

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 5, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Euro United Corporation

Serial No. 75/428,410

Alan Blum of White & Case, LLP for Euro United Corporation.

Stacey J. Johnson, Trademark Examining Attorney, Law Office 113
(Meryl Hershkowitz, Managing Attorney).

Before Hohein, Hairston and Bottorff, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Euro United Corporation has filed an application to
register the term "RESINMADE" for the following goods:¹

"non-metal containers for storage and
transportation of goods" in International
Class 6;

"household flatware, namely, table
knives, forks, and spoons, and knives for
kitchen use" in International Class 8;

"wheel barrows" in International Class
12;

¹ Ser. No. 75/428,410, filed on February 3, 1998, which alleges a bona fide intention to use such term in commerce.

"patio umbrellas" in International Class
13;

"furniture, namely, office furniture,
lawn furniture, outdoor furniture, tables and
cushions; plastic modular storage units,
shelves, wall unit and storage cabinets;
[and] non-metal bins" in International Class
20;

"household utensils, namely, kitchen
serving tongs, spoons, and ladles; home
furnishings, namely, bowls, dishes, plastic
coasters, drinking glasses, ice buckets, and
beverage glassware; flower pots; indoor and
outdoor all purpose portable nonmetal
containers; dust bins; [and] soap holder[s]"
in International Class 21; and

"manually operated and motorized
exercise equipment, namely, climbers and
stair stepping machines, stationary bikes,
walking machines, and treadmills" in
International Class 28.

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
"RESINMADE" is merely descriptive of them.

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

Applicant, in its initial response to the refusal to
register, has "conceded that the goods at issue are made at least
in part of 'resin'." Also, in its request for reconsideration,
applicant has admitted that, as shown by excerpted articles made
of record by the Examining Attorney from her searches of the
"NEXIS" database, "resin is a multi-faceted material with a wide
variety of uses and applications." Applicant insists, however,
in its brief that it coined the term "RESINMADE" and that such

term is "a suggestive, rather than descriptive, designator of Applicant's goods."

In particular, applicant notes that the Examining Attorney has made of record the following definition of the word "resin" from Webster's Ninth New Collegiate Dictionary (1990) at 1003:

1 a: any of various solid or semisolid amorphous fusible flammable natural organic substances that are usu. transparent or translucent and yellowish to brown, are formed esp. in plant secretions, are soluble in organic solvents (as ether) but not in water, are electrical nonconductors, and are used chiefly in varnishes, printing inks, plastics, and sizes and in medicine **b:** ROSIN
2 a: any of a large class of synthetic products that have some of the physical properties of natural resins but are different chemically and used chiefly in plastics **b:** any of various products made from a natural resin or a natural polymer.

According to applicant, "[i]t is doubtful that Applicant's use of the term 'resin' as a component of its mark will evoke this literal definition in the minds of consumers." Applicant also contends that, in any event, it "is using the term 'resin' in its proposed mark RESINMADE in a suggestive sense, [so as] to elicit from the minds of potential purchasers the positive qualities of durability, extreme functionality, and aesthetic appeal with which resin is associated."

In addition, applicant argues that "[t]he Examining Attorney has improperly dissected the proposed mark and asserted that, because the words 'resin' and 'made' are descriptive, the mark RESINMADE is also descriptive." Applicant maintains, however, that the combination of the words "resin" and "made"

results in a mark which, as a whole, "creates a unique commercial impression, and is thus suggestive" inasmuch as "imagination, speculation or perception is required for one to reach a conclusion as to the nature of the goods based on consideration of the mark and the goods."

Specifically, while acknowledging that "the proposed mark RESINMADE imparts information about a single characteristic of the drinking glasses, treadmills, exercise bicycles, household utensils, flower pots and other items it designates," applicant insists that because such term "does not evoke any definite or immediate associations to a consumer seeing or hearing it, the degree of particularity required to render a mark descriptive is not present here." According to applicant:

[T]he leap required to connect the mark RESINMADE with Applicant's goods--such as drinking glasses, exercise bicycles, treadmills, and the like--is far too great to render the mark merely descriptive. Resin can be used in innumerable ways, as a component of a plethora of goods. The average consumer would not, upon encountering the RESINMADE mark, immediately associate it with the household appliances, exercise equipment or lawn furniture the mark is intended to designate. Conversely, there are innumerable properties which comprise Applicant's goods. Certainly, the fact that, for example, an exercise bicycle manufactured by Applicant is made partly of resin will not stand out as its most significant attribute in the mind of a prospective consumer. There is no readily apparent, immediate connection between exercise bicycles and resin products. Accordingly, the consumer would not regard the mark as providing information relating to (i.e., descriptive of) the goods at issue. Indeed, whether a particular exercise bicycle is comprised partly of resin is unlikely to be a factor considered in the decisionmaking process of a prospective purchaser.

