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Mailed: March 31, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re High-Heeled Creations, LLC

Serial No. 76306141

Robert Thornton Smith of Linklaters for High-Heeled Creations, LLC.

Andrea D. Saunders, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Bucher, Holtzman and Drost, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by High-Heeled Creations, LLC to register the mark HIGH-HEELED HANDBAGS ("HANDBAGS" disclaimed) for "goods manufactured of leather and imitations of leather, namely, purses, change purses, handbags, wallets, and pocketbooks" in International Class 18.

The application was filed on August 28, 2001 based on applicant's assertion of a bona fide intention to use the mark in commerce. Following publication of the mark for opposition on

April 2, 2002, applicant filed a statement of use, together with the required specimen, alleging dates of first use of the mark on August 20, 2002. The examining attorney then refused registration of the mark on the ground that the mark is merely descriptive of the goods under Section 2(e)(1) of the Trademark Act.

When the refusal was made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

The examining attorney argues that the mark HIGH-HEELED HANDBAGS is descriptive of a characteristic and feature of applicant's goods, namely a handbag in the shape and form of a high-heeled shoe or boot. In support of her position, the examining attorney relies on a dictionary definition of "high" as "[h]aving a relatively great elevation; extending far upward: a high mountain; a high tower"; a definition of "heel" as "the built-up portion of a shoe or boot, supporting the heel"; and a definition of "handbag" as "[a] woman's purse" and "[a] piece of small hand luggage."¹ The examining attorney also made of record excerpts of articles from the Nexis database containing references to high heeled shoes, and describing the designs of

¹ All from *The American Heritage Dictionary of the English Language, Third Edition* (1992).

applicant's handbags as real shoes made into purses. Examples of these references are set forth below (emphasis added):²

...Shoshanna Smith to give up her beloved **high heels**, the Manhattan artist found an unlikely outlet for her fetish: She converted stilettos into purses. Ten months later, Ms. Smith's new company, **High-Heeled Handbags**, is digging into new markets and expanding its line. Stilettos are merely the starting point for Ms. Smith's pocketbook design. She studs, chains, skins, straps, clasps, zippers and furs them. ... *Crain's New York Business* (March 11, 2002).

Enter New York painter Shoshanna Smith, who has parlayed a passion for **stiletto-heeled shoes** and boots into a popular handbag collection. She's gaining a cult following by turning new pairs of stilettos into zip-closure shoulder bags and backpacks. The line, **High-Heeled Handbags**, was brought to Pittsburgh this month by The Chatterbox in Sewickley and Roberta Weissberg Leathers in Shadyside. ... "They're real shoes, never worn," said Gallagher. ... She beamed, holding up a bright red one with a **6-inch heel** *Pittsburgh Post-Gazette* (Pennsylvania) (January 27, 2002).

WELL-HEELED BAG: Artist and designer Shoshanna Smith recently turned her passion for **high heeled shoes** into a new concept: **High-Heeled Handbags**. The result is a collection that ranges from a sexy, wet-looking red leather shoe adorned with Swarovski crystals to a limited-edition corseted ankle boot imported from Amsterdam, to the simple traditional black pump or the Bally-esque brown driving loafer for the conservative shoe lover. *The Post and Courier* (Charleston, SC) (November 30, 2001).

In addition, the examining attorney refers to an article obtained by applicant from *The Atlanta-Journal Constitution* that describes applicant's goods as follows:

High-Heeled Handbags turns actual pumps and loafers into sophisticated handbags.

² References to Shoshanna Smith in these articles are to applicant's president, Susan Jane Smith aka Shoshanna Smith.

As further evidence of descriptiveness, the examining attorney points to applicant's specimen of use displaying handbags in the shape of various high-heeled shoes and to printouts from applicant's website containing descriptions and photographs of available handbags, such as the following (emphasis added):

"**High-heeled cowboy boot** with silver studded star"

"French **high-heeled sneaker** with leather lid & magnetic clasp on braided strap" [shown below]



"Black patent ankle boot with silver shoulderchain" [shown below]



We also note an article made of record by applicant (from an unidentified source) referring to applicant's handbags as follows (emphasis added):

New York, NY - Artist and designer Shoshanna Smith is a woman in love - with shoes. **High-heeled shoes** to be exact. Whether it's a perilously high platform, a slick, dangerous-looking patent leather stiletto, or an ankle-hugging, corseted boot, Shoshanna simply can't resist. So, just recently, she did what comes naturally to her - she turned her passion into a new concept, and **High-Heeled Handbags** was born.

The examining attorney argues that although the mark may not describe every handbag in applicant's line of goods, "[i]t is sufficient that the mark describes one attribute of the goods." (Brief, unnumbered p. 1).

