

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ITT Industries, Inc.

Serial No. 74/728,226

John R. Garber of Cooper & Dunham LLP for ITT Industries, Inc.

Cynthia C. Henderson, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

Before Cissel, Hanak and Hohein, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

ITT Industries, Inc. (applicant) seeks registration of the mark C-300 in typed capital letters for "heat exchangers." The application was filed on September 11, 1995 with a claimed first use date of July, 1961. In its application, applicant stated that its "mark has become distinctive of applicant's goods by virtue of its exclusive and continuous use thereof in commerce for more than five

years prior to the date of the filing of this application."

The Examining Attorney refused registration pursuant to Sections 1, 2 and 45 of the Lanham Trademark Act on the basis that applicant's mark functions solely as a model designation, and not as a source identifier. The Examining Attorney dismissed applicant's Section 2(f) evidence of acquired distinctiveness as being insufficient.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In support of its claim of acquired distinctiveness, applicant submitted the affidavit of its Assistant Secretary, Robert Seitter. Mr. Seitter stated that applicant had made continuous and exclusive use of the mark C-300 in connection with heat exchangers since 1961. Furthermore, Mr. Seitter stated that "the relevant purchasing public recognizes C-300 as a trademark which identifies the goods [heat exchangers] of the applicant." Attached as an exhibit to Mr. Seitter's affidavit was a page from a brochure describing various types of heat exchangers marketed by applicant. At the top of that page, there appears in very prominent lettering the designation C-300. This designation also appears on numerous occasions in the text found on that page.

In addition, applicant notes that on March 7, 1989 applicant obtained Registration No. 1,528,109 for the identical mark (C-300) for the identical goods (heat exchangers) based upon the identical specimens of use. Continuing, applicant notes that it inadvertently failed to file a Section 8 affidavit, thereby causing this prior registration to lapse in 1995. Applicant states that its current application merely represents "the refiling of the identical application that matured into Registration No. 1,528,108." Applicant states that there have been no changed circumstances between 1988 when it filed its first application and 1995 when it filed this application which in any way would cause the designation C-300 to lose any of its acquired distinctiveness as a source indicator of goods originating with applicant. Indeed, applicant contends that with an additional ten years of continuous and exclusive use of C-300 (i.e. 1988 to 1998), such designation has acquired even more distinctiveness as indicating heat exchangers originating from applicant.

In response, the Examining Attorney has made of record no evidence indicating that the designation C-300 serves solely as a model number. Rather, it is the Examining Attorney's contention that "applicant's evidence of acquired distinctiveness is insufficient to show that the model

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number [C-300] is a source indicator." (Examining Attorney's brief pages 6-7).

If letter and number combinations are perceived solely as indicating model, style or grade, they are not registerable. However, if letter and number combinations serve "a dual purpose" of indicating both (1) model, style or grade, and (2) source of goods, they are registerable as trademarks. McCarthy on Trademarks and Unfair Competition Section 7:16 at page 7-20 (4th ed. 1998).

We find that applicant's showing of acquired distinctiveness pursuant to Section 2(f) is sufficient to establish, at a minimum, that applicant's designation C-300 serves such a dual purpose.

Decision: The refusal to register is reversed.

R. F. Cissel

E. W. Hanak

G. D. Hohein
Administrative Trademark Judges
Trademark Trial and Appeal Board