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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re City of Detroit

Serial No. 76024068

Molly Basile Markley and Andrew R. Basile of Young &
Basile, P.C. for City of Detroit.

Andrea D. Saunders, Trademark Examining Attorney, Law
Office 108 (David Shallant, Managing Attorney).

Before Bucher, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

The City of Detroit seeks registration on the
Supplemental Register for the mark METER CARD for
"magnetically encoded identification cards to provide
access to and from parking garages and/or lots and
magnetically encoded debit cards for electronic parking
meters," in International Class 9.¹

¹ Application Serial No. 76024068 was filed on the Principal Register on April 12, 2000 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. An amendment to allege use was filed on March 23, 2001, alleging use in commerce at least as early as May 3, 2000. Also on March 23, 2001, applicant requested amendment to the Supplemental Register.

The Trademark Examining Attorney has refused registration under Section 23 of the Trademark Act on the ground that the term sought to be registered is generic and, thus, is incapable of identifying applicant's goods and distinguishing them from those of others.

When the refusal was made final, applicant appealed. Applicant and the Trademark Examining Attorney have fully briefed the case. Applicant did not request an oral hearing before the Board.

We affirm the refusal of registration.

Applicant argues, in urging that the refusal be reversed, that the Trademark Examining Attorney has not met the burden of proof to show that applicant's applied-for mark is generic. That is to say, applicant's position is that there is insufficient evidence that the purchasing public would understand the term METER CARD as naming the type or category of applicant's identification cards having a debit function. Applicant specifically points to the absence of any dictionary listing of this term, as well as to the infrequency of uses by others in connection with similar cards.

The Trademark Examining Attorney maintains that "meter card" is the commercial name of applicant's cards, and that the term sought to be registered is generic for

magnetically encoded cards used for parking. In connection with the refusal, the Trademark Examining Attorney submitted dictionary definitions of the terms "meter" and "card." Also of record are excerpts retrieved from the LEXIS/NEXIS database showing uses of the term "meter card" in articles drawn from publications.

In order for a term to be registered on the Supplemental Register, it must be capable of serving as an indicator of source. Capability is determined by considering the meaning of the term as applied to the goods, the context in which the term is used on the specimens filed with the application, and the likely reaction thereto by average purchasers upon encountering the term in the marketplace. *In re Sambado & Son Inc.*, 45 USPQ2d 1312 (TTAB 1997).

A mark is a generic name if it refers to the class or category of goods on which it is used. *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). The test for determining whether a mark is generic is its primary significance to the relevant public. Section 14(3) of the Act; *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); and *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, *supra*. The

Patent and Trademark Office has the burden of establishing by clear evidence that a mark is generic and thus unregistrable. In re Merrill Lynch, Pierce, Fenner and Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

In determining whether a mark is generic, we apply a two-step inquiry: (1) What is the genus of goods at issue? (2) Is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods? See H. Marvin Ginn supra at 530.

Based upon the identification of goods, there appears to be general agreement between applicant and the Trademark Examining Attorney that the class of goods herein is magnetically encoded cards used for parking.

Where applicant and the Trademark Examining Attorney disagree is on the answer to the second H. Marvin Ginn question, namely is the term "meter card" understood by the relevant public primarily to refer to the class of goods at

issue here, i.e., magnetically encoded cards used for parking?

We turn then to the evidence in the record drawn from dictionaries. According to entries placed into the record by the Trademark Examining Attorney, the term "meter" is defined as "Any of various devices designed to measure time, distance, speed, or intensity, or indicate and record or regulate the amount or volume as of the flow of a gas or an electric current; a postage meter; a parking meter."

The term "card" is defined as a "flat, usually rectangular piece of stiff paper, cardboard, or plastic, especially:

a. One of a set or pack bearing significant numbers, symbols, or figures; one bearing a person's name and other information, used for purposes of identification or classification; A magnetic card." The American Heritage Dictionary of the English Language (3rd Ed. 1992). While applicant has submitted dictionary entries for compound terms like "parking meter," "identification card," and "debit card," applicant argues that it is noteworthy, in this context, that there is no entry for "meter card."

The Trademark Examining Attorney has also introduced excerpts retrieved from the LEXIS/NEXIS database and from the Internet that show, according to the Trademark Examining Attorney, that "meter card" is the common

commercial name for magnetically encoded cards used for parking. Examples include the following:

New Parking Era Dawns Downtown

For example, people can buy \$20 pre-paid ***meter cards***, which work like debit cards, if they don't want to lug coins around.