Lastly, applicant notes that "the evidence of record does not show any descriptive use of the term RESINMADE" and that competitors, therefore, have no need to use such term to describe their resin-based or resin-made products. According to applicant, "because there are boundless ways to inform a consumer that a particular product is comprised of resin, the resin manufacturing industry will not be hindered by Applicant's registration of RESINMADE for drinking glasses, treadmills, exercise bicycles, household utensils, flower pots and other goods."

The Examining Attorney, on the other hand, contends that the term "RESINMADE" is merely descriptive of applicant's products inasmuch as it "describes a feature or characteristic of each of the goods, namely, that the goods are made of resin." As the Examining Attorney correctly points out, it is not necessary that a term describe all of the features, characteristics, purposes and/or functions of the particular goods in order to be considered merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute of such goods. See, e.g., In re H.U.D.D.L.E., 216 USPQ 358, 359 (TTAB 1982) and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1971).

In support of her position, the Examining Attorney relies upon definitions of the words "resin" and "made," as set forth below, which she obtained from the electronic version of the American Heritage Dictionary of the English Language (3rd ed. 1992) as demonstrating that, in connection with applicant's

goods, the term "RESINMADE" would be regarded "as connoting manufactured items made of resin.":²

"**resin**," which is defined as "1. Any of numerous clear to translucent yellow or brown, solid or semisolid, viscous substances of plant origin, such a copal, rosin, and amber, used principally in lacquers, varnishes, inks, adhesives, synthetic plastics, and pharmaceuticals. 2. Any of numerous physically similar polymerized synthetics or chemically modified natural resins including thermoplastic materials such a polyvinyl, polystyrene, and polyethylene and thermosetting materials such as polyesters, epoxies, and silicones that are used with fillers, stabilizers, pigments, and other components to form plastics"; and

"**made**," which in relevant part is listed as connoting "1. Produced or manufactured by constructing, shaping, or forming. Often used in combination: *handmade lace; ready-made suits*."

The Examining Attorney additionally relies upon various excerpts, retrieved from her searches of the "NEXIS" database, as establishing that, not only may applicant's goods, as applicant admits, "be manufactured with resins, but ... that this characteristic makes the goods more beneficial to the consumer

² Although not previously made of record, the Examining Attorney, in referring thereto in her brief, states that "[t]he dictionary definitions are attached for judicial notice." While no copy thereof accompanies the Examining Attorney's brief, we nevertheless note that such definitions, as set forth in her brief, are, not surprisingly, identical to those listed in the hard-cover version of the American Heritage Dictionary of the English Language (3rd ed. 1992) at 1535 and 1078, respectively, a publication of which the Board happens to have a copy. Applicant, moreover, has not filed a reply brief raising any objection to consideration of the definitions. Consequently, and since it is settled that the Board may properly take judicial notice of dictionary definitions, we have considered such definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcas Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 (TTAB 1981) at n. 7.

and/or manufacturer." The following examples are considered to be especially pertinent (**emphasis added**):

"[U]nsaturated polyester **resin** remained active in the year for use in construction material, bath tubs, tanks and various **containers**" -- Comline Daily News Chemicals and Materials, January 17, 1996;

"You can uplift a table by the simple addition of place mats and napkins in bright plaids, **resin flatware** in solids, stripes or polka dots, and colorful place settings that mix patterns." -- Star Tribune, August 7, 1997;

"Tregre's Sola utensils for the elderly and disabled also include stainless-steel and Lexan (**resin**) **flatware**, for easy holding and handling" -- Time, February 1, 1982;

"Some recent forays include ready-to-assemble furniture, **resin wheelbarrows**, and tractor carts." -- Charleston Gazette, July 5, 1994;

"Sunbeam's furniture business ... is mostly aluminum, wrought iron and **resin outdoor furniture** plus accessories like **umbrellas** and cushions." -- Palm Beach Post, February 12, 1997;

"**RESIN** IS TAKING over the country, or so it seems. Anything having to do with **outdoor furniture** seems to have **resin** in or on it somewhere. Actually, **resin** has become a generic name for injection molded polyethylene and polypropylene **furniture**. With tongue-twister names like that, it's no wonder everyone calls it **resin**. It's also no wonder that it's coming into such common use. **Resin** provides a durable, easy-to-clean finish for **outdoor furniture**, is weatherproof and can be made into almost anything. And **resin** will not rust, chip, peel or corrode. All this and it's cheap, too. Fabric for outdoor use often contains **resin** as well. **Plastic glassware**, placemats ... and **ice buckets** are made of PVC and acrylics that are actually **resins** in disguise. Outdoor towel trees, **umbrellas** and umbrella stands

are all made from **resin**. Not satisfied to leave it outside, manufacturers are now making **resin furniture** for indoor use as well. Affordable, indoor **resin furniture**, though still in the infant stage, is experiencing great popularity." -- St. Louis Post-Dispatch, April 22, 1993 (article headlined: "ADVANTAGES OF **RESIN FURNITURE**, INSIDE AND OUT");

"Since the introduction of **resin** casual **outdoor furniture** nearly 10 years ago, 'there has been an evolution of **resin** in the marketplace' 'Although **resin** started out selling at specialty stores, it quickly migrated to the mass and became a hell of a value, affordable to everybody'

....
According to makers of **resin furniture**, the new upscale **resin** products are stronger, sturdier and heavier than their promotional counterparts.

