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THIS DISPOSITION IS NOT
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OF THE TTAB

Paper No. 16
EJS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Pirelli Cavi E Sistemi, S.p.A.*,
assignee of *Pirelli Cables & Systems LLC*

Serial No. 75/704,230

Virginia L. Carron and Laurence R. Hefter of Finnegan,
Henderson, Farabow, Garrett & Dunner, L.L.P. for *Pirelli
Cavi E Sistemi, S.p.A.*

David Gardiner, Trademark Examining Attorney, Law Office
103 (Michael Hamilton, Managing Attorney)

Before Seeherman, Hanak and Bucher, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Pirelli Cavi E Sistemi, S.p.A., assignee of *Pirelli
Cables & Systems LLC*, has appealed from the final refusal
of the Trademark Examining Attorney to register *KLEENCORE*
as a trademark for "fiber optic cables."¹ Registration has
been refused pursuant to Section 2(e)(1) of the Trademark

¹ Application Serial No. 75/704,230, filed May 10, 1999, and
asserting first use and first use in commerce as early as
September 1996.

Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

The appeal has been fully briefed.² An oral hearing was not requested.

A term is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act in the absence of evidence of acquired distinctiveness, 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). The question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters goods bearing the mark in the

² Applicant's request for an extension of time to file its reply brief in view of the September 11 attacks is granted. With his appeal brief the Examining Attorney has submitted excerpts from two dictionaries and from a website, and has asked us to take judicial notice thereof. Applicant has not objected, but it has not treated these submissions as of record. The Board may take judicial notice of dictionary definitions, and grants the Examining Attorney's requests with respect to the Newton's Telecom Dictionary and Computer Dictionary submissions. However, the excerpts from the www.howstuffworks.com website does not fall into the category of a recognized reference work, and therefore we have not considered this material.

marketplace. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986).

In this case, applicant has acknowledged that "the distinctive characteristic of KLEENCORE fiber optic cables is that they do not contain core-flooding gels." Brief, p. 4. Applicant touts this feature in its specimens, with a bullet that its KLEENCORE cable "eliminates core flooding gels for cleaner and faster cable termination." In literature for other cables applicant points to the "feature and benefit" of its KleenCore technology, that this discipline "utilizes[s] dry water blocking materials which are easily and quickly removed, thus the task of cleaning the buffer tubes is eliminated, resulting in significant craft labor cost savings."

The Examining Attorney has made of record an article from the October 15, 1996 issue of "America's Network," taken from the American's Network website which discusses fiber optic cable, and which specifically refers to applicant's "KleenCore 'dry cable' family, a line of products that do not use core-flooding gels. ... The absence of such gels eliminates the mess and associated time spent to clean the gels from core components during sheath preparation and termination."

Based on this evidence, as well as the dictionary entries for "core," "fiber optics" and "fiber optic cable" submitted by the Examining Attorney with his appeal brief, of which we take judicial notice,³ we find that applicant's mark would immediately convey to a consumer of fiber optic cable that a feature of applicant's product is to provide a clean core for the fiber optic cable. KLEEN, the phonetic equivalent of the word "clean," would obviously be recognized as this word, a point that applicant does not dispute. We also find that the word CORE would immediately be understood as the core of the fiber optic cable. In this connection, we reject the definition that applicant has provided for "core" as "the hard or fibrous central part of certain fruits, containing the seed."⁴ The term "core," as the various dictionary and website materials show, has a clear meaning in connection with fiber optic cables, i.e., "the central glass element of a fiber optic cable through which the light is transmitted."⁵ Nor, because of the clear meaning of "core" for fiber optic

³ The Board may take judicial notice of dictionary definitions. **University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁴ Although applicant did not provide copies of the dictionary definitions referenced in its responses to Office actions and its brief, the Examining Attorney has accepted these definitions as accurate, as do we.

⁵ Newton's Telecom Dictionary, © 2000.

cable, do we accept applicant's argument that because CORE is the phonetic equivalent of CORPS, consumers will view KLEENCORE as suggesting "an army or corp [sic] of cleaners" providing "consumers with a product that is not only free of moisture but actually uses its 'corp' [sic] of cleaners to block water and moisture." Brief, pp. 3-4.

Much of applicant's argument is based on the presumption that, in order to prove that a mark is merely descriptive, the Examining Attorney must show that "a consumer upon hearing or seeing the mark KLEENCORE would know ... that the goods associated with the mark are fiber optical cables." Brief, p. 4. However, as indicated above, the law is clear that the question of mere descriptiveness is not to be determined in the abstract, but must be determined in the context of the goods or services with which the mark is used. Consumers of fiber optic cables, seeing the mark KLEENCORE used in connection with these goods, would immediately understand that a feature of the goods is that it has a cleaner core. The fact that the mark does not also describe the precise methodology by which this is achieved, i.e., by the elimination of core-flooding gels, does not take away from the descriptive nature of the mark.

Decision: The refusal of registration is affirmed.