

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 14, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Diamond Communication Products, Inc.

Serial No. 75/120,720

Diamond Communication Products, Inc., pro se¹

Richard Y. Kim, Trademark Examining Attorney, Law Office
102 (Thomas V. Shaw, Managing Attorney)

Before Simms, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

¹ Applicant was represented by outside counsel throughout this case, including through the filing of applicant's reply brief in September 1998. Thereafter, in March 1999, applicant's attorneys filed a "request for permission to withdraw as attorney of record." Applicant filed a paper objecting thereto. By Board order dated May 17, 1999, applicant's attorneys' request to withdraw was granted. Therefore, applicant is now pro se. Accordingly, applicant's copy of this final decision will be sent to applicant at its address in Garwood, New Jersey. (A courtesy copy will be sent to the address in Memphis, Tennessee as set forth in applicant's attorneys' request to withdraw.)

Diamond Communication Products, Inc. has filed an application to register the mark SINGLE WRAP for "nonmetallic ties for fastening electrical, telephone and fiber optic cables in place" (International Class 22).²

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, if used on applicant's identified goods, the applied-for mark SINGLE WRAP, would be merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The Examining Attorney contends that the applied-for mark immediately describes a characteristic, use or purpose of applicant's stated goods in that "it refers to ties that require only one coil around the subject material in order to bind" (Final Office action, p. 2); that based on the ordinary meaning of the component words, the term "single wrap" is merely descriptive of "ties, fasteners, string, rope or tape" (Final Office action, p. 3) which goes around the involved material only once in order to be securely

² Application Serial No. 75/120,720, filed June 18, 1996, wherein applicant alleges a bona fide intention to use the mark in commerce.

fastened in place; and that there is neither an incongruous nor a separate unitary meaning created by the term SINGLE WRAP. The Examining Attorney also argues that applicant concedes that its nonmetallic ties function with a "single wrap" by its statement that the goods "can be installed with one or two wraps depending on the application."

(Applicant's May 30, 1997 response, p. 3).

In support of his position, the Examining Attorney relies upon the following definitions from Webster's II New Riverside University Dictionary (1994):

"single," which is defined in pertinent part as "2.b. Consisting of one alone"; and

"wrap," which is defined in relevant part as "4. To clasp, fold, or coil about something."³

In addition, he submitted 19 assertedly representative excerpted stories out of 124 articles retrieved from a Lexis/Nexis database search of the phrase "single wrap"; and a printout of the search report page showing 351 stories were located including the term "double wrap."

Applicant contends that its mark is a composite mark which is at most suggestive of the goods; that the

³ The same dictionary, we note, includes another definition of "wrap" as "To coil, wind, or twist about or around something."

Examining Attorney has submitted no relevant evidence to show that the term "single wrap" is merely descriptive because the excerpted stories do not specifically "refer or relate to the telecommunications industry in any way" (Applicant's May 30, 1997 response, p. 2), nor do the stories specifically relate to applicant's goods ("nonmetallic ties for fastening electrical, telephone and fiber optic cable in place"). In addition, applicant argues that the dictionary does not have an entry for the two words together; and that doubt on this issue is resolved in favor of the applicant. Although the application is based on intent to use, applicant submitted a page from its catalog showing use of the term SINGLE WRAP STRAP with a "TM" appearing after the word "WRAP." Based thereon, applicant asserts that "the fact that Applicant's mark creates a phrase that rhymes is inventive, and is likely to evoke a unique commercial impression." (Applicant's May 30, 1997 response, p. 4).

A term is considered merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it immediately describes an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See In re Abcor

Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that the term describe all of the properties or functions of the goods or services in order for the term to be considered merely descriptive thereof; rather it is sufficient if the term describes a significant attribute or idea about them. And, of course, 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 and the possible significance that the term may have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

In analyzing the Lexis/Nexis evidence we disagree with applicant that all such excerpted stories are irrelevant. First, applicant's goods include ties for fastening electrical cables, so that applicant's goods could be used in the electrical industry, which is clearly broader than "the telecommunications industry" as stated by applicant. Second, those stories which include use of the term "single wrap" in the context of some type of fastener or tie are clearly relevant to the common understanding of the

involved term. Examples of two of the relevant excerpted stories are quoted below:

"Stainless steel cable tie has patented dual locking system. Provides versatile, low-profile, single-wrap tie. A quick squeeze of Tie-Lok Tool forms two strong locks, with combined locking force of over..." Electric Light & Power, October 1991; and

"...pipeline is a grade B, spiral weld seam pipe with .0375-in. wall thickness. It was originally coated with single wrap tape. Some pipe areas were coated with double wrap tape," Oil & Gas Journal, June 21, 1993.

