

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Meridian, Inc.

---

Serial No. 74/623,599

---

Timothy E. Eagle of Varnum, Riddering, Schmidt & Howlett  
for applicant.

Angela Lykos, Trademark Examining Attorney, Law Office 102  
(Myra Kurzbard, Managing Attorney).

---

Before Walters, Chapman and Wendel, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Meridian, Inc. has filed a trademark application to register the mark STACKABLE STORAGE SYSTEM for "office furniture."<sup>1</sup> The application includes a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. 1052(f), and a disclaimer of STORAGE SYSTEM apart from the mark as a whole.

---

<sup>1</sup> Serial No. 74/623,599, in International Class 20, filed January 20, 1995, based on an allegation of use of the mark in commerce, alleging first use and first use in commerce as of December 29, 1986.

The Trademark Examining Attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1),<sup>2</sup> on the ground that applicant's mark is generic in connection with the identified goods.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

We begin by noting the Examining Attorney's statement, in the alternative, that, if the mark is ultimately determined not to be generic, then applicant has established that its mark has acquired distinctiveness under Section 2(f) of the Act. Therefore, the alternative issue of acquired distinctiveness is not before us.

Regarding the question of whether STACKABLE STORAGE SYSTEM is generic in connection with the identified goods, the Examining Attorney contends that applicant's disclaimer of STORAGE SYSTEM in this application, which includes a

---

<sup>2</sup> It is well-established that registration may be refused to generic marks on two statutory grounds, either of which is acceptable. The first approach is to find the term to be the name of the product or service and, thus, within the statutory prohibition of Section 2(e)(1), as the name of the thing is "the ultimate in descriptiveness." The second approach views the question as one of trademark or service mark capacity. Registration is refused, pursuant to Sections 1, 2, [3 for service marks] and 45, because the subject matter fails to meet the definition of a trademark or service mark and, thus, is not capable of distinguishing applicant's goods or services. See, *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985) and cases cited therein. Regardless of the approach taken, the factual analysis is the same.

claim under Section 2(f) of the Act, is an implicit acknowledgment that STORAGE SYSTEM is generic; that, therefore, the crucial question is whether the adjective STACKABLE is generic for applicant's office furniture; that an adjective can be a generic designation; and that, in this case, STACKABLE is an adjective that is a generic designation for a category of office furniture. In support of her position, the Examining Attorney submitted excerpts from the LEXIS/NEXIS database and copies of sales catalogs. She referenced an excerpt from *Webster's Ninth New Collegiate Dictionary* (1985) defining "stack" as, *inter alia*, "vt. (1)(a) to arrange in a stack: pile (b) to pile in or on," and STACKABLE as "adj. easily stacked."

Following are several examples of the LEXIS/NEXIS excerpts submitted by the Examining Attorney:

The company also has designed stackable chairs that just may be the vision of the future. [*The Times-Union*, February 26, 1995.]

Any movable [furniture item] that consists of steel for at least 80 per cent is classified as steel furniture. With the stackable table as maybe the only exception: about half of the product (the table top) consists of wood. [*Money Clips*, September 2, 1995.]

... relatively inexpensive stackable shelving may adjust the height of a computer monitor as well as an expensive, electronically adjustable monitor stand. [*New Hampshire Sunday News*, March 24, 1996.]

Workers haven't yet built the 7,000 square feet of floor, much less moved in the ergonomic furniture, stackable walls, and individual climate-control modules. [*Business Week*, November 20, 1995.]

The line includes easy-to-move chairs and tables on wheels, stackable benches which double as ottomans, ... [*The San Francisco Examiner*, September 24, 1995.]

Until then, the fix for most workers may be to limp along with stackable computer furniture with a lot of cables hanging out the back ... [*Open Computing*, November 23, 1994.]

Landscape your back yard with outdoor sports cushions, lawn bags, stackable molded furniture, ... [*Chicago Tribune*, February 7, 1993.]

In keeping with the something-for-everyone theme, there are wine racks and storage systems for every taste and budget. Wine racks can vary from a plastic milk carton in your closet to ... stackable chrome racks ... stackable wooden cellar cubes. [*The Dallas Morning News*, May 17, 1996.]

Since Courtney's old room had been littered with toys and clothes, she needed usable, accessible storage systems ... Design conscious parents can browse at Limn ... for the elegant stackable drawer units ... [*The San Francisco Chronicle*, November 13, 1991.]

In contrast to other storage systems, stackable plastic cubes that take up a lot of room on shelves, theirs is an easily transportable plastic sleeve ... [*The New York Times*, August 14, 1986.]

The catalogs submitted by the Examining Attorney include advertisements for various types of furniture referred to

as "stackable,"<sup>3</sup> including, "stackable data racks," "stackable shelf file," "stackable cabinets," and "stackable shelf bin."

