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Hearing:
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Paper No. 18
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Huck International, Inc.

Serial No. 75/650,428

Joseph R. Papp of Harness, Dickey & Pierce, P.L.C. for Huck International, Inc.

David H. Stine, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Simms, Walters and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 26, 1999, Huck International, Inc. (applicant) filed a trademark application to register the mark AL (typed form) for goods identified as "threaded metal fasteners, namely nuts and bolts" in International Class 6.¹

¹ Serial No. 75/650,428. The application was based on an allegation of a bona fide intent to use the mark in commerce.

The Examining Attorney refused to register the mark on the ground that the mark, when applied to the goods, is merely descriptive under Section 2(e)(1) of the Trademark Act. 15 U.S.C. § 1052(e)(1). When the Examining Attorney made the refusal to register final, applicant filed a notice of appeal. Both applicant and the Examining Attorney have submitted briefs and attended an oral hearing held on October 17, 2001.²

The Examining Attorney's position is that applicant's mark is in typed form so that the mark can be presented in any style. The Periodic Table of Elements identifies the symbol for aluminum as "Al." Since applicant has indicated that it produces fasteners that contain aluminum, the mark is merely descriptive of an ingredient of applicant's goods.

Applicant responds that its mark is not descriptive of its goods because it will only use the mark in all capital letters and the abbreviation for aluminum is represented by a capital "A" and a small "l". Also, it points to other registrations that it suggests demonstrate that the USPTO has registered similar marks for abbreviations from the

² After oral argument, applicant, sua sponte, also filed a "Supplemental Brief Re Issues Raised at Oral Argument." We have not considered this paper.

Periodic Table of Elements. In addition, it argues that: "The fasteners sold with the AL mark are lightweight fasteners of the AERO-LITE® line for use in the aerospace industry. The purchasers of such AERO-LITE® fasteners are sophisticated buyers." Applicant's Appeal Br. at 14-15. Applicant's concludes that, based on its arguments and evidence, its mark is not merely descriptive.

We agree with the Examining Attorney that applicant's mark is merely descriptive and we, therefore, affirm the refusal to register.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 588 F.2d at 814, 200 USPQ at 218. Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); Meehanite Metal Corp.

v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959).

We start our discussion by noting that applicant has admitted that at least some of its "fasteners will be made with at least one component of aluminum." Response dated January 20, 2000, p. 2. See also Request for Reconsideration, p. 3 and Certification Test Exhibit ("[E]nclosed is a copy ... of tests performed on wire sold to applicant and of a type used to make lightweight bolts including the AERO-LITE® [applicant's] bolt. You will note that the wire tested is made of a titanium alloy ... with one of the alloying materials, Al, being aluminum").

Therefore, the question now is whether the mark AL is merely descriptive of fasteners that contain aluminum as one of the ingredients.³ Applicant strenuously argues that

³ To simplify matters, we have addressed the issue of descriptiveness as if the mark is only used in all capital letters. Even with this limitation, we find the mark merely descriptive of the goods. However, applicant's mark is not "in the block letter form" (Reply Br., p. 11; Applicant's Appeal Br., p. 14). The Examining Attorney advised applicant that "[i]f the applicant intends to display the mark in a form other than as the Periodic Table of Elements abbreviation for aluminum, the applicant must adopt a specific stylized form of the mark." Final Office Action, p. 2, fn. 1. For whatever reason, applicant did not submit a special form drawing. Instead, applicant attempted to disclaim the "Al" form, which disclaimer was not accepted. Without a special form drawing, the mark encompasses the Periodic Table of Element abbreviation "Al" for aluminum, and even applicant does not appear to contest that this abbreviation is merely descriptive for fasteners made at least in part of aluminum. Applicant's offer to disclaim the designation "Al" is essentially meaningless, confusing, and inappropriate. It is not

"the mark AL does not designate aluminum and that the accepted, recognized designation for aluminum by those in the field is the Periodic Table form, "Al." Reply Br., p. 6. We do not disagree that the standard way of designating a symbol from the Periodic Table is to show the initial letter as a capital letter and the second letter as a small letter. However, applicant has not submitted any evidence to support its argument that the simple capitalization of the second letter would change a descriptive term into a non-descriptive term. Indeed, trademark law ordinarily recognizes that even a "slight misspelling of a word will not generally turn a descriptive word into a non-descriptive mark. 2 McCarthy's on Trademarks and Unfair Competition, § 11:31; In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505 (CCPA 1980) (QUIK-PRINT); In re

a proper response to a suggestion that a special form drawing may be necessary. It is confusing because it would not be readily apparent what applicant was disclaiming. For example, when spoken, there is no difference between applicant's mark and the abbreviation in the Periodic Table unless one went to great lengths to describe the term. Finally, since it appears to disclaim the entire mark except when the term is used with the first and second letter capitalized, it is effectively meaningless. Accord In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961, 964 (Fed. Cir. 1985) (Board properly refused to accept a disclaimer differentiating between a cake made from a cake mix and one made from a recipe).

Hercules Fasteners, Inc., 203 F.2d 753, 97 USPQ 355 (CCPA 1953) (FASTIE); and In re Organik Technologies, Inc., 41 USPQ2d 1690 (TTAB 1997) (ORGANIK).

