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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kaiser Aluminum & Chemical Corporation

Serial Nos. 74/706,072, 74/706,073, 75/012,139, 75/012,140, 75/012,141, 75/012,142 and 75/056,433

Francie R. Gorowitz of Ladas & Parry for applicant.

Cindy B. Greenbaum, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

Before Cissel, Quinn and Hairston, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Kaiser Aluminum & Chemical Corporation filed applications to register the following marks: MICROMILL for "metal products, namely strip cast aluminum sheet" (Int. Cl. 6);[1] "an integrated facility for manufacturing strip cast metal, composed of strip casting machines, twin belt strip casters, casting belts, furnaces, rolling mills,

hot rolling mills, cold rolling mills, pinch rolls, rolling stands, heaters, annealers, heat treaters, solution heat treaters, quench stations, accumulators, shearers, coilers" (Int. Cl. 7);[2] "operating and management services, namely operating an aluminum products production facility for others, and providing management assistance for same" (Int. Cl. 35);[3] "custom construction of small scale integrated continuous casting and rolling plants" (Int. Cl. 37);[4] "training, namely hands on skills development in the operation of continuous metal casting and rolling processes" (Int. Cl. 41);[5] and "industrial designing, engineering, consultation in the establishment and/or operation of continuous casting and rolling plants, and licensing of intellectual property" (Int. Cl. 42);[6] and KAISER MICROMILL for "metal products, namely strip cast aluminum sheet" (Int. Cl. 6).[7]

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[1] Application Serial No. 74/706,072, filed July 26, 1995, alleging a bona fide intention to use the mark in commerce.
[2] Application Serial No. 75/056,433, filed February 12, 1996, alleging a bona fide intention to use the mark in commerce.
[3] Application Serial No. 75/012,139, filed October 30, 1995, alleging dates of first use of March 14, 1995.
[4] Application Serial No. 75/012,141, filed October 30, 1995, alleging dates of first use of March 14, 1995.
[5] Application Serial No. 75/012,142, filed October 30, 1995, alleging dates of first use of March 14, 1995.
[6] Application Serial No. 75/012,140, filed October 30, 1995, alleging dates of first use of March 14, 1995.
[7] Application Serial No. 74/706,073, filed July 26, 1995, alleging a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration of MICROMILL under Section 2(e)(1) of the Trademark Act on the ground that the mark, when applied to applicant's goods and services, is merely descriptive thereof. With regard to the application for registration of KAISER MICROMILL, the Examining Attorney has required a disclaimer of the term "MICROMILL" apart from the mark.

When the refusals were made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.[8]

Applicant contends that the mark is only suggestive, and that any doubts on the issue of mere descriptiveness must be resolved in its favor. In support of its position, applicant submitted, in pertinent part, dictionary definitions of the words "micro" and "mill," a copy of applicant's patent covering "Method Of Manufacturing Aluminum Alloy Sheet" and third-party registrations of the mark MICROMILL or slight variations thereof.

The Examining Attorney maintains that a "micromill" is a small mill which produces specialty steel, can sheet and aluminum alloys. Thus, according to the Examining Attorney, the term sought to be registered describes the type of facility in which applicant's goods will be

[8] The appeals are consolidated, and the merits will be considered in this single opinion.

manufactured, or applicant's services will be rendered. The Examining Attorney has relied upon dictionary definitions and excerpts retrieved from the NEXIS database.

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods and/or services for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The dictionary listings show that the term "micro" is defined as "a combining form with the meanings 'small,' very small in comparison with others of its kind", and "mill" is defined as "a factory for certain kinds of

manufacture, as paper, steel, or textiles; any of various machines that modify the shape or size of a workpiece by rotating tools or the work; any of various other apparatuses for shaping materials or performing other mechanical operations."

