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Paper No.

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Merritt**

Serial No. 75/416,648

Leon I. Edelson, Esq. for **Ross M. Merritt**.

Jesse W. Billings, Trademark Examining Attorney, Law Office 103
(**Michael Szoke**, Managing Attorney).

Before **Hohein, Hairston** and **Wendel**, Administrative Trademark
Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Ross M. Merritt has filed an application to register
the term "PUCKBOX" for "jewelry cases and boxes not made of
metal."¹

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

¹ Ser. No. 75/416,648, filed on January 12, 1998, which alleges dates
of first use of August 29, 1996.

basis that, when used in connection with applicant's goods, the term "PUCKBOX" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, 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 or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, 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. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, in his initial brief, acknowledges that the Examining Attorney, in support of the refusal to register, has made of record a definition from The American Heritage Dictionary of the English Language (3rd ed. 1992) which, in pertinent part, defines the word "puck" as "[a] hard rubber disk used in ice hockey as the playing and scoring medium." Applicant also notes that, with respect to ice hockey, such word is defined by The Random House Dictionary of the English Language (unabridged ed. 1973) as "a black disc of vulcanized rubber for use in passing and shooting."² In addition, applicant has made of record a portion of the design patent for his product, which is referred to therein as a "hockey puck case" and is illustrated below:

² Although such definition, being offered for the first time with the applicant's initial brief, is technically untimely under Trademark Rule 2.142(d), we have considered it inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

While conceding, in light of the above, that the appearance of his jewelry boxes and cases "can be similar to that of a hockey puck, being black and round," applicant stresses that such a "container is not designed for holding hockey pucks ... but for holding small articles of jewelry or other small items" Applicant contends, in consequence thereof, that "the term 'PUCKBOX' in its appearance and use has a bizarre or incongruous meaning as applied to the goods ... and evoke[s] a unique commercial impression." In particular, applicant asserts that such term "is incongruous in that the ordinary purchaser would not expect to store items in a hockey puck ... container, the dimensions of which do not allow one to store 'pucks'."

We concur with the Examining Attorney, however, that the term "PUCKBOX" is merely descriptive of a "jewelry case [or box] that is small and round and looks like a hockey puck." As succinctly and persuasively pointed out in the Examining Attorney's brief:

The applicant's jewelry cases and boxes are in the shape of a hockey puck. The applicant has submitted a copy of [a portion of] the design patent issued to the applicant for the goods. The drawings

show that the case, or box, is designed to look like a hockey puck. The term "puck box" [sic] aptly describes a characteristic of the goods and the goods themselves; the goods are identified as "boxes" and they look like pucks.

....

The specimens show that the applicant intends to create the commercial impression in the consumer's mind that the box looks like a puck. The specimens are labels that claim the goods are "the coolest puck off ice!" The applicant [thus] underscores the descriptiveness of the mark by ensuring that the consumer will understand that the box looks like a puck.

The Examining Attorney accordingly concludes that the term "PUCKBOX" merely describes one of the significant characteristics of the applicant's goods.

As stated above, we agree that, when used on or in connection with applicant's "jewelry cases and boxes not made of metal," the term "PUCKBOX" immediately describes, without conjecture or speculation, a significant characteristic or feature of such goods, namely, that they are boxes resembling a hockey puck. While, to be sure, a case or box shaped like a puck would appear to be an unusual if not unique container for keeping jewelry, such a novelty item, with its inherent appeal to fans of ice hockey, is nevertheless aptly described as to its appearance as a "PUCKBOX". As the evidence confirms, there is nothing in the term "PUCKBOX" which, in the context of jewelry

boxes and cases which are designed to look like a hockey puck, is incongruous, ambiguous or susceptible to another plausible meaning. No imagination, cogitation or mental gymnastics is required in order for consumers to readily understand that the term "PUCKBOX" designates a characteristic or feature integral to the commercial appeal of applicant's novelty jewelry containers, namely, that the boxes or cases look like a hockey puck.

Accordingly, because the term "PUCKBOX" conveys forthwith a significant feature or characteristic of applicant's "jewelry cases and boxes not made of metal," such term is merely descriptive thereof within the meaning of the statute.

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

G. D. Hohein

P. T. Hairston

H. R. Wendel
Administrative Trademark

Judges,
Board

Trademark Trial and Appeal