases, the Courts and this Board have found marks to be merely descriptive if they describe the purpose of the goods. See, for example, *In re W. A. Sheaffer Pen Company*, 158 F.2d 390, 72 USPQ 129 (CCPA 1946) (FINE LINE merely descriptive of mechanical pencils because, although FINE LINE does not describe a mechanical pencil, it conveys the information that the pencil will produce a fine line); *In re MBA Associates*, 180 USPQ 338 (TTAB 1973) (STUN GUN for weapon whose primary purpose is to immobilize or stun the target is merely descriptive); *In re National Presto Industries, Inc.*, 197 USPQ 188 (TTAB 1977) ("Burger" for cooking utensils descriptive of purpose of goods). See also, *In re American Beauty Products Company, Inc.*, 223 USPQ 828, n. 2 (TTAB 1984), involving the mark REJUVA CURL for, inter alia, permanent wave preparations. The Board indicated that it would have found CURL to be descriptive of the end result of applicant's permanent waving

preparations, but that, because applicant had disclaimed exclusive rights to that word, it was not necessary to decide that question.

As for the third-party registrations submitted by applicant in which marks containing the word WOBBLE or variations thereof have been registered without disclaimer or resort to the provisions of Section 2(f) of the Trademark Act, there is little persuasive value in these registrations because the Board must assess each mark on the record of public perception submitted with the application. In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).⁷ That is especially true in this case because the marks are for different goods from those at issue herein. Most, in fact, are for toys, and several marks do not use the word WOBBLE, but a variation such as HAWG WOBBLER (for fishing lures) and THE WOBBLER (for irrigation sprinkler heads).

In its reply brief applicant has made the argument that its mark is one unitary and distinct word, WOBBLEFREE. Although applicant has merged the two words into one, consumers would immediately perceive that the mark is

⁷ The same is true of the third-party registrations submitted by the Examining Attorney in which the word FREE has been disclaimed.

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composed of the two words, WOBBLE FREE. The depiction of the mark, therefore, does not change the impression that the words convey, that the fan mounting systems with which the mark is used result in ceiling fans that do not wobble when in use.

Decision: The refusal of registration is affirmed.