

THIS OPINION IS NOT
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OF THE TTAB

Mailed:
Nov. 16, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Arlington Industries, Inc.

Serial No. 76543428

Auzville Jackson, Jr. for Arlington Industries, Inc.

Maria-Victoria Suarez, Trademark Examining Attorney, Law
Office 102 (Thomas V. Shaw, Managing Attorney).

Before Seeherman, Grendel and Zervas, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark THE HOOP (in standard character form) for goods
identified in the application as "non-metal cable holders
for use in electrical or optical wiring of buildings."¹

¹ Serial No. 76543428, filed August 27, 2003. The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), and August 1, 2001 is alleged as the date of first use anywhere and the date of first use in commerce.

The Trademark Examining Attorney has issued a final refusal of registration, on the ground that applicant's mark is merely descriptive of the identified goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). More specifically, the Trademark Examining Attorney argues that the mark is merely descriptive of the hoop-like or ring-like shape of applicant's goods.

Applicant has appealed the final refusal. Applicant and the Trademark Examining Attorney have filed appeal briefs. We affirm.

The Trademark Examining Attorney has made of record several definitions of the word "hoop," the most pertinent of which is from the Merriam-Webster OnLine Dictionary : "a circular figure or object." This definition also identifies RING as a synonym for "hoop." We also take judicial notice that Webster's Third New International Dictionary Unabridged (1993)² defines "hoop," in pertinent part, as follows: "1 a: a strip of wood or metal bent in circular form and united at the ends that is used esp. for holding together the staves of containers ... 2: something

² The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

felt to resemble a hoop: a circular figure or object esp. when serving or used as a retaining band."

The Trademark Examining Attorney also has submitted the following dictionary definition from The American Heritage Dictionary of the English Language of the word "the": "Used before singular or plural nouns and noun phrases that denote particular, specified persons or things."

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). That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Nor is it dispositive that the applicant may be the first or only user of the term in connection with the identified goods. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

It is settled that "a term or word which merely describes the form or shape of a product falls under the

proscription of Section 2(e)(1) of the Trademark Act." *In re Metcal*, 1 USPQ2d 1334, 1335 (TTAB 1986). See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982)(TOOBS, the phonetic equivalent of "tubes," merely descriptive of bathroom and kitchen fixtures in the shape of tubes); and *In re Ideal Industries, Inc.*, 134 USPQ 416 (TTAB 1962)(WING NUT descriptive for electrical connectors shaped like a wing nut). See also *Scanwell Laboratories, Inc. v. Department of Transp., Federal Aviation Administration*, 181 F.2d 1385, 179 USPQ2d 238 (CCPA 1986)(V-RING merely descriptive of directional antennas, the primary components of which were shaped in the form of a "v" and a "ring"); *In re Walker Manufacturing Co.*, 359 F.2d 474, 149 USPQ 528 (CCPA 1966)(CHAMBERED PIPE merely descriptive of an exhaust system consisting of a series of small tuning chambers); *J. Kohnstam, Ltd. v. Louis Marx & Co.*, 280 F.2d 547, 126 USPQ 3762 (CCPA 1960)(MATCHBOX SERIES merely descriptive of toys sold in boxes having the size and appearance of matchboxes); and *In re Zephyr American Corp.*, 124 USPQ 464 (TTAB 1960)(V-FILE merely descriptive of card filing device in which the opening between the cards is in the form of a "v").

In accordance with these authorities, and based on the dictionary definitions discussed above (especially the

definition of "hoop" as "something felt to resemble a hoop: a circular figure or object esp. when serving or used as a retaining band"), we find that THE HOOP is merely descriptive of the goods identified in the application. Applicant's cable holders have, or could have, a circular shape like a hoop.³ HOOP is merely descriptive of this feature or characteristic of the goods, i.e., their shape.

We also find that the mere descriptiveness of the mark is not eliminated by the presence of the definite article THE preceding the word HOOP. Stated differently, THE HOOP considered as a whole is as merely descriptive as the term HOOP when considered alone. The word THE has no inherent source-indicating significance, and combining it with HOOP does not create an incongruous or otherwise distinctive composite mark.

In short, we find that THE HOOP is merely descriptive of applicant's goods.

Applicant also argues that its application for registration should be allowed under the doctrine of *stare decisis*. Applicant states that it had previously filed an intent-to-use application to register the same mark for the

³ Applicant's specimen of use shows that applicant's cable holders, as currently marketed, have a circular shape but for the clasp portion at the top of the cable holder.

same goods as those involved in the present case; that the application initially was refused on the ground of mere descriptiveness; that the refusal was withdrawn, and the application was approved for publication, after applicant made its arguments against the refusal; and that the application was held abandoned after applicant inadvertently failed to file a statement of use. Applicant argues that because the Office previously allowed applicant's application to proceed it should do likewise in the present case, because otherwise the doctrine of *stare decisis* would be violated.

Applicant has failed to make any of the documents from the prior proceeding of record. However, even if applicant's account of the prior proceedings is accurate, it would not affect our decision herein. It is settled that the Office and this Board are not bound by the decisions or actions of previous Trademark Examining Attorneys, but instead must decide each case on its own record and merits. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). Applicant has cited no authority for the proposition that the doctrine of *stare decisis* applies to non-precedential decisions and actions of the Office. *Cf. In re Wilson*, 57 USPQ2d 1863 (TTAB 2001)(administrative law doctrine of "reasoned

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decisionmaking" inapplicable to prior non-precedential decisions and actions of the Trademark Office).

Decision: The refusal to register is affirmed.