

**This Opinion is Not a
Precedent of the TTAB**

Mailed: July 19, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re The Homebrewer, LLC
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Serial No. 86273728
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Candace L. Moon of The Craft Beer Attorney APC
for The Homebrewer, LLC.

Jeffrey S. DeFord, Trademark Examining Attorney, Law Office 115,
John Lincoski, Managing Attorney.

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Before Taylor, Lykos and Gorowitz,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

The Homebrewer, LLC (“Applicant”) has filed an application to register the mark **Home Brewing Co.** in standard characters on the Principal Register for “Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; Flavored beers; Malt beer; Pale beer; Porter”

in International Class 32.¹ Applicant has disclaimed the wording “Brewing Co.” apart from the mark as shown.

The Trademark Examining Attorney has refused registration of the mark 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 Applicant’s identified goods. When the refusal was made final, Applicant appealed and requested reconsideration. The Trademark Examining Attorney maintained the refusal to register and denied the request for reconsideration. Thereafter, the appeal was resumed and is now briefed.²

For the reasons set forth below, we affirm the refusal to register.

Whether the Mark is Merely Descriptive?

Section 2(e)(1) of the Trademark Act precludes registration of a mark that, when used in connection with the goods or services of the applicant, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488

¹ Application Serial No. 86273728, filed May 6, 2014, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a *bona fide* intent to use the mark in commerce.

² Applicant in its appeal brief has requested the alternative relief that its mark be amended to the Supplemental Register. Applicant’s request is denied. At the appeal stage, the proper procedure for consideration of a proposed amendment to the Supplemental Register is a request for remand. *See* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 1209.04 (2016). The request for remand must include a showing of good cause. *Id.* In evaluating whether good cause has been demonstrated, the Board considers both the reason for the remand and the point in the appeal at which the remand has been filed. *Id.* Given the late stage of this appeal, even if Applicant had requested a remand, it is likely that it would have been denied.

F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Bayer*, 82 USPQ2d at 1831. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods or services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Bayer*, 82 USPQ2d at 1831; *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries, newspapers, or surveys.” *In re Bayer*, 82 USPQ2d at 1831 (quoting *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986)).

Notwithstanding Applicant’s voluntary disclaimer of the wording “Brewing Co.”, the issue before the Board is whether Applicant’s mark **Home Brewing Co.**, as a whole, is descriptive of the identified goods.

Applicant argues that the dictionary definitions of record demonstrate that the word “home” denotes “one’s place of residence”; “the place where one lives permanently, especially a member of a family or household”; and “a house, apartment or shelter that is the usual residence of a person, family or household.” Office Action Response dated February 16, 2015 (Merriam-Webster.com), Trademark Status & Document Retrieval (“TSDR”) pp. 6-11; Request for Reconsideration dated September

30, 2015 (Oxford Dictionaries – U.S. English and Dictionary.com), TSDR pp. 8-26. Applicant explains that the goods listed in the application will be produced and sold from a business location, not a residential unit, and by a business entity, namely Applicant’s limited liability company, not a family. Based on this evidence, Applicant asserts that the term “home” as used in its mark **Home Brewing Co.** does not describe a quality or characteristic of the identified goods; rather, it is a marketing tool suggestive of “the sense of community and familiarity, as well as the notions of homeliness and comfort that one associates with their home.”³ Applicant’s Brief, p. 4; 7 TTABVUE 5. Applicant further adds that because “homebrew” and “homebrewing” are popular terms of art in the craft beer industry, the relevant consumer group encountering Applicant’s mark will immediately know that Applicant’s products are not “homebrewed” because it is illegal to sell beer produced from one’s home. Request for Reconsideration dated September 30, 2015, TSDR pp. 44-65.

In reviewing the evidence of record, we highlight the following excerpts from an entry entitled “Homebrewing” from *Wikipedia* submitted by the Examining Attorney:

Homebrewing is the brewing of beer, sake, and other beverages through fermentation on a small scale as a hobby for personal consumption, free distribution at social gatherings, amateur brewing competitions or other non-commercial reasons. Both alcoholic and non-alcoholic beverages can be made from home. The term is also used informally for the production of non-brewed alcoholic drinks such as wine, cider, and perry....The legality of homebrewing varies from country to country.

