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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Manhattan Scientifics, Inc.

Serial No. 75/809,670

James C. Wray, Esq. for Manhattan Scientifics, Inc.

Heather D. Thompson, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Hairston, Walters and Bottorff, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Manhattan Scientifics, Inc. has filed an application to register on the Principal Register the mark POWER HOLSTER for the goods identified below[1]:

> Fuel cell based charging systems for charging and holding electronic devices using fuel cells,

[1] Serial No. 75/809,670, in International Class 9, filed September 24, 1999, based on an allegation of a bona fide intention to use the mark in commerce.

> comprising a frame, a hook for mounting the frame, a fuel cell receiver in the frame, an indicator connected to the receiver for indicating fuel cell level, circuitry and connectors connected to the fuel cell receiver for connecting a fuel cell in the receiver to a charging connection on the frame for holding the electronic device with its charging contacts connected to the connectors.

The Trademark Examining Attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its goods.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney submitted a definition from *Merriam-Webster's Collegiate Dictionary*, 10th ed. 1993, of "power" as "source or means of supplying energy; esp. ELECTRICITY"; and asks the Board to take judicial notice, which we do, of the definition from *American Heritage Dictionary of the English Language*, 4th ed., 2000, www.bartleby.com, of "holster" as "a belt with loops or slots for carrying small tools or other equipment."

The Examining Attorney submitted a press release obtained from applicant's Internet web site (www.hawkassociates.com, October 24, 2001) indicating

that applicant's goods are intended to be used to hold and charge cellular telephones. It contains the following statement:

> The charger, called the Power Holster ™, is a portable lightweight cellular phone charging system that is only slightly larger than a typical cell phone belt holster. It uses a tiny array of MicroFuel Cells ™ to continuously charge the phone when inserted in the holster. Although the current prototype is being used with a Nokia cellular phone, the Power Holster ™ technology can easily be adapted to any brand of cellular phone.

The Examining Attorney contends, therefore, that the identified product is intended to be used primarily as a "power holster" to hold a cellular telephone while it is being charged.

The Examining Attorney submitted excerpts of articles retrieved from the LEXIS/NEXIS database that use the term "holster" to refer to a device that holds a cellular telephone and can be worn by an individual. The following excerpts are several examples:

> The cell phone carrier is in the form of a holster that is slim enough to wear under a suit, and is available in black leather, …. [*Daily News Record*, February 4, 2000.]

> "I said I'm on the train, dammit!" barked the business-suited man beside her, who had whipped his phone out of a nifty little holster on his belt the instant he sat down. [*Bangor Daily News*, January 12, 2000.]

> What the editors call next-generation gear ranges from Burburry plaid messenger case to cell phone thigh holster from leather carrying case for portable MP3 player to rolling office tote with splash guard. [*The San Francisco Examiner*, October 21, 1999.]
>
> Kenneth Jones, however, is proud of his Nokia phone in its red holster. [*The Boston Herald*, October 21, 2001.]

With respect to the term “power,” the Examining Attorney submitted eight third-party registrations for marks containing the term “power” for batteries, fuel cells, electric generators and/or chargers. Each of the registrations includes a disclaimer of “power” or the mark is registered on the Supplemental Register. With respect to the term “holster,” the Examining Attorney submitted five third-party registrations for marks containing the term “holster” for a variety of goods, one of which was the mark MAGNUM PHONE HOLSTER for “holsters for telephones and accessories.” Each of these registrations includes a disclaimer of “holster.”

Applicant contends that the proposed mark is not merely descriptive of “a fuel cell based charging system”; that the mark has not been used by competitors; and that the excerpts from the LEXIS/NEXIS database are minimal and not probative with respect to the mark

considered as a whole and with respect to the identified goods.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp*., 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd*., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Applicant does not dispute that its identified goods will comprise a portable charging system for cellular telephones. While the identification of goods is not so

limited, such a use of the mark is encompassed by the broadly worded identification of record.

It is clear from the evidence that the term "holster," which is descriptive of a carrying device for a broad array of objects, is also merely descriptive of a device that may hold cellular telephones. Applicant itself so uses the term in its web site press release, *e.g.*, "a typical cell phone belt holster"; and further uses the term "holster" in a descriptive manner with respect to its proposed product, *e.g.*, "[I]t uses a tiny array of MicroFuel Cells ™ to continuously charge the phone when inserted *in the holster*" [*emphasis added*].

There is no question that "power" is a noun for a source of energy. As described, applicant's product will be a "holster" that supplies "power" to charge objects, for example cellular telephones, that are placed in the holster. In the mark herein, "power" is an adjective indicating that the "holster" provides power to the object placed in it. The term POWER HOLSTER, considered in its entirety, merely describes this function of applicant's identified goods.

In conclusion, when considered in connection with applicant's goods, the term POWER HOLSTER immediately describes, without conjecture or speculation, a

significant, if not the major, feature or function of applicant's goods. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term POWER HOLSTER as it pertains to applicant's goods.

*Decision:* The refusal under Section 2(e)(1) of the Act is affirmed.