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THIS DECISION IS NOT
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OF THE TTAB

Paper No. 10
TJQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Polymer Flip Chip Corporation

Serial No. 75/909,248

John F. McKenna of Cesari and McKenna for applicant.

Jennifer Stiver Chicoski, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Quinn, Chapman and Holtzman, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Polymer Flip Chip Corporation to register the mark FLIP CARD for "radio frequency identification (RFID) tags and cards."¹

The Trademark Examining Attorney has refused registration under Section 2(e)(1) on the ground that applicant's mark, if applied to applicant's goods, would be merely descriptive of them.

¹ Application Serial No. 75/909,248, filed February 3, 2000, alleging a bona fide intention to use the mark in commerce.

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When the refusal was made final, applicant appealed. Applicant and the Examining Attorney submitted briefs.² An oral hearing was not requested.

At the outset, it should be noted that the Board, in a final decision dated April 25, 2002, affirmed a mere descriptiveness refusal under Section 2(e)(1) in applicant's co-pending application (application Serial No. 75/819,459) to register the mark FLIP TAG for goods identified as "radio frequency identification (RFID) tags and smart cards embedded with a microchip." It has come to the Board's attention that applicant filed, on March 22, 2002, a request to consolidate the appeals in its two applications. Unfortunately, the request was not timely associated with the co-pending application and the final decision issued. We would add that we agree with applicant that the appeals involve common issues of law and fact, and that consolidation would have been properly granted in the interest of judicial economy. Be that as it may, we now turn to consider the merits of this appeal.

² The Examining Attorney objected to the untimely submission of exhibits attached to applicant's appeal brief. The objection is well taken, and the exhibits have not been considered in reaching our conclusion. Trademark Rule 2.142(d). Even if considered, however, the evidence is not persuasive of a different result. Insofar as the dictionary definitions attached to applicant's reply brief are concerned, we take judicial notice thereof pursuant to applicant's request.

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Applicant, while conceding that its RFID cards "happen to incorporate a flip chip" (brief, p. 3), argues that the mark sought to be registered is "FLIP CARD," not "FLIP CHIP CARD" (brief, p. 4). Applicant contends that the term "flip" by itself is meaningless in the smart card and tag trade, and that mental gymnastics are required to conclude that applicant's cards incorporate a flip chip. Applicant maintains that "even as to those of applicant's tags that do contain a flip chip, that chip is only one component of the RDIF tag and 'flip' is only descriptive as to that component, not to the RDIF tag as a whole." (Reply brief, p. 2, emphasis in original). In support of its position, applicant submitted dictionary definitions of certain terms, including "flip chip." Applicant offered other remarks to illustrate the nature of its goods as follows (brief, p. 3):

RFID cards have many uses. For example, they can be programmed to open locked doors; they can be attached to articles (e.g. computers) to sound an alarm when the articles pass a transceiver located at the exitway of a building to prevent a theft. When attached to automobiles, the cards can be interrogated when the cars pass a toll plaza for toll collection purposes.

The Examining Attorney maintains that flip chip technology is used by applicant and others in the RFID tag

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and smart card industry, and that purchasers in the trade are likely to immediately recognize that the term FLIP CARD refers to RFID cards incorporating flip chips. The Examining Attorney asserts that there is nothing incongruous about applicant's mark. In support of the refusal, the Examining Attorney submitted dictionary definitions, excerpts from the websites of applicant and others in the RDIF card trade, and excerpts retrieved from printed publications showing uses of flip chip technology by others in the trade.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it 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). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in

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relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The term "flip chip" is defined as follows: "a tiny semiconductor die having terminations all on one side in the form of solder pads or bump contacts; after the surface of the chip has been passivated or otherwise treated, it is flipped over for attaching to a matching substrate."

McGraw-Hill Dictionary of Scientific and Technical Terms

(1974). The NEXIS evidence attests to the tremendous growth in flip chip consumption for various reasons, among them being the small size, efficiency, reliability and low cost of manufacture of these chips. Solid State Technology (June 1, 1999). This evidence, along with the printouts from various websites of record, shows that others in the trade have incorporated flip chip technology in their products: "Products as diverse as Intel's Pentium II microprocessor with more than 2100 bumps and Philips' Mifare RFID tag chip with two bumps went flip chip last year." Id.

Applicant concedes, and the evidence shows, that applicant's RFID cards incorporate flip chips. Although the record does not include any uses of the term "flip" per se, the term describes the type of chip in applicant's card. The type of chip is a significant feature of the

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cards. The matter sought to be registered is merely a shortened form of "flip chip card" which immediately describes, without conjecture or speculation, a significant feature of the goods, namely that the cards incorporate flip chips or flip chip technology. Thus, no imagination would be necessary for the relevant purchasers in the RFID card trade to perceive precisely the merely descriptive significance of the term FLIP CARD as it relates to an important feature of the goods. See: In re Abcor Development Corp., supra at 219 [Rich, J., concurring: "The name [of the product] 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..."] (emphasis in original).

The fact that applicant could be the first and/or only entity to use the term FLIP CARD for RDIF cards incorporating flip chip technology is not dispositive where, as here, the term unquestionably conveys a merely

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descriptive connotation. In re Polo International Inc., 51 USPQ2d 1061, 1063 (TTAB 1999). We find that others in the trade would have a competitive need to use this term. See: 2 J.T. McCarthy, McCarthy on Trademarks and Unfair Competition, § 11:18 (4th ed. 2001).

Decision: The refusal to register is affirmed.