

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB                      OCT. 14, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re *Catco, Inc.*

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Serial No. 75/285,549

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Michael Ebert of Hopgood, Calimafde, Kalil & Judlowe for  
Catco, Inc.

Karla Perkins, Trademark Examining Attorney, Law Office 106  
(Mary I. Sparrow, Managing Attorney).

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Before Seeherman, Hairston and Bottorff, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Catco, Inc. has filed an application to register the  
mark BLOW UPS for goods which it has identified as "toys  
and playthings, namely, collapsible stuffed toy figures."<sup>1</sup>

Registration has been finally refused under Section  
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the  
ground that the mark is merely descriptive of the

identified goods. Further, the Examining Attorney maintains that the above identification of goods fails to accurately describe the goods and has required that it be amended to "collapsible toy figures featuring stuffed and inflatable components."

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

We turn first to the requirement to amend the identification of goods. According to the Examining Attorney, applicant's toy figures will contain stuffed and inflatable components and, thus, the identification fails to accurately describe the goods. The Examining Attorney points to applicant's Patent No. 5,813,896 for "Collapsible Stuffed Toy Figures" which shows that the head and torso of the toy figures contain inflated balloons. The Examining Attorney maintains that an accurate identification of goods is particularly important here because "collapsible stuffed toys" is not a recognized category of toys.

Applicant, on the other hand, argues that its goods are properly identified and that it should not be required to limit the identification of goods to "inflatable components" as the means to collapse the toy figures.

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<sup>1</sup> Serial No. 75/285,549, filed on May 2, 1997, which alleges a bona fide intention to use the mark in commerce.

According to applicant, a collapsible toy figure could be one having a cavity therein which is water filled, the figure being collapsed by expelling the water. Further, applicant argues that the word "collapsible" has a well established meaning and would be understood to refer to a toy figure that is capable of being caved in or flattened.

While we have carefully considered the Examining Attorney's arguments, we nonetheless agree with applicant that the identification of goods is neither indefinite nor inaccurate. We note that both "stuffed toys" and "toy figures" are acceptable identifications of goods in the Office's *Acceptable Identification of Goods and Services Manual*. Moreover, applicant has gone a step further and added the word "collapsible" which more specifically describes the goods. Also, we are not persuaded by the Examining Attorney's argument that "collapsible stuffed toy figures" is unacceptable because it is not a recognized category of goods, inasmuch as the identification of goods which she is requiring, i.e., "collapsible toy figures featuring stuffed and inflatable components," is not a recognized category, either.

In view of the foregoing, the Examining Attorney's requirement that the identification of goods be amended is reversed.

We turn next to the refusal to register under Section 2(e)(1) of the Trademark Act. The Examining Attorney maintains that the term BLOW UPS immediately describes a feature of applicant's goods, namely, that the toy figures are inflatable or are blown up.

In support of the refusal to register, the Examining Attorney has submitted copies of five third-party registrations which include goods that are identified as "blow-up toys" or "blow-up balls." Also, the Examining Attorney has submitted a number of excerpts of articles taken from the NEXIS data base wherein the term "blow up(s)" has been used in connection with inflatable toys.

The following are representative examples:

A carnival-like atmosphere filled the air. Vendors were selling giant peanut **blow-up** toys and numerous other Carter souvenirs on High Street. Sunday Telegram, (Worcester, MA) October 26, 1997;

The **blow-up** vinyl toy has a red, circular base and three yellow rings for sidewalls. The inflatable toys have been sold since November 1994. The Idaho Statesman, May 6, 1996;

These aren't your basic baby **blow-up** toys, either. These things are big -- the 4-foot tall gorilla, for example, that lies on a patio lounge with its arm crossed behind its head. The Seattle Times, August 5, 1991;

Now that Henry Wolfe's inflatable vinyl alligators, dinosaurs, and sea monsters

have become standard gear in more than 500,000 backyard pools around the world, he's moved his business on to toy-store shelves with a cast of dozens of colorful **blow-up** animals. St. Petersburg Times, November 16, 1987; and

Sure, there are **blow-ups** that are fun for paddling around a swimming pool, toys to take in a tub or play with on the beach. Outdoor Life, March 1984.

Further, the Examining Attorney submitted a definition taken from Webster's II New College Dictionary (1995) wherein "blow up" is defined as, inter alia, "to fill with air; inflate."

Applicant, in urging reversal of the refusal to register, contends that at most the term BLOW UPS is suggestive of its goods. It is essentially applicant's position that the term "blow-up" is the proper name for a large balloon which, when blown up, is shaped to resemble a cartoon character or other figure, but that such term is not merely descriptive of a fabric-covered stuffed figure such as applicant's, where only sections of the figure are stuffed with balloons and the balloons are not visible to purchasers.

A term is considered to be merely descriptive of goods within the meaning of Section 2(e)(1) of the Trademark Act 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. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a single significant attribute or idea about them. In re Venture Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one who sees the mark alone can guess what the applicant's goods are, but rather in relation to the goods for which registration is sought, that is, by asking whether, when the mark is applied to the goods, it immediately conveys information about their nature. In re Bright-Crest, Ltd., 104 USPQ 591 (TTAB 1979).

At the outset, we should make clear that the issue here is mere descriptiveness; not genericness. The Examining Attorney does not argue that BLOW UPS is the generic name for applicant's toy figures. Rather, she contends that the term describes a feature of applicant's toy figures. The evidence submitted by the Examining Attorney establishes that the term "blow-up(s)" is used to

describe inflatable toys. Moreover, applicant has acknowledged that its toy figures will contain inflatable components:

. . . the goods take the form of a fabric-covered figure, such as that of Mickey Mouse, whose arms and legs are stuffed with compressible material, but whose head is stuffed with an inflated balloon and whose torso is also balloon stuffed. (June 1, 1998 response, page 2).

We find, therefore, that BLOW UPS is merely descriptive of applicant's toy figures because it immediately describes a feature thereof, namely, that they are inflated or blown up. That this is a significant feature of such goods is evidenced in applicant's patent:

The advantage of using balloons to fill out the torso and head of the figure is that it is less expensive to make than to fill these large volume components with compressible padding. But the more important advantage of the balloons is that they render the stuffed figure collapsible so that the figure can occupy much less space when packaged and stored.

. . .  
In the absence of the balloons, the filling in the fabric covered figure is mainly in the appendages. Hence it becomes feasible to clean the figure in a standard washing machine, for the amount of water absorbed in the stuffing in the appendages is relatively small and can easily be squeezed out.

Finally, while applicant has maintained that the balloons are not visible, it is obvious from the above

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that, at the very least, those purchasers who wash their toy figures will see the balloons upon removal from the figures.

**Decision:** The refusal to register under Section 2(e)(1) is affirmed and the requirement to amend the identification of goods is reversed.

E. J. Seeherman

P. T. Hairston

C. M. Bottorff  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

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