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Paper No. 25
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rosen Product Development, Inc.

Serial No. 75/242,273

David P. Cooper of Kolisch, Hartwell, Dickinson, McCormack
& Heuser for Rosen Product Development, Inc.

Kathleen M. Vanston, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Cissel, Seeherman and Drost, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On February 14, 1997, applicant filed the above-
referenced application to register the mark "SLIM LINE" on
the Principal Register for "monitor mounting devices and
visors," in Class 9. Applicant claimed use of the mark in
connection with these goods in interstate commerce since
February 20, 1996.

Following a lengthy prosecution¹ of the application, which involved a number of amendments to the identification-of-goods clause, a refusal to register based on likelihood of confusion, and an erroneous determination that the application had been abandoned, this case now comes before the Board on appeal from the final refusal to register under Section 2(e)(1) of the Lanham Act, 15 U.S.C. Section 1052(e)(1), on the ground that the mark "SLIM LINE" is merely descriptive of "computer accessories, namely, hardware for mounting computer monitors in vehicles," in International Class 9.² This is the sole issue on appeal.

¹ Ms. Vanston, the fourth Examining Attorney assigned this application, submitted only the appeal brief.

² Throughout the prosecution of this application, the Examining Attorney made it clear that if applicant attempted to include computer monitors in the identification-of-goods clause, such an amendment would be unacceptable because monitors are not within the scope of goods which were identified in the original application as "monitor mounting devices and visors." Accordingly, after several amendments to this clause, applicant's final amendment adopted "computer accessories, namely, hardware for mounting computer monitors in vehicles." The Examining Attorney accepted this amendment. Applicant's brief recites the goods in these exact words, but at page 2 of the brief, applicant states that "[f]or purposes of this response, applicant refers to its amended identification as 'vehicle monitors and vehicle monitor mounting systems.'" In her brief, the Examining Attorney points out that the application, as amended, does not include "vehicle monitors." Applicant did not respond to this statement.

Applicant is bound by the last amendment it made, which applicant's brief accurately recites. The goods therefore do not include monitors. Moreover, as we explain below in this opinion, the term sought to be registered is merely descriptive of both computer monitors and applicant's hardware used for mounting them in vehicles.

The test for determining whether a mark is merely descriptive within the meaning of the Act is well settled. The term is unregistrable under Section 2(e)(1) if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); In re MetPath Inc., 223 USPQ 88 (TTAB 1984); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

In the case at hand, the evidence of record clearly establishes that the term applicant seeks to register is commonly used to describe slender or streamlined products or components of products in the computer industry. Submitted with the Office Action of March 25, 1999, were a number of excerpts from published articles retrieved from the Nexis database wherein the term in question is used in a merely descriptive context in connection with computer-related goods, including monitors, and related high-technology products. Typical examples of these excerpts include the following: "Swissair has awarded Sony Trans Com a contract to produce and deliver new 'slim line' 8.6-inch Liquid Crystal Display (LCD) rechargeable monitors for selected A320s and A321s." Aviation Daily, (October 13, 1993); "... the space savings makes slimline LCDs worth the

Ser No. S.N. 75/242,273

investment." PC World, (September 1997); "... replacing conventional desktop monitors with slimline liquid crystal display (LCD) panels costing five or six times more." Computer Weekly, (March 5, 1998); "... manufacturers of 'flat-panel' displays (the slimline screens that go into laptop computers and digital watches..." The Economist, (August 15, 1990).

Indeed, applicant's own advertisement, made of record by the Examining Attorney in the April 26, 2000 Office Action, touting the advantages of applicant's "lightest and thinnest entertainment LCD," states that applicant's monitor, "[d]esigned especially for aircraft interiors, ... lives up to its name! Under an inch thick, it still delivers top-quality, full color video imaging." This is plainly a reference to the slim line design of the goods.

The evidence submitted by the Examining Attorney clearly demonstrates that the term applicant seeks to register is used to describe a significant, desirable characteristic of computer monitors. "SLIM LINE" is virtually indistinguishable from "slimline," and applicant does not contend otherwise. Because this term describes a characteristic of these products, it would be unregistrable under Section 2(e)(1) of the Act in connection with computer monitors, but, as noted above, the goods covered

by this application are not computer monitors, but instead are accessories for computers, specifically, the hardware for mounting monitors in vehicles. When this term is used in connection with hardware for mounting monitors in vehicles, the term is likewise unregistrable because it identifies significant characteristics or features of such hardware, namely that the hardware is itself slim or narrow, and that the hardware is designed to accommodate slim line computer monitors. In fact, the specimen submitted with the application shows both that the monitor applicant sells is less than an inch thick ("Our lightest and thinnest entertainment LCD."), and that the mounting hardware designed to attach it to the interior of aircraft is also of a compact design, only slightly thicker than the monitor itself. "SLIM LINE" is therefore merely descriptive of a significant characteristic or feature of the mounting hardware itself, as well as the monitors which the hardware is used to mount.

Applicant makes several unpersuasive arguments to the contrary. One is that the term is only suggestive of a characteristic of the goods because it takes a multi-step reasoning process to understand what the term means in connection with these products. As noted above, however, the evidence supports the conclusion that the term

Ser No. S.N. 75/242,273

immediately and forthwith conveys significant information about a feature or characteristic of the products with which applicant uses it, namely that they are slim or narrowly configured. Applicant has provided no basis upon which we could conclude that imagination, multi-step reasoning or additional thought is required to understand what the term conveys in connection with the goods set forth in this application.

Applicant argues that the Court's decision in the case of *Application of Automatic Radio Mfg. Co.*, 160 USPQ 223 (CCPA 1969), supports registrability of applicant's mark in the instant case, but the decision in that case does not require reversal of the refusal to register in the case at hand. In that case, the Court reversed the refusal to register because the record did not contain evidence that the term in question was used descriptively in connection with the goods identified in the application. In the instant case, however, as noted above, not only do we have evidence that "slimline" is used to describe a feature or characteristic of computer monitors and evidence that a significant feature of the hardware applicant sells under the mark is that it is for use in mounting such goods in aircraft, the record also shows that the mounting hardware itself features a slim line configuration. As the

Ser No. S.N. 75/242,273

Examining Attorney points out, the fact that a term is not found in the dictionary is not controlling on the issue of registrability, nor is evidence of use of the term by others to describe the specific product identified in the application required. Applicant may be the first, and indeed the only, business to use this descriptive term in connection with this kind of hardware, but that fact would not make the term any less descriptive of the goods.

Additionally, applicant's argument that the application should be approved for publication because doubt exists as to whether "SLIM LINE" is merely descriptive of the goods specified in the application is also without merit. The evidence clearly establishes that the term is unregistrable under Section 2(e)(1) of the Act. We have no doubt regarding this conclusion.

DECISION: The refusal to register under Section 2(e)(1) of the Lanham Act is affirmed.