Moreover, as stated by our primary reviewing court in the case of *In re Gould Paper Corporation*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (*SCREENWIPE* held generic for wipes that clean computer and television screens), the Patent and Trademark Office may satisfy its evidentiary burden by means of dictionary definitions showing that the "separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound".

When the Lexis/Nexis evidence is viewed together with the dictionary definitions in the record of the terms

"single" and "wrap,"⁴ we are of the opinion the applied-for mark is no more than a combination of two merely descriptive terms, with the composite mark remaining merely descriptive. That is, consumers for applicant's nonmetallic ties would readily understand that the term SINGLE WRAP refers to a tie or fastener which will accomplish fastening the item(s) in place by means of only a singular wrap around said item(s). As such, the term immediately and without conjecture or speculation describes a significant characteristic, feature, or use of applicant's goods (i.e., that applicant's ties work when wrapped once around the electrical, telephone or fiber optic cables to fasten them in place). See *In re Cryomedical Sciences Inc.*, 32 USPQ2d 1377 (TTAB 1994) (SMARTPROBE merely descriptive of disposable cryosurgical probes); *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays); *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992) (DOUBLE CERTIFIED ORGANIC held merely descriptive of pasta); *Domino's Pizza Inc. v. Little Caesar Enterprises Inc.* 7 USPQ2d 1359 (TTAB 1988) (SINGLE, DOUBLE and TRIPLE merely descriptive of applicant's pizza);

⁴ The fact that the composite term SINGLE WRAP is not found in the dictionary is not controlling on the question of whether the

In re IBP, Inc., 228 USPQ 304 (TTAB 1985) (requirement for a disclaimer of the merely descriptive terms "select trim" for pork affirmed); and In re Truckwriters Inc., 219 USPQ 1227 (TTAB 1983), aff'd unpubl'd Appeal No. 84-689 (Fed. Cir., November 1, 1984) (requirement for a disclaimer of the merely descriptive term "writers" for insurance agency services affirmed).

Applicant's reliance on the case of In re Shutts, 217 USPQ 363 (TTAB 1983) is not persuasive of a contrary result. In holding the mark SNO-RAKE not merely descriptive of a snow removal hand tool, the Board stated that mere descriptiveness must relate to generally recognizable word formulations and meanings, and "should not penalize coinage of hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and 'mental pause'," Shutts case, supra at 364-365.

However, in the case now before the Board, the applied-for mark does not involve any "hitherto unused and somewhat incongruous word combinations," and there is no imagination needed to understand the meaning of SINGLE WRAP. The dictionary definitions of the terms 'single' and

applied-for mark is merely descriptive. See In re Orleans Wines, Ltd., 196 USPQ 516 (TTAB 1977).

'wrap,' as well as several excerpted Lexis/Nexis stories, establish that these two ordinary words have a commonly understood meaning. Applicant's argument that it uses the words SINGLE WRAP STRAP resulting in a combined phrase which rhymes, making the mark inventive and likely to evoke a unique commercial impression is unpersuasive.

Applicant's applied-for mark is SINGLE WRAP and does not include any rhyming words. Even if applicant had included the generic term "strap" in its applied-for mark, we disagree that such alleged "rhyming" would render the composite term unique.

We find that when used in connection with nonmetallic ties for fastening electrical, telephone and fiber optic cables in place, the relevant purchasers would understand the words to mean a tie or fastener which secures the matter in place by wrapping the tie around the matter one single time.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

R. L. Simms

P. T. Hairston

B. A. Chapman

Ser. No. 75/120720

Administrative Trademark
Judges, Trademark Trial and
Appeal Board