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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aluminum Chambered Boats, Inc.

Serial No. 78643554

Michael F. Hughes of Hughes Law Firm, PLLC for Aluminum Chambered Boats, Inc.

Ramona F. Ortiga, Trademark Examining Attorney, Law Office 117 (Loretta C. Beck, Managing Attorney).

Before Seeherman, Grendel and Cataldo, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Aluminum Chambered Boats, Inc., applicant herein, seeks registration on the Principal Register of the mark THE MACHINE (in standard character form) for goods identified in the application as "boats."¹

¹ Serial No. 78643554, filed on June 3, 2005. The application is an intent-to-use application under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the mark is merely descriptive of the identified goods.

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

Applicant has appealed the final refusal. After careful consideration of the evidence of record² and the arguments of counsel, 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

² We sustain the Trademark Examining Attorney's objection to the evidence submitted by applicant for the first time with its appeal brief. Such evidence is untimely and shall be given no consideration. Trademark Rule 2.142(d), 37 C.F.R. §2.142(d). We add that our decision herein would be the same even if we were to treat this evidence as being properly of record.

services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *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, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, 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.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applying these principles in the present case, and based on the evidence submitted by the Trademark Examining

Attorney, we find that THE MACHINE is merely descriptive as applied to "boats."

The Trademark Examining Attorney has submitted dictionary evidence (from the MSN Encarta Dictionary (www.encarta.msn.com)) which shows that the definitions of "machine" include "powered form of transportation: an engine-driven means of transportation, e.g. an aircraft, car, or motorcycle." We find that a boat certainly can be "an engine-driven means of transportation," and thus would be a "machine" according to this definition.

The Trademark Examining Attorney also has submitted excerpts from news articles retrieved from the NEXIS database which show that there is a type of boat called a "machine boat":

St. Louis Post-Dispatch (8/21/06): "Brothers Mike and Tom Seebold rode their Bud Light Racing machine boats to podium finishes..."

Eureka Times-Standard (CA) (4/26/05): "...it deepens and widens the channel marking it safer and more efficient for fishing boats, cargo boats, machine boats, and even leisure boats to move in and out of the bay."

Also of record are other news article excerpts and printouts from third-party websites which establish that "machine" is commonly used descriptively in connection with fishing boats (which of course are encompassed by

applicant's identified "boats"). These boats are called "fishing machines." For example:

The Sun Herald (Biloxi, MS) (3/8/04): "...22-foot Legacy Skiff, which isn't a true skiff, but according to Bob Kranz, is an offshore fishing machine."

www.centuryboats.com - "Want to customize the ultimate fishing machine?"

www.yachtbroker.escapeartist.com - 1979 Topaz 28 foot Sports Fishing machine!... Her name is 'Reel Deel' and she is a well known 1979 Topaz twenty-eight foot fishing machine!"

www.basspro.com - "Turning Your Small Boat Into a Fishing Machine"

www.newwaterboatworks.com - "The Avocet was conceived with one goal in mind - to develop the ultimate shallow water sport fishing machine ... NewWater took boat making to a new level."

The record also includes a printout of a third-party registration, Reg. No. 1633952, which is of the mark FISHING MACHINE for "boats." The mark is registered pursuant to the acquired distinctiveness provisions of Trademark Act Section 2(f), a fact which supports a finding that "machine" is merely descriptive of boats.

Additional third-party websites demonstrate descriptive use of "machine" in connection with other types of boats:

www.mitziskiffs.com - "A serious shallow water machine..."

www.money.cnn.com - "The ultimate yachting machine"

In view of this evidence, we are not persuaded by applicant's argument that MACHINE is arbitrary or suggestive as applied to boats. Boats can be and are described as being "machines," and MACHINE thus is a merely descriptive term as applied to boats.

We also reject applicant's argument that the presence of the word THE in the designation THE MACHINE negates the mere descriptiveness of MACHINE, or that it transforms the designation as a whole into a unitary, inherently distinctive mark. As the Board has repeatedly found, the word THE would be perceived as merely the common article that it is, without trademark significance. *See, e.g., In re G.D. Searle & Co.*, 149 USPQ 619 (CCPA 1966), *aff'g* 143 USPQ 220 (TTAB 1964) (THE PILL); *In re King Coil Licensing Co.*, 79 USPQ2d 1048, 1051 n.6 (TTAB 2006) (THE BREATHABLE MATTRESS); *In re Weather Channel, Inc.*, 229 USPQ 854, 856 (TTAB 1985) (THE WEATHER CHANNEL); and *The Conde Nast Publications Inc. v. The Redbook Publishing Co.*, 217 USPQ 356, 357 (TTAB 1983) (THE MAGAZINE FOR YOUNG WOMEN).

Based on the evidence of record, we find that THE MACHINE is merely descriptive of "boats," the goods identified in the application, and that registration therefore is barred by Trademark Act Section 2(e)(1).

Decision: The refusal to register is affirmed.³

³ For the first time in its appeal brief, applicant requests that it be allowed to amend the application to one seeking registration on the Supplemental Register, if the mere descriptiveness refusal to register the mark on the Principal Register is affirmed. This request is untimely and will be given no consideration. See generally TMEP §§816.05 and 1501.06.