The Nexis evidence includes numerous references to the term "micromill(s)":

> The advent of the micro-mill in the steel industry is a good example of how improved production equipment eliminates historic economy-of-scale advantages.
> *Machine Design*, October 8, 1987
>
> The result was a new process called a "micromill," which is a fraction of the size of a conventional mill.
> *The Houston Chronicle*, December 24, 1995
>
> ....steel that don't need plants even as large as what we have here. They have some local scrap and some local building needs, and what they need is a micromill--a very small and efficient operation.
> *Harvard Business Review*, May/June 1986
>
> Those smaller mills will be "micro-mills". . . .
> *American Metal Market*, July 2, 1986
>
> In any few weeks of perusing business journals, you will come across phrases such as: "micro-brewers" (beer), "micro-mills" (steel). . . .
> *Chicago Tribune*, November 9, 1987 (in an article captioned "Tomorrow Belongs To Those Who Think Small")

> The addition of the Korf Group furnace is part of a three-stage plan to transform the company into a "micro-mill."
> *American Metal Market*, November 2, 1987
>
> "While we have chosen Nevada for our first micro-mill and will expect to ship this facility's production to both domestic and offshore customers, we believe that, over time, the economies of scale make this process ideally suited to be built in emerging market countries around the world," Richard B. Evans, president of Kaiser Aluminum's micro-mills business, said in a statement.
> *American Metal Market*, November 17, 1995
>
> The steel industry might have something to learn from a successful micro-mill, just as it learned from the mini-mill explosion. . . .
> *American Metal Market*, February 1, 1994
>
> The Terre Haute plant "basically is a micro-mill for the production of primary ultra-high carbon and super-plastics steels," Russell said.
> *Industrial Energy Bulletin*, October 26, 1990
>
> Looking toward 2000, on the horizon is the metals correlate to micro-breweries as thin-strip casting technology drives the development of the neighborhood steel micromill.
> *Oregon Business*, January 1996

Excerpts from the patent (No. 5,514,228), titled "Method Of Manufacturing Alloy Sheet," owned by applicant show the following language:

> The concepts of the present invention reside in the discovery that it is possible to combine casting, hot rolling, annealing and solution heat treating, quenching and optional cold rolling into one continuous in-line operation for the production of aluminum alloy sheet stock. . . .The in-line arrangement of the processing steps in a narrow width (for example, 12 inches) make it possible for the invented process to be conveniently and economically located in or adjacent to sheet stock customer facilities. . . .to facilitate ease of processing and enable use of small decentralized strip rolling plants. . . .By employing such narrow cast strip, the investment can be greatly reduced through the use of small, two-high rolling mills and all other in-line equipment. Such small and economic micromills of the present invention can be located near the points of need, as, for example, can-making facilities. That in turn has the further advantage of minimizing costs associated with packaging, shipping of products and customer scrap. Additionally, the volume and metallurgical needs of a can plant can be exactly matched to the output of an adjacent micromill.

The term “micromill,” given the dictionary definitions, would be perceived as meaning a small mill in comparison to other mills. The additional evidence bears this out. The NEXIS evidence shows that the term “micromill” is a readily used and commonly understood term in the metal industry. Indeed, applicant itself used the term in a highly descriptive/generic manner in its patent.

In sum, the evidence of record shows that the mark MICROMILL, as applied to applicant's goods and/or services, immediately conveys information about the goods and/or services, namely that they are involved in, or integrally related to the operation of a micromill. Whether as applied to goods or services, the fact that applicant may have intended to be the first entity to use the term in the metal industry is not dispositive where, as here, the term "micromill" unequivocally conveys a merely descriptive connotation. In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

The third-party registrations are of little help in determining the registrability of the mark at issue in this case. As often noted by the Board, each case must be decided on its own set of facts.

Decision: The refusals to register are affirmed.[9]

R. F. Cissel

T. J. Quinn

P. T. Hairston
Administrative Trademark Judges, Trademark Trial and Appeal Board

[9] With respect to application Serial No. 74/706,073 for the mark KAISER MICROMILL, the refusal to register is affirmed in the absence of a disclaimer of the descriptive word "micromill." Applicant is allowed until thirty days from the date of this decision to submit the disclaimer. Trademark Rule 2.142(g); TBMP §1218. If the disclaimer should be submitted, this decision, only insofar as it relates to application Serial No. 74/706,073, will be set aside.