

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Hinkle-Washington Joint Venture**

Serial No. 75/031,114

Douglas W. Sprinkle of Gifford, Krass, Groh, Sprinkle, Patmore, Anderson & Citkowski, P.C. for **Hinkle-Washington Joint Venture**.

Anne T. Madden, Trademark Examining Attorney, Law Office 102
(**Thomas Shaw**, Acting Managing Attorney).

Before **Cissel, Hanak and Hohein**, Administrative Trademark Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Hinkle-Washington Joint Venture has filed an application to register the term "DRIVER-ID" for "anti-theft alarms for vehicles".¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "DRIVER-ID" is merely descriptive of them.

¹ Ser. No. 75/031,114, filed on December 11, 1995, which alleges a bona fide intention to use the term.

Applicant has appealed. Briefs have been filed, but an oral hearing was not held.² We affirm the refusal to register.

Applicant, in response to the Examining Attorney's request for information concerning, in particular, how applicant's "alarms function and if an identification code is keyed into the vehicle to gain entry or to start the engine," submitted the following "brief description of the DRIVER-ID system" along with copies of "the first pages of patents granted on this system" to Messrs. Hinkle and Washington (**emphasis added**):

The DRIVER-ID system **identifies the individual who is attempting to operate a vehicle** via a personal identification code, fingerprint, retina scan, bracelet or the like. The system prevents any unauthorized user from using the vehicle. For example, if a **driver** has a restricted license and is not permitted to operate a vehicle between certain hours, the DRIVER-ID system prevents that person from operating a vehicle to which the system has been added.

The abstract of the patent granted to Mr. Washington, which covers a "VEHICLE SECURITY SYSTEM USING DRIVER'S LICENSE, TIME OF DAY AND PASSIVE TAG," reveals with respect to various versions of applicant's goods, including those incorporating the "VEHICLE OPERATION INHIBITOR CONTROL APPARATUS" disclosed in the abstract of the patent issued to Mr. Hinkel,³ that (**emphasis added**):

² Although an oral hearing was requested by applicant and scheduled by the Board, applicant subsequently submitted a waiver of the oral hearing.

³ Such apparatus, as stated therein, essentially operates as follows:

A band housing a transmitter is non-removably mounted about a portion of the body of a person who is not authorized to operate a motor vehicle. A receiver is

A system is provided for use with an automotive vehicle having a normally disabled ignition system. Each driver license is encoded with indicia, such as a magnetic strip, indicative of the **identity of the driver**. This driver's license is inserted into a reader container in the vehicle which then generates an identification signal representative of the identity of the driver's license. A microprocessor then compares the identification signal from the driver's license with pre-recorded computer memory representative of the authorized driver(s) for the vehicle. When the driver's license identification signal matches the stored data in memory, the microprocessor generates an output signal which enables the vehicle ignition system. In ... a ... modification, the system, includes a radio receiver which receives a radio signal from a transmitter on an ankle bracelet worn by a person with a restricted driver's license. Once the receiver detects the radio signal from the bracelet, a microprocessor compares the current time with a time schedule containing time periods during which operation of the vehicle by the selective person is unauthorized. In the event that operation of the vehicle is unauthorized, the microprocessor generates a disabled signal which disables operation of the vehicle.

While acknowledging in its main brief that, in light of the above, its goods "are a novel ignition enabling or disabling device for automobiles which works by matching features of a particular operator's driver's license with information previously programmed into the device" and by which "the vehicle is enabled or disabled, depending upon whether the driver's license signal matches or does not match the stored data,"

mounted in the vehicle in close proximity to the vehicle steering wheel to detect signals from the transmitter when the person wearing the band is situated in proximity with the steering wheel. Upon receiving a signal from the transmitter, the receiver generates an output signal to the electric circuit control elements which inhibit the operation of the vehicle.

applicant maintains that the term "DRIVER-ID" only "*suggests*, at most, a feature of the goods". Specifically, applicant insists that such term immediately conveys only an indirect or vague aspect of its anti-theft alarms for vehicles inasmuch as its goods, "[r]ather than 'identifying drivers at all,' simply "correlate encoded information to enable the ignition to run or not, depending on the match of the information."

The Examining Attorney, on the other hand, contends in her brief that:

Applicant's mark, DRIVER-ID, immediately conveys to the average prospective purchaser of applicant's goods the primary function of the goods. This term immediately tells the function of the applicant's goods which is to identify authorized drivers of vehicles armed with this system.

Relying, among other things, upon definitions of record in which "driver" is defined in Webster's II New Riverside University Dictionary (1984) as "[o]ne that drives" and "ID" is listed in the Random House Unabridged Dictionary (2d ed. 1993) as signifying "a means of identification, as a card or bracelet containing official or approved identification information," the Examining Attorney argues that:

In the instant case, the terms comprising the applicant's mark are ordinary English words which are in common usage as evidenced by the dictionary definitions of record. The combination of the descriptive terms, DRIVER-ID, when considered in relation to the goods, leaves nothing for speculation or conjecture. It does not create a new and different commercial impression. The descriptive aspect of the mark is not lost in its combined form.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of any 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). It is not necessary that a term describe all of the properties or functions of the goods 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 or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

In the present case, it is our view that, when applied to anti-theft alarms for vehicles, the term "DRIVER-ID" would be regarded by purchasers and potential customers for such goods as immediately describing, without any conjecture or speculation, a significant feature or purpose of applicant's goods, namely,

their driver identification or authorization function. Specifically, as persuasively pointed out in her final refusal, the Examining Attorney accurately notes that, as shown by the record:

Applicant's goods screen potential drivers and exclude those which are identified as not authorized to drive the motor vehicle. This is done by determining the identity of the person attempting to start the ignition and, after scanning his or her driver's license, allowing the identified person to start the car or by disabling operation of the vehicle. Applicant's goods are able to identify potential drivers--those authorized and those not authorized to operate the vehicle.

As such, the term "DRIVER-ID" merely describes a primary feature or purpose of applicant's anti-theft alarms for vehicles, which is to allow only certain drivers, as identified by their drivers' licenses' magnetic strips, ankle-band transmitters or other means of personal identification, to operate the vehicles so protected. There simply is nothing in the term "DRIVER-ID" which, when used in connection with applicant's goods, requires the exercise of imagination, cogitation or mental processing or necessitates the gathering of further information in order for the merely descriptive significance thereof to be immediately perceived. Clearly, to customers and users of applicant's goods, such term readily conveys that a principal feature or purpose of applicant's vehicle anti-theft alarms is that driver identification is required before the vehicle may be legitimately operated, thereby preventing unauthorized drivers from starting the vehicle.

Furthermore, as is plain from the dictionary definitions thereof, combining the terms "DRIVER" and "ID" into the term "DRIVER-ID" results in a term which has the same meaning which ordinary usage would ascribe to the individual terms in combination. See, e.g., In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987). Nothing in such combined term is bizarre, incongruous, indefinite or ambiguous when considered in the context of applicant's goods.

Accordingly, because the term "DRIVER-ID" forthwith conveys that a significant feature or purpose of applicant's anti-theft alarms for vehicles is the driver identification capability or function which permits only authorized users to operate the vehicles so protected, such term is merely descriptive within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.

R. F. Cissel

E. W. Hanak

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board