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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Super Vision International, Inc.

Serial No. 78/071,439

James H. Beusse of Beusse Brownlee Bowdoin & Wolter, P.A.
for Super Vision International, Inc.

Cheryl Clayton, Trademark Examining Attorney, Law Office
102 (Thomas V. Shaw, Managing Attorney).

Before Quinn, Bucher and Holtzman, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Super Vision International, Inc. seeks registration on
the Principal Register for the mark FLEXLED for goods
identified, as amended, as "electrical circuit boards with
light emitting diodes," in International Class 9.¹

This case is now before the Board on appeal from the
final refusal to register on the ground that the term
FLEXLED is merely descriptive of applicant's goods under
Section 2(e)(1) of the Lanham Act, 15 U.S.C. §1052(e)(1).

¹ Application serial no. 78/071,439 was filed on June 28,
2001 based upon applicant's claim of a *bona fide* intention to use
the mark in commerce.

Both applicant and the Trademark Examining Attorney have fully briefed the case. Applicant did not request an oral hearing. We affirm the refusal to register.

A term is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods with which it is used or is intended to be used. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978); and In re Eden Foods Inc., 24 USPQ2d 1757 (TTAB 1992). It is well settled that 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; it is enough that the term describes one significant feature, attribute, function, property ingredient, quality, characteristic, purpose or use of the goods or services. In re Opryland USA Inc., 1 USPQ2d 1409 (TTAB 1986); In re The Weather Channel, Inc., 229 USPQ 854 (TTAB 1985); In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); and In re MBAssociates, 180 USPQ 338 (TTAB 1973). The question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to

the goods or services for which registration is sought, the context in which the mark is used or is intended to be used, and the possible significance that the mark is likely to have on the average purchaser encountering the goods in the marketplace. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986) and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

That is, the question is not whether someone presented with only the term or phrase 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 term or phrase to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corp., 226 USPQ 365 (TTAB 1985).

On the other hand, applicant argues that its trademark is not merely descriptive, while conceding that it may well be suggestive. 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. See In re Gyulay, *supra*.

Accordingly, applicant argues that potential consumers would have to use some imagination or thought in order readily to understand the nature of these goods being offered by applicant in connection with this mark:

"... [T]here is no evidence that the word 'FLEX' could be commonly understood to refer to a FLEXIBLE LED in particular."

(applicant's appeal brief, p. 3).

Applicant's identification of goods makes it clear that "light emitting diodes" are key components of applicant's goods. As noted by the Trademark Examining Attorney, the entire record (applicant's webpages, the LEXIS/NEXIS excerpts, applicant's responses, brief, etc.) demonstrates that the initialism "LED" is recognized as interchangeable with "light emitting diode." For good measure, the Trademark Examining Attorney has included an Internet screenprint from "The Acronym Finder" showing "light emitting diode" as the first of six listings for the entry, "LED."

The areas of disagreement between applicant and the Trademark Examining Attorney are over (i) whether the term "Flex" is merely descriptive for the identified goods, and (ii) whether the composite is descriptive when the prefix, "flex," is combined with the LED designation.

We begin our analysis of this case by noting that the arguments herein -- those made by applicant as well as those made by the Trademark Examining Attorney -- failed to provide us with a clear context for understanding these products. However, we take it from a perusal of applicant's webpage that applicant is a manufacturer in the low-voltage lighting industry, specializing in light emitting diode, or LED, technology. These particular LED modules are used in architectural lighting products and electronic signage products such as channel letters of lighted signs. Appealing to target customers such as small entrepreneurs and professional sign makers, applicant touts its LED lighting as being preferable to neon for lighted signs.

The excerpt from applicant's website (placed into the record by applicant) shows that the recited goods are generically known as "strips." Applicant's promotional materials point out that these linear strips can easily be field cut, wired together and bent for lighting in outdoor signage. In fact, according to these materials, one of the keys to the product's commercial success is its mechanical flexibility.

As to nomenclature, throughout applicant's webpages (found at www.flexled.com and at www.svision.com),

applicant's alleged trademark ("**Flex-LED**"²) is actually used interchangeably with highly descriptive (if not generic) names such as "flexible LED strip," flex-LED strip, "flex-LED board," and "flex-strip."