Applicant concedes that "[a] subcategory of office furniture is 'storage systems,' a term that Applicant has disclaimed." [Response of September 20, 1996.] However, applicant contends that "stackable" is merely descriptive of a characteristic of its goods, rather than being the generic name for a category of goods; that the dictionary includes several different definitions for "stackable" and "there is no evidence to indicate which meaning is attributed to it by the relevant public when it is used with the suffix 'storage system'"; that "stackable" is only merely descriptive because it has been allowed to register on the Supplemental Register, pointing to third-party registrations<sup>4</sup>; and that applicant's competitors do not need

---

<sup>3</sup> We note that one such catalog, J.C. Penney, indicates that the term "Sturdi-Stackables is a registered trademark. As this composite mark differs from the applied-for mark herein, it does not effect our consideration of the issue before us.

<sup>4</sup> Applicant's evidence of third-party registrations is not in the proper form and, thus, has not been considered. In order to make registrations of record, soft copies of the registrations themselves, or the electronic equivalent thereof, i.e., printouts of the registrations taken from the electronic records of the Patent and Trademark Office's (PTO) own data base, must be submitted. See, *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992). We hasten to add that our decision would remain the same even if we had considered these third-party registrations. The issuance of a registration does not signify the government giving its imprimatur to the mark concerned. *In re Old Glory Condom Corp.*, 26 USPQ2d 1216, 1220 (TTAB 1993).

to use the term STACKABLE STORAGE SYSTEM in referring to competing products.<sup>5</sup> In support of its position that STACKABLE STORAGE SYSTEM has various meanings to the purchasing public, applicant submitted excerpts of articles from the LEXIS/NEXIS database<sup>6</sup> and referred to the same dictionary definition of "stack" and "stackable" submitted by the Examining Attorney.<sup>7</sup>

Our primary reviewing court has set forth a two-step inquiry to determine whether a mark is generic: first, what is the genus (category or class) of goods at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that genus (category or class) of goods? *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). With respect to

---

<sup>5</sup> Applicant has submitted no persuasive evidence in this regard.

<sup>6</sup> Applicant's LEXIS/NEXIS evidence includes one article that uses the term STACKABLE STORAGE SYSTEM to refer to applicant's goods, and several articles that refer to modular furniture. This does not support applicant's contentions regarding the "various meanings" of the term STACKABLE STORAGE SYSTEM. To the extent that applicant is attempting to show that "modular" is the relevant generic designation for the goods involved herein, such a finding is unwarranted on this record and applicant has made no argument in this regard.

<sup>7</sup> We note that the definition of "stack" includes several additional meanings not quoted herein. As the issue of genericness is determined in connection with the identified goods rather than in the abstract, we find the unquoted meanings of little relevance to the case before us as purchasers are unlikely to attribute those meanings to the word STACKABLE in the context herein. To the extent that applicant is arguing that the multiple meanings render the term ambiguous or a double entendre, applicant's argument is not well-taken.

genericness, the Office has the burden of proving genericness by "clear evidence" thereof. *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987).

To be found generic, a term does not have to specifically name a narrow category as long as the goods or services are encompassed within the broad term. For example, in *In re Analog Devices*, 6 USPQ2d 1808 (TTAB 1988), *aff'd. unpublished*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989), the Board held that the term ANALOG DEVICES named a category or class of devices having analog capabilities and was generic for a number of products such as operational amplifiers, power supplies, converters, transducers, switches, etc., some of which were in the nature of analog devices. In response to applicant's argument that the term ANALOG DEVICES is a nebulous and vague one, the Board responded, at 1810:

However, while we readily concede that the category of products which the term "analog devices" names encompasses a wide range of products in a variety of fields, we do not believe this fact enables such a term to be exclusively appropriated by an entity for products, some of which fall within that category of goods. For example, while terms such as "digital devices," "computer hardware," "computer software," and "electronic devices," just to name a few, may be broad and even nebulous terms, nevertheless, these terms may not be exclusively

appropriated but must be left for all to use in their ordinary generic sense.

The evidence submitted by both applicant and the Examining Attorney indicates that STACKABLE is a term commonly used to refer to furniture that can be stacked either for use or for storage; and that this term identifies a category of use that is applicable to all different forms of furniture, for example, chairs, walls, shelving, tables, computer tables, etc. We find that the evidence of record supports the conclusion that STACKABLE STORAGE SYSTEM is the generic name of a category of goods, namely, office furniture comprising a "storage system" that may be "stacked" for use and/or for storage; and that when STACKABLE STORAGE SYSTEM is considered in connection with applicant's identified goods, the relevant public will understand the term in its generic sense.

Serial No. 74/623,599

Decision: The refusal to register on the ground that the applied-for mark is generic in connection with the identified goods is affirmed.

C. E. Walters

B. A. Chapman

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board