... 20 minutes of free parking with the push of a button, and payment methods that include coins, tokens and a pre-paid ***meter card***...²

Meter cards soon may work as debit cards in convenience stores, movie theaters and restaurants. A pilot program later this year in Boston will implement more than 200 of these multipurpose meters near Boston University... The University of Maryland at College Park has a debit ***meter card*** system that allows customers to get unused money back. The meter "remembers" the card number, so remaining time is retrieved if the customer enters the card before leaving. "Let's say someone puts in eight hours worth into a meter, but they're only there for 20 minutes - with our cards, they don't lose any money," said David Allen, the university's parking supervisor.³

Hong Kong is installing its first "coinless" parking meters programmed to accept stored-value "***meter cards***." If the one-year trial run proves successful, the government will completely replace Hong Kong's 18,000 coin meters..."⁴

Parking Meter Debit Cards Still Bottled Up

... South Aiken Avenue and at the authority's four metered lots that run from Bellefonte to Ivy streets. Twenty

² *The Idaho Statesman*, November 18, 2000.

³ *The Washington Times*, August 9, 1998

⁴ *The Orange County Register* (Sunday Evening Edition), March 27, 1988.

participants were issued **meter cards** to use for the first two weeks of the month...⁵

Parking Plan Revisited: Fresno Council now is not so sure on 24-hour enforcement

... city plans to purchase new electronic meters that are designed for long-term outings and that take dollar bills or a **meter card** that can be purchased at City Hall, Reed said.⁶

The need for quarters and parking meter revenues surged a month ago when the city installed new digital meters that only accept quarters and increased rates to 25 cents per half-hour. Meter revenues increased 53 percent in the first four weeks of October compared with the same period last year, Daryl Cole, city streets director said. Revenue totals rose from \$63,275 to \$96,758.

The rate increase, intended to help finance the renovation of the Plaza Theatre, is still unpopular with some businesses and motorists...

An artist's depiction of the theater is on the first 1,000 debit-style **meter cards** ordered last week and expected to arrive by year's end, Cole said. The cards will have a computer chip that can be read by the meters.⁷

Downtown Nashua meters to go high tech

A "smart card" system is also planned, where frequent parkers will be able to purchase pre-paid **meter cards** and even be able to collect unused time if they return to their cars before their time expires.⁸

Types of Electronic Parking Meters:

City of Sacramento has two types of electronic meters. Just let us know where

⁵ Pittsburgh Post-Gazette, January 22, 1999.

⁶ The Fresno Bee, April 27, 2002.

⁷ El Paso Times (El Paso, TX), November 6, 2002.

⁸ The Boston Globe, August 22, 2002.

you park most frequently, and we will issue you the appropriate **meter card**.⁹

****NEW ITEM FOR METER PARKING****

We have a new item for the digital meters that is currently available for students and employees. It is called a **meter card** and it takes the place of needing quarters for your meter. The cost of the **meter card** is a one time deposit of \$15 which is refundable upon the return of the card. The cards are charged with either \$10 or \$20 (the deposit and amount will be charged to your student account). Each time you activate the **meter card**, it applies 25 cents to the meter (one hour in most meters). They can be placed directly on your key chain for easy access. Please contact Parking Lot Operations if you are interested in receiving a **meter card** at 573-341-4303 or fleck@umr.edu.¹⁰

Maybe now parking meters will get fixed

Sarah Barry, could do a follow-up about the problems with these malfunctioning parking meters and the \$25 nonrefundable, nonreplaceable resident parking **meter cards** to which they do not respond. For several months the majority of parking meters in the lots adjacent to Lincoln Road have consistently responded to the **meter cards** with an error message. "My cards have worked just fine with the meters on Ocean Drive..."¹¹

... City of Santa Fe parking officials are offering a 20 percent discount through July for purchases of CashKey parking-**meter cards**. The keys may be used instead of coins in downtown parking meters.¹²

⁹ The Department of Public Works City of Sacramento website <http://www.pw.sacto.org/parking/meters.html>

¹⁰ "Parking Lot Operations," University of Missouri-Rolla http://campus.umr.edu/police/parking/permit_faqs.htm.save

¹¹ *The Miami Herald*, December 3, 2000.

¹² *The Santa Fe New Mexican*, July 2, 1999.

Sales slow for parking meter cards

Street parking can get fairly tight in Minneapolis, but there's no shortage of new electronic parking ***meter cards***. Since the cards went on sale April 27, only one or two have been sold, officials said.¹³

In addition to the above examples of third party usage of the term "meter card," the Trademark Examining Attorney also included an article about applicant's goods where she alleges the term is used generically:

For anyone caught short of change at a Detroit parking meter, the city's Municipal Parking Department has an answer: ***meter cards***. The debit cards, sold in \$10, \$15 and \$20 denominations, are usable at 2,000 meters in four business areas: downtown, the Detroit Medical Center, Wayne State University/Cultural Center and New Center. Cards with metered time have been in use at parking structures and lots for years. The city of Birmingham has used a rechargeable ***meter card*** for about 2½ years, and it is very popular, city officials said.¹⁴

In summarizing the impact of this evidence, the Trademark Examining Attorney argues as follows:

In addition to generically using the mark to describe the goods, this [*Crain's Detroit Business*] article clearly states that other cities such as Birmingham have used "meter cards" for years. Thus, registration of the applicant's mark would prevent competitors from using this generic wording to describe their goods. Competitors need and should be allowed to use "meter card" to describe their goods in this class. The examining attorney also points to the fact that each

¹³ *Star Tribune* (Minneapolis, MN), May 6, 1998.