Among the benefits touted by applicant at its website, (e.g., flexibility, energy saving, ease of installation, etc.), one of the main advantages applicant stresses is its mechanical "flexibility." Accordingly, we agree with the Trademark Examining Attorney that in this context, the unabbreviated word, "flexible," would clearly run afoul of Section 2(e)(1) as applied to the identified goods. The term "flex," whether used as a stand-alone term or as a prefix with other matter, means "Flexible."³ Moreover, given the ease with which applicant itself uses "flexible" and "flex" interchangeably on its website, we find that the

² Interestingly, except in its trademark application drawing, at no point does applicant present its alleged mark as **FLEXLED** (i.e., in an unbroken string of same-sized, upper-case letters). While the "Flex" syllable is always set off in some manner from the "LED" designation, applicant is otherwise quite inconsistent in how it presents its mark, using variations such as **flexLED**, **Flex-LEDs**, **Flex-Led's** and the special form, .

While not in any way critical to the outcome of this case, these visual presentations as actually written out by applicant suggest that this alleged mark, when spoken, is articulated as a one-syllable word followed by three spoken letters, e.g., "flex-L-E-D".

³ We take judicial notice of two separate dictionary entries:
flex: ... *n.* ... 3. Pliancy; flexibility ...
flex-: *pref.* Flexible ...

The American Heritage Dictionary of the English Language, (4th ed. 2002).

clearly descriptive term, "flexible," loses nothing in this context when shortened to "flex."⁴

We turn briefly to the LEXIS/NEXIS excerpts placed into the record by the Trademark Examining Attorney in support of her position. While most stories contain the word "flexible" within several words of "light emitting diode," we agree with applicant they do not help in any manner the case being made by the Trademark Examining Attorney herein. These articles all reflect contracts for cutting-edge military technologies having nothing in common with the goods we are dealing with herein.

Turning to the final issue in this case, midway through its brief, applicant seems almost to concede the descriptiveness of the two separate components of this composite mark. Applicant then points to several trademark registration cases for the proposition that even if one were to conclude that the two separate components of this composite mark were individually merely descriptive of applicant's goods, the unique combination will not permit potential customers to grasp the nature of applicant's products. See In re Pennwalt Corporation, 173 USPQ 317

⁴ In spite of the fact that applicant argues that this record is devoid of any evidence showing that the word "flex" would be understood to refer to a "flexible LED," applicant's own website employs a telling parallel construction within a single sentence,

(TTAB 1972) [DRI-FOOT is not merely descriptive of anti-perspirant deodorant for feet]; and *In re Shutts*, 217 USPQ 363 (TTAB 1983) [SNO-RAKE is not merely descriptive of a snow removal hand tool]. Specifically, applicant argues that the applied-for mark creates a "whimsical and incongruous combination" (applicant's appeal brief, p. 4).

It is in the context of this disagreement over whether applicant's mark comprises a unique combination of terms that applicant argues that each one of its traditional LED components is rigid⁵ (and hence not flexible). Applicant is correct, and the Trademark Examining Attorney appears to agree. In turn, the Trademark Examining Attorney argues that the printed circuit boards making up the backbone of the linear strips are undeniably flexible. And on this point, the Trademark Examining Attorney is correct, and applicant seems to agree. However, this exchange appears much too theoretical. Absent sufficient illumination of the practical realities of these products, applicant and the Trademark Examining Attorney have engaged this issue much like two blind jousters. As seen in our discussion

stating that "***Flex-LED's is a low voltage, flexible, monochromatic, LED strip...***" <http://www.flexled.com/ABOUT/ABOUT.html>.

⁵ According to the photograph on applicant's website, each diode measures only a few millimeters across, and according to applicant, is constructed with rigid materials such as Gallium Arsenide, Aluminum Gallium Arsenide, Indium Phosphide, etc.

above, whether the involved goods are thought of as "lighting strips" or "LED modules" (the flexible circuit board connected to rigid lighting components), the combined term, "Flex-LED" is not at all "whimsical" or "incongruous" as applied to flexible lighting strips containing rigid LED's.

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