

10/18/02

THIS DECISION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Odin Systems International, Inc.

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Serial No. 76/070,407

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James C. Wray for applicant.

Kathleen de Jonge, Trademark Examining Attorney, Law Office  
116 (Meryl L. Hershkowitz, Managing Attorney).

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Before Seeherman, Quinn and Hairston, Administrative  
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Odin Systems  
International, Inc. to register the mark FAST for "anti-  
icing temperature and moisture sensors, radio controls,  
programmable logic system controls, graphical user  
interface personal computer-based controls, and antifreeze  
substance dispensers."<sup>1</sup>

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<sup>1</sup> Application Serial No. 76/070,407, filed June 15, 2000,  
alleging dates of first use anywhere and first use in commerce of  
August 1999.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, is merely descriptive of them.

When the refusal to register was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

Applicant argues that the mark is ambiguous and does not convey, with any degree of particularity, an immediate idea or characteristic about the goods. Therefore, according to applicant, the mark is only suggestive. Applicant asserts that there are more than fifty different meanings of the term "fast." Applicant states that the term is not normally associated with roadside anti-icing equipment, and that others in the field neither have used the term nor have a competitive need to use the term in connection with similar goods. Applicant further states that the mark is an acronym created by it for "Fixed Anti-icing Spraying Technology" and that the mark, if anything, relates to the "fixed" or "secure" nature of the goods.

The Examining Attorney maintains that the mark merely describes the fact that applicant's goods are fast-acting, i.e., the goods function to administer fast treatment of icy roads. In this connection, the Examining Attorney has

**Ser No.** 76/070,407

relied upon a dictionary definition of the term "fast."  
The Examining Attorney is not persuaded by the fact that the term has a multitude of meanings, given that the determination of mere descriptiveness must be made on the basis of the term's meaning when applied to the specific goods listed in the application.

The Examining Attorney bears the burden of showing that a mark is merely descriptive of the relevant goods. In re Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). A mark is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976) (emphasis added). See also: In re Abcor Development Corp., 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods with a "degree of particularity." Plus Products v. Medical Modalities Associates, Inc., 211 USPQ 1199, 1204-1205 (TTAB 1981). See also: In re Diet Tabs, Inc., 231 USPQ 587, 588 (TTAB 1986); Holiday Inns, Inc. v. Monolith Enterprises, 212 USPQ 949, 952 (TTAB 1981); and In re TMS Corp. of the Americas, 200 USPQ 57, 59 (TTAB 1978).

The term "fast" is defined as, inter alia, "acting, moving or capable of acting or moving quickly; swift; accomplished in relatively little time; firmly fixed or fastened." The American Heritage Dictionary of the English Language (3d ed. 1992). The Examining Attorney relies on this definition and draws a connection with language found in applicant's product literature:

Maximizing winter road safety requires rapid response and immediate delivery of liquid anti-icing agents onto the pavement, before traction is reduced. Odin FAST systems are installed at the site, ready for action 24 hours a day, all season long. Immediate system activation can be accomplished autonomously by interfacing the Odin Controller to pavement condition sensors.

We find that the mark FAST, when applied to applicant's goods, is suggestive and not merely descriptive. There is a certain ambiguity about the mark, and no information about any quality or characteristic of the goods is conveyed with a degree of particularity. Additional thought or imagination would be required on the part of prospective purchasers in order to perceive any significance of the mark FAST as it relates to applicant's goods.

**Ser No.** 76/070,407

The Board has noted on a number of prior occasions that there is a thin line of demarcation between a suggestive and a merely descriptive designation. Although we find that the mark sought to be registered falls in the suggestive category, to the extent that the Examining Attorney's arguments cast doubt on our finding, such doubts are to be resolved in applicant's favor. See, e.g., *In re Atavio*, 25 USPQ2d 1361 (TTAB 1992); *In re Morton-Norwich Products, Inc.*, 209 USPQ 791 (TTAB 1981); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

Decision: The refusal to register is reversed.