¹⁴ *Crain's Detroit Business*, December 11, 2000.

of the articles referenced above shows use of the term "meter cards" to refer to the applicant's class of goods, namely, debit cards for parking meters.

(Trademark Examining Attorney's appeal brief, Unnumbered page 7).

Nonetheless, applicant argues as follows:

First, the class of goods in question are identification cards that contain a debit function. These cards are used to allow access to and from parking garages/lots and also contain the ability to debit an account for parking expenses (whether it be in a parking garage, parking lot, or parking meter). While the mark, METER CARD, is descriptive of Applicant's goods (the card has a metering function in the sense that it keeps track of parking garage usage and expenses), it is not a class of goods... .

Applicant submits that the mark, METER CARD, is not generic as applied to Applicant's goods. The combination of the words of the mark do not result in a designation that has a plain and readily understood meaning of class of goods when used in connection with the goods sold by Applicant.

The Examining Attorney bases her decision on several article excerpts. In most of these articles, the term "card" is used in connection with the term "parking meter." While the terms "identification card", "debit card", term [sic] "parking meter" are frequently used terms, there are only a few examples of the term "meter card." Further, some of the articles submitted are actually Applicant's goods being promoted. Applicant submits, as it did in its earlier Response to Office Action, that the term "parking meter" is a recognized term (Attachment B). Applicant also submits that the terms "debit card" and "identification card" are also

widely recognized terms (Attachments C and D). While Applicant's mark may be descriptive of elements of these various cards, Applicant was unable to find a dictionary definition for the term "meter card." Applicant submits that the term meter card does not have a plain and readily understood meaning when used in connection with identification cards. Accordingly, Applicant does not believe that there is sufficient evidence showing the mark, METER CARD, is generic for Applicant's identification cards.

(Applicant's appeal brief, pp. 3 - 4).

Beginning with applicant's identification of goods, and then looking to the ordinary meanings of the individual words "meter" and "card," we find that the combination of these two words appears on its face to result in a designation having a readily understood reference to a class of goods. Applicant has not shown how this compound term results in a different meaning from what one would anticipate in melding the connotations of its constituent words.

However, on this record, we do not need to rely solely upon dictionaries and other such references in order to establish the meaning of those words as being generic. Rather, the Trademark Examining Attorney has demonstrated third-party uses of the combined term "meter card" to refer to this class of goods. Most are references to multiple-function cards, all of which seem to have a debit function.

All of those shown in this record are used to pay for automobile parking.

In answering the second and critical H. Marvin Ginn query, we agree with the Trademark Examining Attorney that the NEXIS and Internet evidence placed into the record shows that the relevant public will primarily understand "meter card" to refer to magnetically encoded cards used for parking. See In re The American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832, 1834 (Fed. Cir. 1999).

Moreover, contrary to applicant's argument, the majority of excerpts from NEXIS and the Internet refer to "meter card" apart from the longer term, "parking meter card."

Even where the longer term is used in the excerpted stories of record, one must remember that the identified goods are all concerned with parking. In this context, the term "parking meter" will inevitably be shortened to "meter," making "parking meter" and "meter" interchangeable terms. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (Judge Rich concurring):

The description of the goods for which GASBADGE is sought to be registered, set forth as the single item of goods named in the application, is "chemically treated badge to determine and to monitor the amount of personal exposure of an individual to gaseous pollutants." This, of course, is a

wordy explanation which does not qualify as a name in the usual sense of the word. So, what is the name of this article? Appellant's own descriptive literature of record in the PTO provides the answer. The name is "Gas Monitoring Badge." This may be regarded as the full name. However, the users of language have a universal habit of shortening full names - from haste or laziness or just economy of words. Examples are: automobile to auto, telephone to phone, necktie to tie, gasoline service station to gas station. I regard it as inevitable that a gas monitoring badge will be called a gas badge as the name of the goods to the same extent as gas monitoring badge is the name... .

Accordingly, we find that applicant's magnetically encoded cards used for parking will readily be referred to as parking meter cards or just meter cards.

To the extent that applicant stresses that these identification / debit cards permit access to and from parking garages and parking lots, our conclusion is not tied to the presence of individual parking meters. The dictionary definitions and the excerpted stories contain a concept of regulating access and/or metering parking time, but the common thread of the meaning is not related to whether one's access and payment is tied to an individual meter, a centrally located machine or entry/exit gates.

In conclusion, we find that the Trademark Examining Attorney has provided clear evidence that the term METER CARD is generic for the involved goods and that applicant

has not provided a rebuttal to the Trademark Examining Attorney's case of genericness. In re Central Sprinkler Company, 49 USPQ2d 1194 (TTAB 1998).

Decision: The refusal to register under Section 23 of the Trademark Act is hereby affirmed.