Applicant argues that its mark is not descriptive, but instead is an "evocative mark, calling to mind a sexy image." Brief, p. 3. Applicant contends that "the idea of this product is so unique that people generally cannot picture the handbags even after the concept of shoes as handbags is orally described," and concludes that "the mark would be a poor description even if that were its function." Brief, p. 3. Applicant notes that the concept of making shoes into handbags "has been described in the industry as award winning and utterly original and part of fashion history." Id.

While admitting that some of the handbags "in the line" have high heels, applicant, nevertheless, argues that the mark is not

descriptive because not all of the handbags have high heels. Applicant states that its line of handbags includes a number of styles without high heels pointing out that, as shown by the evidence, the collection also includes traditional black pumps, sneakers, cowboy boots, biker boots, and loafers, none of which styles feature high heels. It is applicant's contention that the examining attorney has confused what applicant characterizes as a distinction between a term that describes only one of several attributes common to all of the goods, and a term that is not a feature common to the line of goods.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, feature, function or characteristic purpose or use of the goods with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). A mark does not have to describe every such attribute of the goods in order to be found merely descriptive; it is sufficient for the purpose if the mark describes a single significant attribute. See In re Patent & Trademark Services Inc., 49 USPQ2d 1537 (TTAB 1998); and In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract or on the basis of guesswork, but in relation to the goods for which registration is

sought. See *In re Remacle*, 66 USPQ2d 1222 (TTAB 2002); and *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986).

Applicant's goods are handbags and similar items. We find that HIGH-HEELED HANDBAGS describes a key feature or characteristic of those handbags. The term immediately, and without conjecture, informs customers that applicant's handbags have "high heels" or are "high-heeled." In fact, pictures of applicant's goods show that a typical handbag of applicant's is made from a shoe or a boot, often with a high heel, that has been modified to serve as a handbag.

The meaning of "high-heeled" is well understood in relation to footwear. Applicant's website materials as well as the dictionary evidence and media references submitted by applicant and the examining attorney show that the term "high-heeled" refers either to a feature of a shoe or to any type of shoe having a high heel, such as the "high-heeled sneakers" and "high-heeled boots" mentioned on applicant's website. We also take judicial notice of a definition of "high heels" as "women's shoes with tall, often slender heels that raise the back of the foot off the ground";³ a definition of "high heeled" as "[h]aving high

³ *Microsoft Encarta College Dictionary* (2001).

heels";⁴ and a definition of "high heels" as "shoes with high heels."⁵

It is clear from the evidence of record that purchasers, upon seeing the term HIGH-HEELED HANDBAGS, not in a vacuum, but in relation to the goods will, without any guesswork or the exercise of any imagination, immediately understand that applicant's handbags have high-heels or are "high-heeled" and that in fact they consist of high-heeled shoes that have been converted into handbags. It is well settled that a term which merely describes the form or shape of a product, or the form or shape of a significant feature of the product, is merely descriptive of the product. See, e.g., *Scanwell Laboratories, Inc. v. Department of Transportation, Federal Aviation Administration*, 181 F.2d 1385, 179 USPQ 238 (CCPA 1973) (V-RING merely descriptive of directional antennas, the primary components of which were shaped in the form of a "v" and a "ring"); *J. Kohnstam, Ltd. v. Louis Marx & Co.*, 280 F.2d 437, 126 USPQ 362 (CCPA 1960) (MATCHBOX SERIES merely descriptive of toys sold in boxes having the size and appearance of matchboxes); and *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982) (TOOBS, the phonetic

⁴ *Webster's 1828 Dictionary* (from www.onelook.com).

⁵ *Merriam-Webster's Online Dictionary*, 10th Edition (from www.m-w.com).

equivalent of "tubes," merely descriptive of bathroom and kitchen fixtures in the shape of tubes which serve as holders and racks).

We do not take issue with the contention that the shape of applicant's handbags is unusual and that the concept of a shoe functioning as a handbag is innovative and unique. The fact remains, however, that purchasers of this new style of handbags would clearly understand the descriptive meaning of HIGH-HEELED HANDBAGS in relation to those goods. Anyone who produces handbags with the high heel of a shoe on it, as unusual as that may be, should be entitled to describe its handbags as having high heels or as "high-heeled."

Moreover, the fact that all of the handbags in the line do not have high heels is irrelevant. The relevant point is that HIGH-HEELED HANDBAGS is descriptive of those of applicant's handbags that do have high heels or are "high-heeled." See, e.g., *Roselux Chemical Co., Inc. v. Parsons Ammonia Company, Inc.*, 299 F.2d 855, 132 USPQ 627, 634 (CCPA 1962) (immaterial that "some of the so-called 'sudsy' [ammonia] products marketed by opposers were not in fact sudsy because they contained no detergent"). Absent any restriction in applicant's identification of goods, it be presumed that such goods encompass all styles of handbags, including applicant's "high-heeled" styles.

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In view of the foregoing, we are convinced that applicant's mark is merely descriptive of its goods.

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