

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
January 30, 2008
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kabushiki Kaisha King Jim

Serial No. 79019227

Jeffrey L. Van Hoosear of Knobbe Martens Olson & Bear LLP
for Kabushiki Kaisha King Jim.

Mary E. Boagni, Trademark Examining Attorney, Law Office 114
(K. Margaret Le, Managing Attorney).

Before Bucher, Grendel and Holtzman, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Kabushiki Kaisha King Jim seeks registration on the
Principal Register of the following mark:

LEVER RING

for goods identified in the application, as amended, as
follows:

"photograph albums; paper filings, namely,
document files; letter files; card files;
binders; metal ring mechanisms in the nature
of a metal ring, metal lever, and metal plate
sold as a component part of binders" in
International Class 16.¹

¹ Application Serial No. 79019227 is a §66(a) application filed
by Kabushiki Kaisha King Jim, a Japanese Joint Stock Company, on
May 16, 2005. Applicant is the holder of International

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation under Section 2(e)(1) of the Trademark Act based upon the ground that the mark is merely descriptive when considered in relation to applicant's identified goods, i.e., that the term "lever ring" immediately informs potential purchasers about the nature of applicant's goods.

Applicant and the Trademark Examining Attorney have filed briefs addressing the issues involved in this appeal.

We affirm the refusal to register.

Preliminary matters

We note that much of the material attached to applicant's appeal brief appears to have been submitted into the record for the first time with the brief. The Trademark Examining Attorney correctly objected to the tardy submission of these materials inasmuch as the record in an application must be complete prior to appeal. 37 C.F.R. § 2.142(d); TBMP §§ 1207.01 *et seq.* See *Rexall Drug Co. v. Manhattan Drug Co.*, 284 F.2d 391, 128 USPQ 114 (CCPA 1960);

Registration 0872161 that has filed with its international application a request for extension of protection of that registration to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a).

and *In re Psygnosis Ltd.*, 51 USPQ2d 1594 (TTAB 1999).
Accordingly, we have not considered these materials.²

Is term merely descriptive?

A mark is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it immediately conveys information of a significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services with which it is used or is intended to be used. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978) [GASBADGE merely descriptive of a "gas monitoring badge"]. *See also In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) [MONTANA SERIES and PHILADELPHIA CARD merely descriptive of "credit card services." The Court found that a "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service."]. Hence, the ultimate question before us is whether the term **LEVER RING** conveys information about a significant feature or characteristic of

² We hasten to add that even if we had considered the contents of these attachments, it would not have changed the result herein.

applicant's goods with the immediacy and particularity required by the Trademark Act.

A mark is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) [APPLE PIE merely descriptive of potpourri mixture: "Whether a given mark is suggestive or merely descriptive depends on whether the mark 'immediately conveys ... knowledge of the ingredients, qualities, or characteristics of the goods ... with which it is used,' or whether 'imagination, thought, or perception is required to reach a conclusion on the nature of the goods.'" (citation omitted)].

The question of whether a particular term is merely descriptive is not decided in the abstract. That is, when we analyze the evidence of record, we must keep in mind that the test is not whether prospective purchasers can guess what applicant's goods are after seeing applicant's mark alone. *In re Abcor, supra* at 218 ["Appellant's abstract test is deficient - not only in denying consideration of evidence of the advertising materials directed to its goods, but in failing to require consideration of its mark 'when applied to the goods' as required by statute"]; *In re Home*

*Builders Association of
Greenville*, 18 USPQ2d 1313
(TTAB 1990) [NEW HOME

NEW HOME
BUYER'S GUIDE

BUYER'S GUIDE merely descriptive of "real estate advertisement services"]; and *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985) [APRICOT is merely descriptive of apricot-scented dolls]. Rather, the proper test in determining whether a term is merely descriptive is to consider the applied-for mark in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to have on the average purchaser encountering the goods or services in the marketplace. See *In re Omaha*

