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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Livbag S.A.

Serial No. 75/490,769

Paul W. Kruse and James R. Menker of Pillsbury Winthrop
for Livbag S.A.

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

Before Seeherman, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Livbag S.A. filed an application to register the
mark MGG for "gas generators for air bags protecting
devices," in International Class 11, and "pyrotechnic gas
generators; pyrotechnic fillings for such generators and
pyrotechnic gas generators for seat belt retractors," in

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International Class 13.¹ The application was filed originally for the Principal Register based on an allegation of a bona fide intention to use the mark in commerce. Subsequently, applicant filed an Amendment to Allege Use, alleging, for both classes, first use and use in commerce as of May 4, 1998, as well as an amendment of its application to the Supplemental Register.

The Trademark Examining Attorney initially refused registration, 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 both of its classes of goods. Following applicant's amendment to the Supplemental Register, the Examining Attorney refused registration, under Section 23 of the Trademark Act, 15 U.S.C. §1091, on the ground that applicant's mark is generic in connection with both of its classes of goods. This refusal has been made final.

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

The Examining Attorney contends that "MGG" is an acronym for "monopropellant gas generator," and that it

¹ Serial No. 75/490,769 was originally filed on May 26, 1998. The application filing date was amended to November 9, 2000, which is the

is the name of the class or genus of chemical reaction gas generators to which all of applicant's goods belong. The Examining Attorney states that these goods are of a highly specialized nature and, thus, only limited evidence pertaining to these goods is available; but that the utility patents of record are sufficient evidence of the generic nature of the initials "MGG" in connection with the goods identified herein. In this regard, the Examining Attorney states the following:

The excerpts from utility patents ... clearly show generic use of the acronym "MGG" ... to identify "monopropellant gas generators." It is noted that applicant terms its goods "micro gas generators"; however, the salient inquiry involved here is the significance of the acronym itself, rather than underlying wording it may represent. Review of the patent excerpts clearly indicates that the MGG devices described are essentially identical in nature and function to applicant's goods. All of the items produce a supply of propellant gas via a violent or vigorous chemical reaction, which may be in the nature of a pyrotechnic explosion.

...

[A]pplicant's employment of this same type of gas generator in vehicular restraint systems, rather than in the specific type of device described in the patents, does not render the generic designation of one of the employed components any less generic than it would be in another application. To draw a parallel, the term "wheel" would be just as generic as applied to the wheel of an automobile as it would when applied to the wheel of a wheelbarrow or a toy train. Applicant's goods are exactly the type or genus of product which is generically

date applicant filed both its Amendment to Allege Use and its amendment to the Supplemental Register.

identified within the evidence of record as an "MGG."

The Examining Attorney submitted brief excerpts from two patents in support of his position.²

Applicant contends that its goods are not monopropellant gas generators; that the evidence of two expired patents is insufficient to establish that applicant's mark is generic in connection with its identified goods; and that if MGG is generic for monopropellant gas generators, then it cannot also be generic for applicant's goods. In addition to submitting complete copies of the patents referenced by the Examining Attorney, applicant submitted its specification sheet.

One of the patents of record, for a "protective weapon for attack aircraft" utilizes a monopropellant gas generator, which is also referred to as an "MGG." The other patent is for a "portable underwater fuel feed system" that also utilizes an "MGG" and the patent discusses several of the different types of systems within the "family of MGGs" for use in connection with portable underwater fuel feed systems.

² The patent excerpts submitted by the Examining Attorney are so brief that no conclusions can be drawn from these excerpts. We have, however, considered these two patents because applicant submitted copies of the two patents in their entireties.

On its specification sheet, applicant's product is described as "MGG/MGC Micro Gas Generator For Belt- And Buckle Pretensioner Systems."³ One of the characteristics of the product noted therein, within a list of five characteristics, is "nitrocellulose or composite propellant." There is no further explanation or other evidence regarding the nature of applicant's goods or the nature and uses of monopropellant gas generators.

With respect to genericness, the Office has the burden of proving genericness by "clear evidence" thereof. *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods or services in question. *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Our primary reviewing court has set forth a two-step inquiry to determine whether a mark is generic: First, what is the category or class of goods or services at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to

³ Nowhere in the record is there any indication as to whether "MGC" has a meaning and, if so, what that meaning is.

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that category or class of goods or services? *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). See also, *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); and *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001).

The standard for determining that a term is generic in connection with specified goods and/or services is difficult to meet. In the case before us, we have only two patents in evidence. In these patents, the acronym "MGG" is used in a generic manner to mean "monopropellant gas generator," which appears, from the descriptions in the two patents, to be a generic term for a class of gas generators using a single gas as a propellant. Even if these patent excerpts are sufficient to show that "MGG" is generic in connection with the goods involved in the two patents, the evidence is not sufficient to demonstrate that the relevant consumers for applicant's goods would view "MGG" as a generic term. The patents in evidence are not in the same field or for the products involved in this application.

It simply requires too much speculation for us to conclude that "MGG" is generic in this case. We note,

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however, that if applicant's competitors believe "MGG" is generic, a cancellation proceeding may be brought against a registration on the Supplemental Register, where an *inter partes* record could be presented.

Decision: The refusal under Section 23 of the Act on the ground that the proposed mark is generic is reversed for both classes of goods. The application will be forwarded for registration on the Supplemental Register in due course.