One maker taking the upscale tack is Euro United, a Canadian-based maker of **resin furniture**. At the show, the company introduced a number of products with this thrust, including a new Malibu Beach collection that features striking two-tone chairs." -- HFN The Weekly Newspaper for the Home Furnishing Network, September 30, 1996 (article headlined: "**Resin** on the rebound; makes upscale inroads; **resin outdoor furniture** exhibited at International Casual Furniture Market");

"NATIONWIDE DSN REPORT - Resin isn't just for **patio furniture** anymore.

....
Dorskocil returned the favor by introducing its own line of **resin** plastic **furniture**, ... diversifying from its traditional lines of **resin** lawn edging, dog houses and pet carriers. Dorskocil had been making **resin furniture** for an Italian company ... and now is producing a line ... for the U.S. market." -- Discount Store News, November 7, 1994; and

"Cytec's products typically find their way into **outdoor and indoor furniture**, **exercise equipment** and toolboxes, says Frank May, manager of commercial development,

coating and **resin** products for Cytec." --
Chemical Marketing Reporter, October 21,
1996.

In light of the above, the Examining Attorney concludes that no imagination or thought would be required by consumers of applicant's goods in order to know immediately that the term "RESINMADE" merely describes that a significant characteristic or feature of such products is that they are resin made. The combination of the descriptive words "resin" and "made" into the term "RESINMADE", the Examining Attorney contends, does not result in any incongruity or ambiguity, nor does it otherwise create a suggestive and hence distinctive mark. Moreover, the Examining Attorney, citing *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-12 (Fed. Cir. 1987) and *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977), correctly notes that the fact that a term is not found in a dictionary is not controlling on the question of registrability, especially where the combination of two descriptive words does not result in a term with a separate and distinct meaning. Finally, citing *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983), the Examining Attorney also correctly points out that the fact that applicant intends to be the first and only user, among its competitors, of the designation "RESINMADE" does not justify registration if such term projects a merely descriptive significance.

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 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 or services. See 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). Consequently, "[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 used on or in connection with the various products of applicant which it concedes are made at least in part of resin, the term "RESINMADE" immediately describes, without conjecture or speculation, a significant characteristic or feature of such goods, namely, that they are made with or of resin. The plain meaning of the words comprising such term, as confirmed by the dictionary definitions thereof and the "NEXIS" evidence demonstrating that there are

even entire product categories which are designated by the word "resin" (e.g., resin flatware, resin wheelbarrows and resin outdoor furniture), convince us that, as used in connection with applicant's goods, there is nothing which is incongruous, unusual or indefinite about the term "RESINMADE". In particular, as the dictionary definition of the word "made" makes clear, such word is often used in combination (e.g., "handmade" or "ready-made") and, when combined with the word "resin," the designation "resin-made" would unambiguously connote products, including goods of the kinds applicant intends to offer, which are produced or manufactured by constructing, shaping or forming any of various plastic materials known as resin.

No imagination, mental processing or gathering of further information is thus necessary in order for customers and prospective purchasers of applicant's goods to readily perceive that a significant aspect thereof, in light of the desirable qualities of products manufactured from resin (e.g., affordability, durability, functionality and aesthetic appeal), is that such goods are resin made. Nothing in the combination of the words "RESIN" and "MADE" into the term "RESINMADE" is lost or is susceptible, when used in connection with applicant's products, to any plausible meaning other than that such goods are made from or out of resin. As such, the term "RESINMADE" forthwith conveys, with sufficient particularity, a meaningful characteristic or feature of applicant's goods, namely, that they are resin made.

Moreover, inasmuch as the Examining Attorney did not specifically run a search for either the term "RESINMADE" or the words "resin" and "made" used in combination,³ it is not surprising that she did not discover whether other producers and sellers of products made of or with resin utilize such terminology to refer to a characteristic or feature of their goods. Consequently, and in any event, the absence of any third-party use of the term "RESINMADE" or variant thereof in the "NEXIS" excerpts of record simply does not mean, as postulated by applicant, that competitors would have no need to use such term in marketing their resin-made goods. Finally, that a variety of other words or phrases assertedly exist by which competitors may equally describe products which are made from or out of resin is immaterial. See, e.g., Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc., 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962).

Accordingly, because the term "RESINMADE" conveys forthwith a significant, desirable feature or characteristic of applicant's goods, it is merely descriptive of such goods within the meaning of the statute.

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

³ Instead, as stated in the final refusal, the Examining Attorney conducted searches in the "NEXIS" database "in which 'resin' appeared with reference to goods in each of applicant's classes" and furnished as the results thereof "36 representative stories."

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