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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Titan International, Inc.

Serial No. 76/031,072

Daniel A. Rosenberg of Davis, Brown, Koehn, Shors &
Roberts, P.C. for Titan International, Inc.

Steven W. Jackson, Trademark Examining Attorney, Law Office
114 (K. Margaret Le, Managing Attorney).

Before Simms, Cissel and Quinn, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Titan International, Inc. (applicant), an Illinois
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark TRACTION
DRIVE for tires, namely, tires for agricultural equipment.¹
The Examining Attorney has refused registration under
Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing

¹Application Serial No. 76/031,072, filed April 18, 2000, based upon
allegations of use and use in commerce since January 1, 1994.

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that applicant's mark is merely descriptive. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

It is the Examining Attorney's position that applicant's mark TRACTION DRIVE combines two descriptive words that separately and independently identify characteristics of applicant's goods because both terms identify types of tires--traction tires and drive tires. Based upon the evidence of record, described in more detail below, the Examining Attorney argues that applicant's mark immediately tells prospective purchasers that applicant's goods are drive tires that provide traction in rugged conditions, or are traction tires with enhanced drive capabilities. The Examining Attorney argues that these words are highly descriptive, if not generic, of applicant's goods.

Among the evidence submitted by the Examining Attorney, from the Nexis database and from the Internet, are the following.

The G164 RTD traction drive tire for use on regional delivery vehicles such as UPS and Fed-Ex trucks.
Tire Business, March 1, 1999

The deep tread, high traction drive tire designed to perform in highway and

off road conditions.
Michelin catalog (undated)

Two front traction drive tires...
Toro.com Web site

The Turf Tiger [riding lawn mower]
features an ultra wide track stance,
low center of gravity, 1" to 6" cutting
height range, large high-traction drive
tires and 10mph ground speed.
Intmowers.com Web site

Front Drive Tires: Dual 5.00 x 8 8-ply
Pneumatic Traction Drive Tires
LEKTRO Aircraft Towing Vehicle catalog
(undated)

Drive Tire

Goodyear's G372 LHD line haul drive
tire has a 30/32nds-inch nonskid tread...

New Traction Tire

Goodyear designed the G164 Regional
Traction Drive radial tire to withstand
most rugged conditions...
Tirereview.com Web site

1. What qualifies as a traction tire?
Do mud and snow tires qualify?
Tires that are labeled snow tire, all-
season, all-weather, or studded...qualify
so long as they meet the standards set
in WAC 204-24-040 Traction Devices.
Washington State government Web site

Most drive tires are designed to dig
into soft, wet surfaces, trying to
grab, so that the torque of the engine
can be transferred to the road.
Trucktires.com Web site

Tires that meet the following requirements also qualify as "approved traction tires"...
Washington State Dept. of Transportation Web site

- (1) "Traction Tire":
 - (a) Tires with studs allowed under ORS 815.165;
 - (b) Tires marked as mud and snow or all-season radial tires when used on vehicles exempt under ORS 815.145(4)...
- Oregon State Archives Administrative Rules (undated)

Vehicles **Must Use Traction Devices or Traction Tires**: Snow tires or mud and snow tires, or "all-season" radial tires qualify as traction tires.
www.fs.fed.us Web site

5X12 Deep Lug traction tires...
www.hsmfgco.com Web site

The drive tires must provide traction to push the rig over wet pavement through snow...
Georgia state government Web site

T823 Transteel Traction Drive Radial
Firestone Web site

It is the applicant's position that the combination of two arguably descriptive terms does not necessarily make a combined descriptive mark. According to applicant, a merely descriptive rejection requires "a 100 percent

descriptive mark," and the mark must be so descriptive that it is incapable of acquiring secondary meaning. Brief, 1-2. Here, according to applicant, the combination of the words diminishes the descriptiveness of each. Moreover, these words have different meanings, applicant argues. For example, "traction drive" could refer to the tight, hugging ride which one receives if riding on gripping tires. In this connotation, "drive" is used as a synonym of "ride" to refer to the feel of the vehicle on the road, according to applicant. On the other hand, "traction drive" could refer to the powerful ride and accelerating force of the vehicle.

In sum, it is applicant's position that the Examining Attorney has provided minimal evidence of descriptiveness of these words considering the large size of the databases searched by the Examining Attorney, and that the terms "traction tire" and "drive tire" appear with much greater frequency than the expression "traction drive." Finally, applicant argues that any doubt be resolved in favor of publication.²

²In its appeal brief, applicant states that, if its mark is found to be descriptive, "as a final recourse Applicant should be allowed to enter a statement of acquired distinctiveness under Section 2(f). The Applicant has used the mark continuously for more than five years, as required by Section 2(f)." In its reply brief applicant again states that it should be allowed to enter a statement of acquired distinctiveness. The statement in applicant's appeal brief concerning the basis for its belief of acquired distinctiveness comes too late in the appeal for this evidence to be considered, and this issue, therefore, cannot be considered. See Trademark Rule 2.142(d). See

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Upon careful consideration of this record, we conclude that applicant's mark merely describes its tires. Aside from the fact that it appears that both "traction" and "drive" are types of tires, the Examining Attorney has made of record some evidence that tires are described by both words--"traction drive"--which applicant seeks to register. While perhaps not an overwhelming showing of mere descriptiveness, this evidence is sufficient from which to conclude that the words "traction drive" merely describe a characteristic or feature of applicant's tires. Accordingly, the refusal of registration under Section 2(e)(1) of the Act is affirmed.

also TMEP §1212.02(c) for the proper procedure for arguing acquired distinctiveness in the alternative.