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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Baldwin Hardware Corporation

Serial No. 75491070

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

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

Before Seeherman, Hairston and Bucher, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

This is an appeal by Baldwin Hardware Corporation from the Trademark Examining Attorney's final refusal to register LIFETIME FINISH, with the word FINISH disclaimed, as a trademark for goods which have ultimately been identified as "finish coating in the nature of electroplated and vapor deposited metals sold as an integral component of metallic bath accessories, namely,

metal costume hooks."¹ Registration has been refused pursuant to 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 of its goods.²

This case has had a rather complicated prosecution. Initially the then-intent-to-use application, which identified the goods as "finish coating in the nature of electroplated and vapor deposited metals for bath accessories and door hardware," was approved for publication after the entry, by Examiner's Amendment, of a disclaimer of the word FINISH. After the publication period passed without a notice of opposition being filed, the Office issued a notice of allowance. Applicant then filed a Statement of Use, and submitted labels showing the mark THE LIFETIME FINISH for costume hooks. Upon the examination of the Statement of Use, the Examining Attorney issued a refusal on the basis that the mark was merely

¹ Application Serial No. 752491070, filed May 26, 1998, based on an asserted bona fide intention to allege use. Applicant subsequently filed a Statement of Use alleging use anywhere and use in interstate commerce on September 20, 1993.

² The Examining Attorney had also made final a requirement for additional information regarding the nature and purpose of applicant's identified goods. In his appeal brief the Examining Attorney withdrew this requirement, noting that in the appeal in a companion application, In re Baldwin Hardware Corporation, Serial No. 75490727 (TTAB April 30, 2003), the Board had reversed the Examining Attorney's refusal on the basis of applicant's failure to comply with this requirement.

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descriptive (and also required information about the nature of applicant's goods, see footnote 2). Applicant's response to this action, inter alia, criticized the handling of the application, stating that the evidence submitted by the Examining Attorney was published after the original allowance of the mark, and that it is unfair that misuses of applicant's mark by third parties resulting from the delay by the United States Patent and Trademark Office (USPTO) in issuing applicant's registration should be cited as a basis for refusing applicant's application.

When the refusal was made final, applicant filed a notice of appeal and its appeal brief. The file was then forwarded to the Examining Attorney for his brief, but the Examining Attorney then filed a "request for remand to correct informalities." The so-called informality, however, was actually that the Examining Attorney intended to issue a new refusal. Specifically, the Examining Attorney stated that the specimens submitted with the Statement of Use "fail to support the description of goods as filed" because "they show use of the mark in connection with costume hooks which are coated with applicant's finish rather than the finish itself. Therefore, the Examining Attorney indicated that applicant would either have to provide a new specimen or amend the identification of

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goods. The request for remand was granted, and this resulted in an Examiner's Amendment changing the identification of goods to the present identification. Proceedings in the appeal were then resumed, applicant declined to file a supplemental brief, and the Examining Attorney then filed his appeal brief. An oral hearing was not requested.

As a preliminary comment, we think it is indeed unfortunate that the Examining Attorney was not able to reach his conclusion that applicant's mark is merely descriptive during the initial examination of the application, particularly because many of the articles taken from the NEXIS database were published prior to the approval of the application for publication in 1999. Similarly, it is unfortunate that the Examining Attorney did not conclude that applicant's specimens do not support use of the mark on applicant's identified goods until the point that the Examining Attorney had to file his appeal brief. However, the mandate of the USPTO is to register only registrable marks, and because a mark that is merely descriptive or that does not evidence use for the identified goods is not registrable, the delays by the

Examining Attorney in raising these objections can have no effect on our decision herein.³

This brings us to the substantive ground of refusal in this appeal. In support of his position that LIFETIME FINISH is merely descriptive of applicant's finish coating sold as an integral component of metal costume hooks, the Examining Attorney has submitted articles taken from the NEXIS database which use the term "lifetime finish" in connection with bath accessories and fixtures, as well as door hardware, including the following:

Headline: Sinking In; Getting a Handle
on the Many Types of Faucets Available
Solid-brass fixtures may have a
chrome- or nickel-electroplated
finish. If not, they should have
a proprietary lifetime finish
(Delta Brilliance, Moen LifeShine
and Jado Diamond are popular
finishes for brass fixtures).
"Chicago Tribune," June 23, 2000

Headline: Pour it On. Need a new
faucet: Kitchen and bathrooms awash
with options
Made by Jado Co. of Camarillo,
Calif, Washco's new faucet has
what the manufacturer calls a

³ We also note that applicant filed a companion application for THE LIFETIME FINISH. The Examining Attorney makes reference to this application in the final Office action, and points out that the specimen filed in that application contains the phrase "limited lifetime warranty." Although the co-pending application, and the specimen from that application, are not of record in the subject file, it is possible that the Examining Attorney's review of that specimen may have had an effect on the determination that applicant's mark is merely descriptive.

life-time finish promised not to tarnish or discolor with use.
"Chicago Daily Herald," February 22, 1998

Headline: Get a Handle on knobs & Things

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, Grabow said.

"Omaha World Herald," February 23, 1997

Headline: DO IT YOURSELF; KEY TO HOME SECURITY; DON'T SHUT THE DOOR ON PRIVACY. WITH PROPER TOOLS AND AN HOUR'S EFFORT, YOU CAN INSTALL A NEW LOCK SET AND DEADBOLT.

Features to look for:

- Dual-torque springs to keep knobs from sagging or loosening with use over time
- A tarnish-free lifetime finish, particularly for brass, and a lifetime mechanical warranty.

