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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Baldwin Hardware Corporation

Serial No. 75/490,727

Edgar A. Zarins of Masco Corporation for the Baldwin Hardware Corporation.

Yong Oh (Richard) Kim, Trademark Examining Attorney, Law Office 115 (Tomas Vlcek, Managing Attorney).

Before Simms, Seeherman and Drost, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Baldwin Hardware Corporation (applicant), a Pennsylvania corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the asserted mark THE LIFETIME FINISH ("FINISH" disclaimed) for finish coating in the nature of electroplated and vapor deposited metals sold as an integral component of metallic door hardware, namely, locks, latches, knobs, knobs in the

nature of levers, and hinges.[1] The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), on the basis that applicant's asserted mark is merely descriptive of its goods. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

Based upon dictionary definitions,[2] excerpts from news articles and printouts of third-party Web pages, the Examining Attorney argues that the words THE LIFETIME FINISH merely describe a finish which lasts for the lifetime of the object to which the finish is applied. According to the Examining Attorney, this phrase is commonly used in the finish coating industry and is well understood by the consuming public. Some of the news and Web page excerpts are set forth below:

> Solid-brass fixtures may have a chrome- or nickel-electroplated finish. If not, they should have a proprietary lifetime finish (Delta Brilliance, Moen

[1] Applicant Serial No. 75/490,727, filed May 26, 1998, based upon applicant's allegation of a bona fide intention to use the mark in commerce. The application was approved for publication and a notice of allowance was issued. On November 26, 1999, applicant submitted a statement of use, asserting use since September 20, 1993, along with specimens evidencing such use. At that time, the Examining Attorney raised the present refusal of registration.

[2] According to The American Heritage Dictionary of the English Language (3rd edition 1992), the word "lifetime" is defined as "the period of time during which property, an object, a process, or a phenomenon exists or functions" while "finish" is defined as "the last treatment or coating of a surface."

> LifeShine and Jado Diamond are popular finishes for brass fixtures).
> Chicago Tribune, June 23, 2000
>
> •A tarnish-free lifetime finish, particularly for brass, and a lifetime mechanical warranty.
> Los Angeles Times, January 30, 1999
>
> As for aesthetics, look for dual-torque springs that prevent knobs from sagging and a no-tarnish lifetime finish.
> Los Angeles Times, January 23, 1999
>
> That includes the doors, sidelights, lifetime-finish hardware, new molding around the doors and its painting.
> News & Record, July 4, 1998
>
> The door-hardware companies, they have lifetime finishes and they do guarantee them.
> The Courier-Journal, March 29, 1997
>
> The development of a lifetime finish brass, that is, the brass is pre-oxidized during the manufacturing process, has become a standard offering of most high-end companies…
> Omaha World Herald, February 23, 1997
>
> Schlage's Mediterranean Designer Series carries a 100-year mechanical warranty and a lifetime finish.
> Newsday, September 21, 1996
>
> The development and introduction of a lifetime anti-tarnish finish recently offered to the residential door lock market in Dec. 1994 was the result of extensive investigation and technical development.
> From Vapor Technologies Web site.

It is applicant's position, on the other hand, that its mark only suggests that its coating provides superior

protection or that the finish will last forever. Applicant contends that its mark is “merely a fanciful combination of words” (brief, 4), which does not immediately convey the nature, purpose or quality of its goods. According to applicant, consumers will believe that the name of applicant’s finish is LIFETIME. Also, third parties are free to describe their products by using such alternative expressions as “lifetime guarantee,” “lifetime warranty” and “a finish that lasts a lifetime.”

Further, applicant’s attorney maintains that applicant is the original user of the phrase LIFETIME FINISH and that its mark is being infringed by third parties who have been using applicant’s mark to describe their goods. According to applicant, the articles showing descriptive third-party use are “a direct result of applicant’s successful use of the mark THE LIFETIME FINISH and it is these abuses of applicant’s trademark rights which applicant is seeking to end by obtaining the trademark registration.” Brief, 3-4.

It is well settled that a term is merely descriptive, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes a quality, characteristic or feature of the goods or directly conveys information regarding the nature, function, purpose or use of the goods. *In re Abcor Development Corp.,* 588 F.2d 811, 200

USPQ 215, 217-18 (CCPA 1978). Also, whether a term is merely descriptive is determined, not in the abstract, but in relation to the goods for which registration is sought and the possible significance that the term may have to the relevant purchasers. *In re Bright-Crest, Ltd.,* 204 USPQ 591, 593 (TTAB 1979). Further, we must judge the question of mere descriptiveness on the basis of the likely purchaser perception of the asserted mark according to the evidence of record.

Upon careful consideration of this record and arguments of the attorneys, we conclude that applicant's asserted mark merely describes a characteristic or feature of applicant's goods. The meaning of the words which make up applicant's asserted mark as well as the evidence of the use of these words by others, including competitors, demonstrate to us that the average purchaser of these goods will perceive the words THE LIFETIME FINISH as merely descriptive of an aspect of them. That is to say, these words will be perceived as immediately describing the fact that applicant's goods incorporate a finish that is designed to last for the lifetime of the product to which it is applied.

With respect to applicant's argument that its asserted mark is being "infringed" by others, the examples of usage

by others made of record by the Examining Attorney do not appear to reflect trademark usage but rather use in a descriptive manner. These descriptive usages would seem to reflect the understanding of the authors that this phrase describes a feature of the goods being discussed, and would also have a bearing on the perception of the public which sees these descriptive uses.

We also note that the Examining Attorney has made final a requirement to provide additional information under Trademark Rule 2.61(b), in particular, to provide information as to whether applicant's finish is designed to last for the lifetime of the product. The Examining Attorney has noted in his brief that applicant has failed to provide this information and has correctly observed that applicant has failed to address this issue at all. While the Examining Attorney is correct in his observations, it is also true that there is information in the file, including a discussion of applicant's goods, which details the lifetime nature of applicant's coatings. And the Examining Attorney has alluded to this fact in his appeal brief, 3. Because we believe that there is sufficient information in the record to satisfy the request of the Examining Attorney, including applicant's specimens of record (indicating "Limited Lifetime Warranty"), we decline

to affirm the refusal on the basis of applicant's failure to comply with this requirement. *Compare In re SPX Corp., 63 USPQ2d 1592 (TTAB 2002); In re Page,* 51 USPQ2d 1660, 1665 (TTAB 1999) and *In re Babies Beat Inc.,* 13 USPQ2d 1729 (TTAB 1990).

Decision: The refusal of registration on the basis that applicant's mark is merely descriptive is affirmed.