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EJS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Power Fasteners, Inc.

Serial No. 75/612,036

Bradley N. Ruben and Vincent A. Sireci of Hopgood,  
Calimafde, Judlowe & Mondoline LLP for Power Fasteners,  
Inc.

Cynthia Esparza Crockett, Trademark Examining Attorney, Law  
Office 111 (Craig Taylor, Managing Attorney)

Before Seeherman, Bottorff and Rogers, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Powers Fasteners, Inc. has appealed from the final  
refusal of the Trademark Examining Attorney to register  
WEDGE-BOLT as a trademark for what was ultimately  
identified as "non-expansion-type masonry anchors; namely  
metal bolts installable in holes drilled in masonry."<sup>1</sup>

<sup>1</sup> Application Serial No. 75/612,036, filed December 24, 1998,  
based on an asserted bona fide intention to use the mark in  
commerce.

Ser No. 75/612,036

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified goods.<sup>2</sup>

The appeal has been fully briefed, but an oral hearing was not requested.

We affirm the refusal of registration.

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Applicant has described its goods as "a masonry anchor that takes the form of [a] rod having a cutting thread which when turned into a hole drilled in masonry, then cuts a female thread in the bank of the hole. This cutting action produces masonry debris that jams into spaces between convolutions of the thread to form a compacted mass that resists withdrawal of the anchor from the hole." Response filed August 10, 1999. The abstract for the

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<sup>2</sup> During the course of prosecution the Examining Attorney had also refused registration on the ground that the mark is deceptively misdescriptive-, and that it is likely to cause confusion with two registered marks, but these refusals were subsequently withdrawn.

patent for these goods, which applicant made of record, explains that "particulate debris produced by the cutting action is discharged into the [helical] land and forced into the compacting zone to create a dense mass that wedges the anchor in the hole and thereby enhances the holding power of the anchor."

It is clear from just this material that WEDGE-BOLT immediately conveys information about a significant feature of applicant's bolts, namely, that the bolt is wedged into the hole. Moreover, the evidence shows that consumers of this product would readily recognize the significance of "wedge" when used with the word bolt. The excerpts from applicant's own website, made of record by the Examining Attorney, show that "wedge anchor" is a commonly used term for anchoring bolts:<sup>3</sup>

Just as the wedge anchor replaced the self-driller, the new Wedge-Bolt will replace the traditional wedge anchor. Why? Anchors that are simple and easy to install are better. There is less likelihood of improper installation, therefore better performance. While traditional wedge anchors have been restricted to use in concrete only, the versatile Wedge-Bolt anchor can be used in most sold base materials including concrete, block, grout filled block and brick. Installation time compared with

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<sup>3</sup> Although the application is based on an intention to use the mark, and no amendment to allege use has been filed, the evidence indicates that applicant is using the mark WEGDE-BOLT in connection with the advertising of its goods.

traditional wedge anchors is reduced by up to 70%. Versatility and speed of installation combined with superior performance characteristics make the Wedge-Bolt anchor the most reliable product on the market.

Applicant argues that its bolt does not function as a wedge, is not secured into the base material with wedges, and is not wedge-like in geometrical form, statements with which we agree. However, as noted above, the bolt does function to wedge or fix itself into the masonry by using the debris created during the insertion process, and it is this meaning that will be obvious to consumers of the goods. It is a well-settled principle of trademark law that the question of descriptiveness is not determined in the abstract, but in relation to the goods on which the term is used. See **In re Abcor Development Corporation**, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

Nor are we persuaded by applicant's statement that "WEDGE-BOLT is a rhythmic combination of terms presented in an unusual and distinctive manner." Brief, p. 6. As indicated above, applicant's own literature uses "wedge anchor" in a generic manner. An anchor is a type of bolt, as applicant's own identification of goods makes clear. Applicant has identified its goods as masonry anchors,

namely metal bolts.<sup>4</sup> Further, the NEXIS evidence submitted by the Examining Attorney shows that the term "wedge bolt" is used as a generic term for expansion bolts. See, for example, "The sill bolt used for concrete is called a wedge bolt (or sometimes an expansion bolt)." "The San Francisco Chronicle," October 17, 1990. Although applicant's goods are specifically identified as "non-expansion bolts," and the Examining Attorney has not asserted that WEDGE-BOLT is generic for these goods, the usage of the term "wedge bolt" in the construction industry refutes applicant's argument that WEDGE-BOLT is a combination of terms presented in an unusual and distinctive manner.

As for applicant's argument that competitors do not need to use the term WEDGE-BOLT, this term is clearly an apt term to describe a bolt that wedges itself in to the base material, particularly when the term "wedge anchor" is already being used in the industry.

Decision: The refusal of registration is affirmed.

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<sup>4</sup> In view of applicant's own identification, we find applicant's statement that its product is not a bolt to be less than forthright.