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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Roark Licensing, LLC

Serial No. 78827895

Daniel N. Lundeen of Lundeen & Dickinson for Roark
Licensing, LLC.

Leigh Caroline Case, Trademark Examining Attorney, Law
Office 105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Holtzman and Drost, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Roark Licensing, LLC to
register the mark MONGOLIAN for "wind chimes" in
International Class 20.¹

The trademark examining attorney refused registration
under Section 2(e)(1) of the Trademark Act, 15 U.S.C.
§1052(e)(1), on the ground that applicant's mark, when used

¹ Application Serial No. 78827895, filed March 2, 2006, alleging
first use anywhere in September 1989, and first use in commerce
in January 1992.

in connection with applicant's goods, is merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

The examining attorney maintains that MONGOLIAN is merely descriptive of applicant's wind chimes that utilize the notes of the Mongolian musical scale. In support of the refusal, the examining attorney submitted excerpts of third-party websites, as well as the website of applicant.

Applicant states that its chimes produce random melodies when exposed to the wind, sounding out notes without a set rhythm or order of tones according to the direction and force of the wind as the clapper is driven by the sail and meets an individual metal tube. The mark, applicant argues, is, at most, suggestive as applied to the goods. In this regard applicant contends that there is no specific scale understood as specific notes representing a Mongolian scale. Rather, the mark suggests exotic locales, adventure travel in Asia, the outdoors and historical figures such as Genghis Kahn and his empire. In support of its position, applicant introduced excerpts of websites and the results summary of a search using Google's search engine. Applicant also submitted, pursuant to the

examining attorney's request, information about its product.

A term is deemed to be merely descriptive of goods or services, 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 or services. *In re Abcor Development*, 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; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. *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 the 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; contrary to the gist of a portion of applicant's argument, that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593

(TTAB 1979). 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). The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of applicant's goods or services. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

We begin by noting applicant's own statement in its response dated February 21, 2007:

The tubes of **the wind chimes admittedly utilize the notes of the Mongolian musical scale**, and even describe the scale in the sales literature, however, the mark sought to be registered is MONGOLIAN, not MONGOLIAN SCALE or MONGOLIAN MUSICAL SCALE. (emphasis added).

Applicant's website includes information about "Chime Tunings" and "Musical Scales." Applicant states, "[O]ur founder, Larry Roark, designed our chimes in a variety of musical scales so you could choose the one that sings most sweetly to you." Applicant indicates that its chimes are available in ten musical scales, including "Mongolian," "Pentatonic," "Chinese," Hawaiian" "Whole Tone" and

"Quartal." The "Mongolian scale" is described as "a livelier version of the Chinese" and is "reminiscent of church and temple bells." In a description of its product appearing on the website www.amazon.com, applicant states:

The major pentatonic scale in root position in the key of A, it harmonizes nicely with the Aquarian scale...**Musicians are impressed with the use of authentic musical scales from around the world.** The less knowledgeable just know they sound great. All chimes are precision tuned to A 440, the standard orchestral pitch. They are available in the musical scales indicated and are written in the octave of the alto size. Sopranos are one octave higher; mezzo sopranos, one-half octave higher; tenors, one-half octave lower; and basses, one octave lower. (emphasis added)

The examining attorney's evidence includes evidence showing use of "Mongolian scale" in connection with tuning mandolins (www.musicianuniversity.com); a listing for "Mongolian," among hundreds of others, in "Music Scales Dictionary" (www.scales.se/f_list.htm);² "wind chimes in the

² Websites from English language, foreign sources may be relevant to determine if a mark is merely descriptive. *Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007) ["information originating on foreign websites...may be relevant to discern United States consumer impression of a proposed mark"]. We also have considered the results summary generated by Google's search engine. We note that some websites appear to show use of "Mongolian" as a trademark for applicant's goods, while others show use in connection with a type of music. We hasten to add that, without the entire websites relied upon,

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Mongolian scale" (www.thefind.com); and "[t]he Mongolian tuning is reminiscent of church and temple bells" (www.outdoordecor.com).

Based on the evidence of record, we conclude that the term "Mongolian" is the name of a music scale, and that MONGOLIAN merely describes applicant's wind chimes. The term immediately describes, without conjecture or speculation, a significant characteristic or feature of the goods, namely, that the wind chimes utilize the notes of the Mongolian music scale. Applicant admitted this fact, as noted above, and, contrary to applicant's argument, that applicant's mark does not include the terms SCALE or MUSICAL SCALE does not diminish the descriptiveness of MONGOLIAN standing alone.

As pointed out by the examining attorney, that applicant may be the first and only user of a merely descriptive term does not justify registration if the only significance conveyed by the term is merely descriptive. *See In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

Decision: The refusal to register is affirmed.

the search engine results summary merits little probative value. *See In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002).