

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed: 6/21/05

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re NFE, Inc.

Serial No. 76477087

Arthur G. Yeager for applicant.

Zachary R. Bello, Trademark Examining Attorney, Law Office
111 (Craig D. Taylor, Managing Attorney).

Before Seeherman, Quinn and Walsh, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by NFE, Inc. to register the
mark GLASSPAD for "fiberglass foundations for supporting
enclosures for covering, securing, and otherwise protecting
exterior plumbing assemblies."¹

The trademark examining attorney refused registration
under Section 2(e)(1) of the Trademark Act on the ground
that applicant's mark, when applied to applicant's goods,

¹ Application Serial No. 76477087, filed December 19, 2002,
alleging first use anywhere and first use in commerce on October
25, 2002.

is merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant argues that its mark is only suggestive, pointing to other possible meanings of "glass," and third-party uses of "glass pad" having nothing to do with the type of applicant's goods. Even assuming *arguendo* the individual words comprising its mark are descriptive, applicant contends that the combination of the two words results in a unitary mark that is just suggestive.

Applicant states that while it may use the word "pad" as a noun, this does not detract from the use of the composite mark GLASSPAD as a trademark. (Response filed August 16, 2004).² In support of its position, applicant submitted portions of web pages retrieved from searches of "glass pad" in databases on the Internet, including GOOGLE, AOL and YAHOO. Applicant contends that the searches show the term "glass pad" has many different meanings and uses for various goods unrelated to applicant's goods.

² Applicant earlier proposed a disclaimer of the term "glass." (Response filed November 24, 2003). The examining attorney declined to accept the disclaimer, indicating that disclaimers are impermissible in the case of compound word marks. TMEP §1213.05(a) (4th ed. rev. April 2005).

The examining attorney maintains that the mark merely describes "the features of material compositions of the goods, i.e., fiberglass, and its padding function or purpose." (Brief. p. 3)(emphasis in original). The examining attorney submitted dictionary definitions of the terms "glass," "pad," and "fiberglass"; a printout of a search report showing five hits for the term "glass pad" retrieved from the GOOGLE database; and portions of applicant's website dealing with applicant's involved goods.³

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). 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

³ We agree with applicant's criticism of the one third-party registration, relied upon by the examining attorney, that includes a disclaimer of "pad." The goods in the registration appear to be completely unrelated to applicant's goods. Likewise, the examining attorney's reliance on the website of Foam Seal, Inc. is misplaced given that the goods listed therein appear to be unrelated to applicant's goods.

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descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

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 or is intended to be 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 or intended use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that:

....the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the goods or services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998).

When two or more descriptive terms are combined, the determination of whether the composite mark also has a

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descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs]; *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) [FOOD & BEVERAGE ONLINE merely descriptive of news information services for the food processing industry]; and *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) [SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays].

Applicant offers the following description of its goods (Brief, p. 2):

[A]pplicant's GLASSPAD foundations are rigid upside down pans (like a dish pan with outwardly extending flanges adjacent the open top edge, protruding horizontally). The pans are buried in the ground with the flanges being about three (3) inches below ground and the pan bottom being thereabove at or near ground level. The enclosures of

applicant are then mounted onto the foundation, i.e., the foundation supports the enclosure and the enclosure protects exterior plumbing all as set forth in the identification of goods.

The term "glass" is defined as "any of a large class of materials with highly variable mechanical and optical properties that solidify from the molten state without crystallization, are typically made by silicates fusing with boric oxide, aluminum oxide, or phosphorous pentoxide, are generally hard and brittle, and transparent or translucent, and are considered supercooled liquids rather than true solids." The term "pad" means "a thin, cushionlike mass of soft material used to fill, to give shape, or to protect against jarring, scraping, or other injury." The term "fiberglass" is defined as "a material consisting of extremely fine glass fibers, used in making various products, such as yarns, fabrics, insulators, and structural objects or parts." All of these definitions were taken from The American Heritage Dictionary of the English Language (3rd ed. 1992). In addition to the above definitions, we take judicial notice of the definition of "fiberglass" appearing in Webster's Third New International Dictionary (unabridged ed. 1993): "glass in fibrous form

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used in making various products; called also fibrous glass, spun glass."

The specimens show applicant's use of the words "Artificial Pad" immediately below the mark. Applicant, on its website, promotes its goods in the following manner:

"GLASS PAD™ Fiberglass mounting pads sized for HOT BOX® enclosures that take the guess work out of pad size and allows for true one stop installation of valves, pad and enclosure." Other portions of applicant's website reveal similar descriptions of the involved goods: "Fiberglass mounting pads available for most standard fiberglass flip-top and HOT ROK® products"; and "Fiberglass Mounting Pads For Backflow Enclosures. For the simplest installation possible, try our new GLASS PAD™ designed for use with a specific fiberglass enclosures [sic], the GLASS PAD™ can reduce installation time significantly. GLASS PADS™ are currently available for all molded fiberglass flip-top models." The website also includes a chart listing "Pad Model #," "Pad Dimensions" and "Pad Ship Weight."

Applicant's website goes on to list additional information about its goods sold under the involved mark:

Fiberglass pads designed for use in lieu of formed in place concrete pads

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Pads designed for "One Trip" valve &
enclosure installations--no returns

Pads are 4" deep with flange on bottom
for direct burial

Pads are fiberglass, finished with gray
(concrete) gel coat

Pads feature centers removed for inlet
& outlet of BFP piping

Based on the evidence of record, we conclude that the term "glass" is broad enough to encompass "fiberglass." Indeed, the dictionary definition of "fiberglass" defines it in terms of "glass in fibrous form." Further, the term "pad" is used generically by applicant in describing its goods and, indeed, the goods function as a pad. The terms "glass" and "pad" are at least merely descriptive terms when applied to applicant's goods that are, in applicant's own words, "fiberglass pads" ("Fiberglass pads designed for use in lieu of formed in place concrete pads"). The combined term GLASSPAD also is as descriptive as the individual terms. When the proposed mark GLASSPAD is viewed in the context of applicant's goods, the term immediately informs prospective customers of the fact that applicant's pads are constructed of fiberglass and, as such, it describes a significant characteristic of the goods.

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The fact that the terms comprising applicant's mark may have other meanings in different contexts is not persuasive. In re Polo International Inc., 51 USPQ2d 1061 (TTAB 1999). Further, the fact that applicant uses a "TM" after GLASSPAD is unavailing.

Decision: The refusal to register is affirmed.