Similarly, the correct spelling of a proper noun in English normally requires an initial capital letter. However, the failure to spell a surname with a capital letter did not overcome its surname significance. In re Directional Marketing Corp., 204 USPQ 675 (TTAB 1979). In that case, applicant argued that use of the word "DRUMMOND" in lower case letters emphasizes the service mark significance of the term. The Board rejected this argument and held that "[n]or do we think that applicant's use of the mark in lower case letters has such an impact on the commercial impression created by the mark as to alter its primary significance to the purchasing public from that of a surname to that of a service mark." Id. at 677.

We do not have any basis to find that the spelling of applicant's term with two capital letters as opposed to one capital letter changes the commercial impression from a descriptive term to a non-descriptive one. Previously, the Board found that the term "ALR" in all capital letters was merely descriptive for insulated electrical conductor building wire. Southwire Co. v. Kaiser Aluminum & Chemical Corp., 196 USPQ 566 (TTAB 1977). The record in that case

established that the abbreviation "ALR" was a descriptive abbreviation of the term "aluminum revised." Id. at 574.

The Board indicated that:

It is a reasonable inference from the foregoing that the entire electric industry ... because of the adherence of most electrical codes to the National Electrical Code for which UL establishes standards, are of necessity aware of the "CO/ALR" designation for wiring devices and significance of "ALR" as meaning "aluminum revised" to distinguish from the designation "AL" previously used to identify aluminum wire that has not been upgraded or revised.

Id. at 574.

Apparently, the designations "ALR" and "AL" were recognized in the electrical industry as referring to aluminum regardless of the fact that the "l" was capitalized. Thus, we simply cannot agree with applicant's argument that prospective purchasers of fasteners would not similarly recognize the term "AL" as an abbreviation for aluminum merely because the "L" is capitalized.

Also, the fact that applicant believes that the term "AL" is an acronym for its mark "AERO-LITE" is not persuasive. The term "AL" when applied to fasteners that contain aluminum would describe the aluminum content of the fasteners. Applicant admits that its mark is used "for a lightweight metal fastener for use in the aerospace industry." Applicant's Br., p. 3. Aluminum is defined as "a silvery-white, ductile metallic element used to form

many hard, light, corrosion-resistant alloys."⁴ Thus, the presence of aluminum as an ingredient would be significant in the manufacturing of lightweight fasteners because it is used to make "hard, light, corrosion-resistant alloys."

As stated earlier, applicant maintains that it sells lightweight fasteners to the aerospace industry; however, applicant has not limited its identification of goods to fasteners that are either lightweight or sold only to the aerospace industry. Therefore, we must consider the goods as applicant has chosen to describe them in its identification of goods. Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed"); In re Vehicle Identification Network, Inc., 32 USPQ2d 1542 (TTAB 1994) (Descriptiveness of mark in an intent-to-use application

⁴ Webster's II New Riverside University Dictionary (1984). We take judicial notice of this dictionary definition. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

determined by services identified in application).
Therefore, applicant's argument that the purchasers are sophisticated because the purchasers are limited to those purchasing parts for the aerospace industry is not relevant.⁵

Applicant devotes considerable time arguing that it is a "practice of the Trademark Office in granting trademarks to block letters which are same as the upper and lower case letter form for elements in the PERIODIC TABLE." Reply Br., p. 9. To support this argument, applicant has submitted printouts of 37 registrations that purportedly support its argument. The Examining Attorney was not persuaded by this evidence because he found that many registrations were in special form or composite marks or that the metal was not perceived as forming a salient ingredient of the goods. We agree with the Examining Attorney.

First, we note that "[e]ven if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court." Nett

⁵ Even it were relevant, we have no basis to find that sophisticated purchasers seeking lightweight aluminum fasteners for the aerospace industry would not assume that "AL" did not describe fasteners with aluminum as an ingredient.

Designs, 57 USPQ2d at 1566. Similarly, even if applicant were able to establish that the USPTO had registered marks that had similar characteristics to applicant's mark, it does not establish that applicant's descriptive mark is entitled to registration. Second, we note that of the 37 marks applicant has submitted at least 15 of the marks are cancelled or expired. "[A] canceled registration does not provide constructive notice of anything." Action Temporary Services Inc. v. Labor Force Inc., 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989). Third, many of the registrations are for composite marks, such as 3CR12, CR-PAA, TISALES, TI-13-13, and TI-GUARD or the registrations have integral designs that may be viewed as unitary. Fourth, at least one registration, NITRO TI, contains a disclaimer of the term "TI." Finally, many registrations consisting of abbreviations from the Periodic Table are for goods that are apparently not made of the matter described by the abbreviations and the abbreviation would not deceptively misdescribe the goods in the registrations. For example, it is unlikely that registrations containing the letters for the abbreviations for thallium (TL)⁶ and

⁶ Thallium is a "soft, malleable highly toxic metallic element used in rodent and rat poisons and low-melting glass." *Webster's II New Riverside University Dictionary* (1984). We take judicial notice of this dictionary definition.

calcium (CA) would deceptively misdescribe the goods in those registrations.

There is certainly no rule that prohibits the registration of abbreviations from the Periodic Table so it is not surprising that there are registrations for these abbreviations. What applicant's evidence shows is that each mark must be evaluated individually. In applicant's case, its mark is the Periodic Table's abbreviation for aluminum. Applicant's goods actually contain aluminum and aluminum would be a significant feature of lightweight fasteners. Therefore, applicant's mark describes a feature or ingredient of its goods, and it is merely descriptive.

Decision: The Examining Attorney's refusal to register the mark AL under Section 2(e)(1) of the Trademark Act on the ground that it is merely descriptive of the goods, threaded metal fasteners, namely nuts and bolts, is affirmed.