³ Applicant also points to a house design used in conjunction with its word mark as reinforcing this meaning of the mark. Applicant’s Brief, pp. 4-5; Final Office Action dated March 30, 2015, TSDR pp. 2-3, 10, 12, and 15. Applicant, however, applied for a mark in standard character format; therefore, this is the mark we must evaluate on appeal.

...

Beer. In general brewing beer at home is very similar to brewing beer commercially. Homebrewers can select from ingredients identical to those used in commercial brewing, in addition to a wide range of post-market customization. The basic ingredients that are necessary include water, malt, hops and yeast. With the exception of water (although minerality, pH, and other characteristics do play a role and careful water selection is recommended, any water will do), there are countless varieties of these ingredients.

...

The principles behind home brewing beer are similar to commercial brewing. A hopped wort is produced and yeast pitched into the wort to stimulate fermentation. The complexity of the process is mostly determined by the approach used to manufacture the wort; by far the simplest method is kit brewing.

Office Action dated August 25, 2014, TSDR pp. 11. This evidence standing alone supports a determination that Applicant's mark, **Home Brewing Co.**, immediately informs prospective purchasers as to a quality, feature, or characteristic of the identified goods, namely that the target market for Applicant's identified goods are "home brewing" enthusiasts seeking to replicate at home the various the types of beers offered by Applicant, who are seeking a specific taste for their beer. A term that alludes to the group to whom an applicant directs its goods or services is merely descriptive. *See In re Planalytics, Inc.*, 70 USPQ2d 1453 (TTAB 2004) (GASBUYER merely descriptive of risk management services in the field of pricing and purchasing natural gas); *Hunter Publ'g Co. v. Caulfield Publ'g Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER found merely descriptive of a trade journal directed toward users of large data processing systems; evidence sufficient to establish distinctiveness under Section 2(f)); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984) (MOUNTAIN CAMPER held merely descriptive of retail mail-order services in the

field of outdoor equipment and apparel). Such is the case here, even though the term appears in adjective, not noun, form. And contrary to Applicant's assertion, the inclusion of the non-source indicator "Co." to its mark does not mitigate our finding that the mark is merely descriptiveness. *See, e.g., In re The Phone Co., Inc.*, 218 USPQ 1027 (TTAB 1983) (THE PHONE COMPANY merely descriptive of telephones). It is well established that business type designations and abbreviations such as "Corporation," "Inc.," "Company," and "Ltd." or family business designations such as "& Son's" or "Bros." merely indicate an applicant's business type or structure and generally have no source-indicating capacity. *See, e.g., Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 602-03 (1888); *In re Piano Factory Grp., Inc.*, 85 USPQ2d 1522, 1526 (TTAB 2006); *In re Patent & Trademark Servs., Inc.*, 49 USPQ2d 1537, 1539-40 (TTAB 1998).

Next we note the evidence made of record by the Examining Attorney obtained from Applicant's own web site. Applicant has objected to consideration of this evidence, arguing that it has since changed its proposed business model. We need not rely upon any of this extrinsic evidence to find that Applicant's mark is merely descriptive of the identified goods. Because the identification as worded is unrestricted, it necessarily encompasses all types of "Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; Flavored beers; Malt beer; Pale beer; Porter", including

those types marketed to “home brewing” hobbyists and created to taste like high quality “home brewed” beer.

Applicant points to the third-party registrations it made of record for registered marks including the word “HOME” for International Class 32 goods as support for its assertion that its proposed mark is not merely descriptive. *See* Request for Reconsideration dated September 30, 2015. None of this evidence, however, has a bearing on the appeal before us. *See In re Scholastic Testing Serv., Inc.*, 196 USPQ 517, 519 (TTAB 1977).

In light of the foregoing reasons, we find Applicant’s mark **Home Brewing Co.** in standard characters merely descriptive of “Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer; Flavored beers; Malt beer; Pale beer; Porter.”

Decision: The descriptiveness refusal to register Applicant’s mark under Section 2(e)(1) of the Trademark Act is affirmed.