National Corp., 819 F.2d 1117,
2 USPQ2d 1859 (Fed. Cir. 1987)
[the term "first tier"

The logo for FirstTier, featuring a stylized globe icon to the left of the word "FirstTier" in a bold, sans-serif font.

describes a class of banks]; *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996) [the term VISUAL DESIGNER is merely descriptive of "computer programs for controlling the acquisition of data from measurement devices"]; *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991) [MULTI-VIS is merely descriptive of "multiple viscosity motor oil"]; *In re Engineering Systems Corp.*, 2 USPQ2d 1075

(TTAB 1986) [DESIGN GRAPHIX merely descriptive of computer graphics programs]; and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979) [COASTER-CARDS merely descriptive of a coaster suitable for direct mailing].

In arguing for registrability, applicant concedes that the words "lever" and "ring" are both terms that are used in the industry, such as "ring binders" and "lever arch files." However, applicant argues that the Trademark Examining Attorney has not shown that the combined term, "Lever Ring," is merely descriptive. Applicant argues that this term is not the same as "rings with levers," and hence, the applied-for term is merely suggestive, as it does not immediately convey information about applicant's products, it does not describe a significant attribute or idea relating to applicant's goods but rather, it requires imagination in order for members of the relevant public to perceive any significance of the combined term, "Lever Ring," taken as a whole, as it relates to the applicant's goods.

By contrast, the Trademark Examining Attorney contends that the evidence placed into the record amply demonstrates the descriptive nature of the applied-for mark in the context of these goods in that it immediately tells consumers that this ring binder has a level for opening and closing the binder.

The individual terms “Lever” and “Ring”

The Trademark Examining Attorney has included for the record a definition of each of these two words:

ring (rîng) noun 1. A circular object, form, or arrangement with a vacant circular center.... 3. A circular band used for carrying, holding, or containing something: a napkin ring.

lever (lèv¹er, lê¹ver) noun 1. A simple machine consisting of a rigid bar pivoted on a fixed point and used to transmit force, as in raising or moving a weight at one end by pushing down on the other. 2. A projecting handle used to adjust or operate a mechanism..

From pre-school students to doctoral candidates, in academia or the workplace, government or business, papers are often maintained in an orderly manner with the use of binders, notebooks, files or folders. Whether for frequently-referenced materials or for long-term storage, this kind of stationery items is often described with reference to the type of mechanism holding the papers in place.

For example, ring binders are designed for use with papers having appropriately-spaced holes punched into them.³ The ring clips may be referred to as "O" ring clips or "D" ring clips. Whichever shape it takes, the word "ring" in this context clearly connotes a type of paper holder in the United States.

On occasion, ring binders for frequently-updated and referenced materials will not have a trigger or lever for opening the rings. However, repeatedly tugging on the rings directly can cause them to bend and gap - rendering the binder useless for its intended purpose:

HEADLINE: Guide Covers Great Interior Basics

...

Consider the ringbound edition, as you can then file your own notes and other tips right in the book. However, and this is the only negative thing about the book, because there isn't an opening **lever** for the **binder rings**, you must give the rings a tug each time you want to open them. The bottom ring in our book is already gapping, which may tear pages...⁴

Accordingly, the record amply demonstrates that binders, notebooks, files and folders having ring clips usually have opening and closing trigger mechanisms. Three-

³ By contrast, the holding mechanism for punchless paper will usually be called a spring or lever clip (or clamp).