"Los Angeles Times," January 30, 1999

Another terrific convenience is universal keying, which allows you to carry one house key despite having installed locks on other doors from different makers. 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

Headline: WARP-PROOF DOORS WELL WORTH THE COST

That includes the doors, sidelights, lifetime-finish

hardware, new molding around the doors and its painting.
"News & Record" (Greensboro, NC),
July 4, 1998

Photos-1) Locking the deadbolt is no longer a separate operation with Master Lock's TwinBolt—one button locks know and deadbolt.
2) A built-in alarm on Pease locks is designed to sound at 130dB before would-be intruders enter the house. (above) 3) Schlage's Mediterranean Designer Series carries a 100-year mechanical warranty and a lifetime finish (right)
"Newsday," September 21, 1996

Baldwin Hardware says its new Images Collection of lock sets have "a lifetime finish" that guarantees a brass set exposed to the weather will shine forever if maintained with glass cleaner.
"The Cincinnati Enquirer," February 5, 1995

The Examining Attorney has also submitted materials taken from various Internet websites. For example, an article on www.improvement.com on "Appliance Trends: Faucets Come Clean with New Decorating Finishes" states that:

Today's faucets carry lifetime finish guarantees. Moen, which now offers its LifeShine finish on all of its kitchen and bath faucets, offers a lifetime guarantee against tarnishing. The brass-colored finish is strengthened with titanium, one of the strongest metals known.
www.improvenet.com/adviceandresources/

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articleslibrary/jeremy_powers_faucets.
html

The website of Schlage contains the question and
answer:

Is it really worth the extra cost to
have a lifetime finish guarantee for my
door hardware?

Actually, there is no extra cost. When
you purchase Schlage door hardware, we
realize you are purchasing three
things: security, function and style.
Over the years, exposure to the
elements will not adversely affect the
quality of security protection or the
function of the lock, but a harsh
environment may damage the finish. The
harsher the environment, the more
damaging the affect on the finish.
That's why Schlage has taken a lead in
developing finishes that last a
lifetime. All Schlage Maximum Security
Handlesets and Maximum Security
Deadbolts come with the ULTIMA®
Lifetime Finish as a standard feature.
A lifetime of looking great—at no extra
cost!
www.schlagelock.com/main/customerservice/faq.htm

Applicant's own products are described as lasting a
lifetime:

Tarnish-Free Brass for a Lifetime...
The Lifetime Finish from Baldwin
remained unblemished after testing over
a thousand hours in salt spray and
simulated weather conditions of heat,
ultraviolet rays, cool moisture and
humidity.
...
Finally...a finish for brass that lasts
a lifetime.

Lifetime Warranty...
Baldwin's commitment to you...
Baldwin's mortise lock set will operate
smoothly and shine on through the
harshest of conditions for the lifetime
of the product.
www.reedbrothers.com/baldwin.htm

In addition, the Examining Attorney has made of record
the following dictionary definitions:⁴

lifetime 2. The period of time during
which property, an object, a process,
or a phenomenon exists or functions

finish 3. Something that completes,
concludes, or perfects, especially: **a.**
The last treatment or coating of a
surface: *applied a shellac finish to
the cabinet.* **b.** The surface texture
produced by such a treatment or
coating. **c.** A material used in
surfacing or finishing.

A term is considered to be merely descriptive of goods
or services within the meaning of Section 2(e)(1) of the
Trademark Act if it forthwith conveys information
concerning any significant ingredient, quality,
characteristic, feature, function, purpose, subject matter
or use of the goods or services. See, e.g., *In re Gyulay*,
820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and *In re*
Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18
(CCPA 1978). The evidence of record clearly demonstrates

⁴ The American Heritage Dictionary of the English Language, 3d
ed © 1992.

that the term LIFETIME FINISH, as applied to a finish coating for metal costume hooks, immediately conveys to consumers that the hooks have a finish that will last for the life of the product. Thus, we find that the applied-for mark, LIFETIME FINISH, is merely descriptive of the identified goods.

It is noted that the NEXIS and Internet articles primarily use the term LIFETIME FINISH in connection with faucets and door hardware. This is because, at the time this evidence was submitted, applicant's goods were identified as "finish coating in the nature of electroplated and vapor deposited metals for bath accessories and door hardware (emphasis added)." The fact that the identification was subsequently changed to "finish coating in the nature of electroplated and vapor deposited metals sold as an integral component of metallic bath accessories, namely, metal costume hooks" (emphasis added) does not change our view on the probative value of this evidence. The descriptive significance of the term "lifetime finish" as used in these articles and websites is equally applicable to metal costume hooks as to unspecified metallic bath accessories and door hardware. Further, even without such evidence, the dictionary definitions alone show the descriptive nature of the term as a whole.

Applicant has argued that the uses of "lifetime finish" in the articles are abuses of applicant's trademark rights. However, our review of the articles taken from the NEXIS database shows that the term is not being used as a trademark, but in a descriptive manner. These articles clearly reflect the authors' views that consumers will readily recognize the descriptive significance of "lifetime finish" as indicating a characteristic of the goods.

Applicant argues that any evidence of third-party uses "which guarantee a product for a *lifetime* or separately refers to a guarantee for the *finish* should not be considered since applicant is seeking registration for a specific combination of the words LIFETIME FINISH." Brief, p. 3. This argument is not persuasive. First, much of the evidence does, in fact, use the exact phrase "lifetime finish," thus showing the descriptive significance of this combined term. Even without such evidence, however, the meaning of the individual elements combined in the phrase "lifetime finish" results in a term which is merely descriptive of a characteristic of applicant's goods.

Decision: The refusal of registration is affirmed.