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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mica Lamp Company

Serial No. 75/163,499

John W. Hazard, Jr. of Webster, Chamberlain & Bean for Mica Lamp Company.

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

Before Simms, Walters and Holtzman, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Mica Lamp Company (applicant), a California corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the asserted mark MICA LAMP COMPANY for electric lamps and lamp fixtures, namely, lamp shades and lamp reflectors.¹ The Examining Attorney has refused registration on the Principal Register and on the Supplemental Register on the

basis that applicant's mark is generic for applicant's goods.² Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

It is the Examining Attorney's position that applicant's mark MICA LAMP COMPANY consists of the name of a type of lamp with a lamp shade made of the mineral mica, with the addition of the entity designation "COMPANY."³ Based upon dictionary definitions and excerpts from the Nexis computer database, some of which are reproduced below, the Examining Attorney argues that applicant's mark is generic and, therefore, incapable of distinguishing applicant's goods from those of others, and is not registrable on either register. With respect to applicant's evidence of acquired distinctiveness, more fully discussed below, the Examining Attorney argues that generic terms cannot be registered pursuant to the provisions of Section 2(f), and that no amount of evidence of acquired distinctiveness can

¹ Application Serial No. 75/163,499, filed September 10, 1998, based upon allegations of use and use in commerce since January 1, 1992.

² Pursuant to applicant's request, applicant has sought registration on the Principal Register under Section 2(f) of the Act, 15 USC §1052(f), and on the Supplemental Register. See TMEP §1212.02(c), which permits this practice.

³ Among other words, the Examining Attorney has made of record a definition of the term "mica":

any member of a group of minerals, hydrous silicates of aluminum with other bases, chiefly potassium, magnesium, iron, and lithium, that separate readily into thin, tough, often transparent, and usually elastic laminae; isinglass.

render a generic term registrable. Even if applicant's evidence establishes some recognition of the asserted mark, the Examining Attorney contends that such recognition is *de facto* recognition or *de facto* secondary meaning.⁴ Some of the excerpts relied upon by the Examining Attorney are quoted below:

... in a floor model. But the company has ventured beyond its high tech and contemporary roots with arts-and-crafts-style mica lamps, transitional Scabo glass and iron styles. HFN The Weekly Newspaper for the Home Furnishing Network, October 11, 1999

* * * * *

... In addition to new sculpture, mosaic glass lamps and accents, mica lamps and fixtures, and Tiffany-style and reverse-painted shades, Dale will present a new Architectural Glass collection... HFN The Weekly Newspaper for the Home Furnishing Network, October 11, 1999

* * * * *

The mica lamp category is getting another shot in the arm with the most recent Pottery Barn national print advertising campaign, running currently in Architectural Digest, Metropolitan Home and other prominent shelter magazines. The campaign spotlights a single mica lamp, an adjustable-height design with a subtly tinted bronze base produced by J. Hunt & Co. of Bono, ... HFN The Weekly Newspaper for the Home Furnishing Network, August 30, 1999

* * * * *

Each of four consecutive right-hand pages showcases one product, including a mica lamp.

⁴ In his brief, the Examining Attorney states that, in the event that applicant's mark is determined not to be generic, the evidence of record is considered by the Examining Attorney to be sufficient evidence to establish "a *de facto* showing of acquired distinctiveness in the term 'MICA LAMP COMPANY.'" Brief, 4. Therefore, the issue of acquired distinctiveness is not before us.

Advertising Age, August 16, 1999

* * * * *

... Co was founded in Manhattan in 1922 by Mario Russo, an Italian immigrant with expertise in manufacturing mica lamp shades. Mario Manufacturing became a leading supplier of specialty lighting made of mica, for use in railroad...

He later joined the Crucet Manufacturing Co., where he made decorative baskets, a line of decorative floor lamps and torchieres, and mica lamp shades (mica is a thin, translucent material that emits a soft glow when light is shined through).

Business and Industry, June 14, 1999

* * * * *

... The company entered new product segments, and was one of the first suppliers to offer mica lamps at affordable prices.

HFN The Weekly Newspaper for the Home Furnishing Network, December 21, 1998

* * * * *

... Young carries reproductions or accessories items such as copper pieces or mica lamps. Young says wall stencils and wallpaper representing the arts and crafts era can be special-ordered through the store...

Arkansas Business, October 19, 1998

* * * * *

... In one section of the center, Mission-style leather sofas and chairs, mica lamps, and oak tables create a sense of home...

Buildings, September 1998

* * * * *

In a timely manner, the retailer just brought in mica lamps in two styles, for \$69 and \$89 and they are doing very well," said the buyer.

HFN Weekly Newspaper for the Home Furnishing Network, June 1, 1998

* * * * *

... ADAMS, owner of Aurora studios, shows off one of his copper lighting creations, which he calls a Van Erp styled mica lamp...

Syracuse Herald American, January 25, 1998

* * * * *

... She cited a Dirk Van Erp early 20th-century copper and mica lamp she'd appraised at \$15,000.

The Press-Enterprise, March 5, 1997

* * * * *

Wrought-iron and mica lamps hang from the ceiling, lighting the 12-foot-square, intricately designed tile floor...

The Ledger, December 20, 1996

* * * * *

... van Erp Shop produced a variety of hand-hammered bowls and trays but was best known for its copper-and-mica lamps (for more on these, see Antiques Across America, "Arts & Crafts Lighting," in our February 1994 issue)...
Country Living, February 1996

In addition, one of applicant's specimens of record, a portion of which is reproduced below,

proclaim "The Copper Lamp With The Unique Mica Shade," and show the following uses of the term "mica."