⁴ San Jose Mercury News, December 21, 2001.

ring binders in the United States often have an upper and lower opening lever.⁵

By contrast, it appears that in the United Kingdom, throughout Europe, and in the rest of the English-language world, the lever may be a single, large toggle hinged in the center of the spine and swung from top to bottom to open and close the rings. Applicant submitted an advertisement for the involved goods, clearly showing a ringed binder with just such a prominent lever:

⁵ http://www.cstores.uiuc.edu/cgi/price2.dbr?UOI00740068%20%20%20%20****

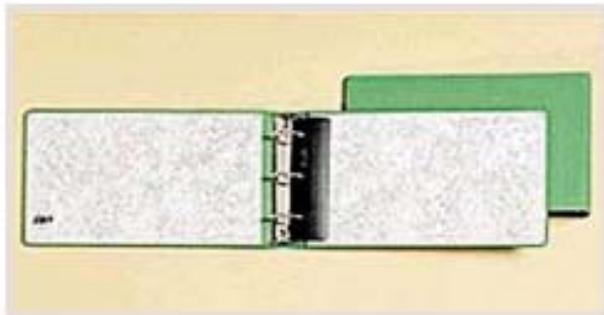
University of Illinois at Urbana-Champaign Price Lists:

11207850 Black 1" 3-Ring Binder ... opening and closing trigger levers

11207860 Black 2" 3-Ring Binder ... opening and closing trigger levers

11207870 Black 3" 3-Ring Binder ... opening and closing trigger levers

Product Details: Green Canvas Legal Binder. For 8 and a half x 14 sheets. Ideal for active use. Heavy-duty canvas over stiff board covers and fabric reinforced hinges. Three standard round rings have **top and bottom opening levers**. Sheet lifters. 2" capacity.



<http://www.bizrate.com/binders/>



The combined term “Lever Ring”

We turn to examine those places in the record where the combined term “Lever Ring” is used in connection with stationery binders or folders. Applicant argues as follows:

“In all of the evidence submitted by the Examining Attorney, only six web pages used LEVER and RING side by side, in that order, as LEVER RING. Moreover this evidence should be afforded little weight. The majority of these six pieces of evidence come from foreign websites and as such have little probative value. In *In re Remade*, the Board made clear that foreign sources have limited evidentiary value in establishing purchaser perception in the United States. *In re Remade*, 66 USPQ2d 1222 (TTAB 2002).

We agree with applicant that some of these uses have limited probative value in establishing purchaser perception

in the United States. Two are clearly British websites as evidenced by their <.co.uk> top level domains.⁶ In another website, the binder is priced in pounds (£).⁷ Several other business-to-business websites with information on Taiwanese and Chinese manufacturers and suppliers also used variations on the term "lever ring" in connection with items called ring binders and "lever arch files."⁸ In fact, it seems clear the generic terminology in Britain for applicant's goods, much as pictured on the instant specimens of record, is "lever arch file" "lever ring binder" or "lever arch binder."⁹

⁶ www.ebay.co.uk and www.inkandstuff2.co.uk

⁷

Description: - A4 lever ring binder made from high quality cardboard with blue or purple contrasting stripes.
<http://www.mr-office.com/>



⁸ www.manufacturers.com.tw

TradeKey is identified as a business to business website allowing for Internet enabled trade - designed for use by global importers, wholesale buyers, exporters, suppliers and manufacturers.

"Material: Pu or paper binder; O or D ring and arch lever; ring size: A4 or A5; packing: 1pc/polybag
From: [Ningbo livia trade co.,ltd](http://www.tradekey.com/ks-ring-binder/) [China]"
<http://www.tradekey.com/ks-ring-binder/>



⁹ www.alibaba.com, <http://www.b2bchinasources.com/>,
<http://www.legalstore.com/dbID/2479.html>,

HEADLINE: SHE KNOWS THE BIZ: CEO Sharon Avent owns and runs Smead Manufacturing with a personal touch. Employees stay for decades and the kudos are piling up.

... But expanding internationally has not meant easy penetration into Europe with U.S.-made products, an obstacle Avent chalks up to cultural differences. British customers, for instance, prefer the **lever arch file**, a hard-backed folder akin to **the three ring binder**...¹⁰

Applicant also discounted the support provided by an Internet reference in a catalogue from an academic publishing house - arguably the Trademark Examining Attorney's strongest reference - because in this usage there is a hyphen placed between the words "Lever" and "Ring," which applicant argues is different from applicant's applied-for mark without a hyphen¹¹:

http://www.blumberg.com/invoice.cgi?rm=view_cluster;cluster_id=170230, and <http://empireimports.stores.yahoo.net/filebinders.html>.

¹⁰ Saint Paul Pioneer Press (St. Paul, MN), April 27, 2006.

¹¹ Of course applicant's own specimens above show a hyphen in the way applicant actually uses this alleged mark.

Catalogue of Planktonic Foraminifera

(ISBN 0-914324-06-4)

Approx. 2,500 genera and species, extracted from Ellis and Messina catalogues. Pages for Neogene, Paleogene, and Mesozoic taxa are from catalogues between 1942 and 1975 in 6 looseleaf volumes; additional pages from 1976 to 1999 in 2 supplements. **Lever-ring binders included.** Shipping extra.

Full set, 8 volumes	\$ 900
Vol. 7 (supplement, 1976-1988)	125
Vol. 8 (supplement, 1989-1999)	125

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<http://www.micropress.org/micropress/mp3.html>

If we were to base our decision herein on the need of U.S. based competitors to use the term "Lever Ring", as judged by the actual usage of this term in connection with ring binders within the United States, we would have to reverse the Trademark Examining Attorney.

However, the question remains as to whether this term should be considered merely descriptive even if applicant

should be the first one to use this combined term for the identified goods in interstate commerce in the United States. The Trademark Examining Attorney argues from uses drawn from the Internet and the LEXIS database that applicant's competitors commonly use the terms "lever" and "ring" to describe significant components of their ring binders, and hence that U.S. consumers would clearly be familiar with these two words in this context. Applicant seems to have conceded as much.

We agree with the Trademark Examining Attorney that both the lever and the ring are clearly salient features or characteristics of these goods. The *lever* is prominently featured in the advertisement for these *ring* binders. Hence, the sole remaining question for us is whether or not the combination of these two words creates a unitary mark having a new, separate, nondescriptive or incongruous meaning.

It is in this context that applicant argues that the combined term is not merely descriptive:

Applicant's mark is neither LEVER nor RING, but LEVER RING. In this case, the terms LEVER and RING combine such that each individual term does not retain its individual descriptive meaning. Although LEVER may be descriptive of Applicant's goods, and RING may be descriptive of Applicant's goods, the mark at issue, LEVER RING, is not merely descriptive of

applicant's goods; it is at least suggestive of them.

The mark is unitary, LEVER RING, created by the consonance between the final R in the word lever and the first R in the word ring. The sound of these terms put together makes the mark sound like one whole word - a unitary mark. Moreover, the unitary word suggested by the mark, levering, is not descriptive of Applicant's goods. "To lever" means "to lift or pry." Such a meaning is not descriptive of Applicant's goods, but merely suggestive of them.

We are not persuaded that there is anything in the combination that creates a sufficiently novel image to overcome the descriptiveness refusal. Rather, the way in which the alleged mark is used on applicant's own specimens of record - in differing sized fonts and having a hyphen between the words ("Lever-Ring") - actually reinforces the merely descriptive connotation of the two individual words.

Finally, although the Trademark Examining Attorney did not pursue this at length, we are convinced that "the evidence of the generic use of the term ["lever ring" (and "lever arch")] in Great Britain is probative of a Section 2(e)(1) ground for refusal under our Trademark Act, by an ordinary application of the doctrine of foreign equivalents." *In re Consolidated Cigar Corp.*, 13 USPQ2d 1481, 1485 (TTAB 1989) [the term **WHIFFS** is merely descriptive of small cigars, J.Sams concurring opinion].

Serial No. 79019227

Decision: The refusal to register under
Section 2(e)(1) of the Lanham Act is hereby affirmed.