Our Mica shade panels are the same natural materials used by the Arts & Crafts master lampmakers. Mineral mica flakes, combined with organic shellac, make each mica shade unique with its variations of mineral deposit patterns and color tones.

Dirk Van Erp was the master coppersmith of the American Arts and Crafts movement. In 1910, at his San Francisco workshop, he discovered the warmth of copper, combined with the magical translucence [sic] of crystallized mica mineral.

While arguing that its mark is at most suggestive (brief, 14), applicant nevertheless contends that, even if its mark were considered merely descriptive, the mark MICA LAMP COMPANY has achieved secondary meaning. In support of its showing of acquired distinctiveness under Section 2(f) of the Act, applicant has submitted statements from industry representatives such as owners of lamp and furniture showrooms, as well as from

retail consumers, attesting that the name "Mica Lamp Company" identifies only one manufacturer, applicant, of Glendale, California. Applicant indicates that these statements are submitted from those most familiar with the lamp industry and consumers who have purchased lamps from applicant. Applicant's attorney has also provided advertising and promotional expenditures in the hundreds of thousands of dollars. Accordingly, it is applicant's position that members of the relevant public use or understand the term sought to be registered to refer to applicant and not to a class of goods. Further, applicant maintains that the Examining Attorney has not provided evidence from the relevant public of the significance of the mark (MICA LAMP COMPANY) sought to be registered. Applicant notes that most of the stories deal with the term "mica lamps" and not the mark sought to be registered. Other stories refer to "copper and mica lamps" or "wrought iron and mica lamps" and not the asserted mark. Further, applicant argues:

The great majority of the evidence cited by the Examiner does not show the mark MICA LAMPS or the mark MICA LAMP COMPANY in common usage, but rather, unconventional or careless usage, as where a consumer orders a "coke" instead of a "Coca Cola."

Applicant's brief, 9-10.

A term is generic if it names the class of goods or services to which it is applied. H. Marvin Ginn Corp. v.

International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986) and In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985). The test for determining whether a term is generic is its primary significance to the relevant public; that is, whether the term is used or understood, by purchasers or potential purchasers of the goods or services at issue, primarily to refer to the class of such goods or services. Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); In re Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., *supra*; and In re Leatherman Tool Group, Inc., 32 USPQ2d 1443 (TTAB 1994). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, newspapers, magazines, dictionaries, catalogs and other publications. In re Merrill Lynch, Pierce, Fenner, and Smith Inc., *supra*, and In re Northland Aluminum Products, Inc., *supra*. The Office has the burden of proving genericness with clear evidence. In re Merrill Lynch, Pierce, Fenner, and Smith, Inc., *supra*.

After careful consideration of this record, we believe that the Examining Attorney has established that applicant's mark is generic. The term "mica lamps," according to the evidence of

record, is used, at least by the trade press, and, in our view, by applicant on its promotional literature, to refer to a type or category of lamp, that is, a lamp with a lamp shade made in part or entirely of the mineral mica. To this expression, applicant has simply added the word "COMPANY." This entity designation cannot convert an otherwise generic term into a proprietary one. We have in the past held that the entity designation "CO." attached to a generic term does not make the mark registrable. See *In re Paint Products Co.*, 8 USPQ2d 1863, 1865 (TTAB 1988) ("PAINT PRODUCTS CO." held generic for various paints and coatings) and *In re Phone Co., Inc.*, 218 USPQ 1027 (TTAB 1983) ("THE PHONE COMPANY" held merely descriptive). Similarly, we have on a number of occasions held the entity designation "Inc." to have no trademark or service mark significance. See, for example, *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Industrial Relations Counselors, Inc.*, 224 USPQ 309 (TTAB 1984) (INDUSTRIAL RELATIONS COUNSELORS, INC. incapable of functioning as a mark for conducting seminars and research in the field of industrial relations, the Board attaching no trademark significance to the corporate identifier "Inc."); *In re E.I. Kane, Inc.*, 221 USPQ 1203 (TTAB 1984) (OFFICE MOVERS, INC. incapable of functioning as a mark for moving services; addition of the term "Inc." does not add any trademark significance to

the matter sought to be registered); and *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984) (PACKAGING SPECIALISTS, INC. merely descriptive of contract packaging services, etc.; the term "Inc." is recognized, in trademark evaluation, as having no source-indicating or distinguishing capacity).

With respect to applicant's showing of acquired distinctiveness, we have considered that evidence in our decision. However, while there may be some indication of source as a result of applicant's use of designation MICA LAMP COMPANY, we believe that that recognition is what the law categorizes as "*de facto* secondary meaning"--that is, secondary meaning to which the law attaches no legal significance. Because we believe that applicant's mark consists of the generic entity designator "COMPANY" coupled with a term which is understood by the relevant public primarily to refer to a type of product, we affirm the Examining Attorney's refusal to register applicant's mark on the Principal and the Supplemental Registers. See *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) ("The Best Beer in America" found to be "so highly..descriptive of the qualities of its product that the slogan does not and could not function as a trademark to distinguish Boston Beer's goods and serve as an indication of origin.").

Decision: The refusal of registration is affirmed.

R. L. Simms

C. E. Walters

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial and
Appeal Board