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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Lista International Corporation*

Serial No. 76/108,371

*George W. Neuner* and *Andrea A. Jacobs* of *Edwards & Angell, LLP* for *Lista International Corporation*.

*Todd Hardy*, Trademark Examining Attorney, Law Office 113 (*Odette Bonnet*, Managing Attorney).

Before *Simms*, *Hairston* and *Chapman*, Administrative Trademark Judges.

Opinion by *Hairston*, Administrative Trademark Judge:

On August 11, 2000 *Lista International Corporation* filed an application to register the mark E-LOCK on the Principal Register for goods which were identified as "furniture, drawer and cabinet security systems, and components."<sup>1</sup> Applicant classified the goods in Classes 6 and 20 and paid the fee for two classes.

<sup>1</sup> Serial No. 76/108,371, based on applicant's allegation that it has a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney issued a first office action refusing registration of applicant's mark on the ground that the mark, if used in connection with applicant's goods, would be merely descriptive of them. In addition, the Examining Attorney advised applicant that the identification of goods was unacceptable as indefinite and overly broad, and required applicant to submit an acceptable identification of goods.

In response to the refusal, applicant argued that the mark was not merely descriptive. However, applicant requested that the application be amended to seek registration on the Supplemental Register. Further, applicant proposed to amend the identification of goods as follows:

"metal locks and keys therefor, for use with furniture, drawer, and cabinet security systems in class 6;" and

"furniture, drawer, and cabinet security systems comprised of self-locking drawers and cabinets, electronic controllers, programmable hand-held transmitters and programming key, and components parts therefor in class 9."

The Examining Attorney, in the next office action, maintained the refusal to register under Section 2(e)(1) and advised applicant that it could not amend the application to seek registration on the Supplemental Register in the absence of an amendment to allege use or a

statement of use. In addition, with respect to the identification of goods, the Examining Attorney found the proposed identification of goods for class 6 to be acceptable, but held that the proposed identification of goods for class 9 was not acceptable and covered goods in classes 9 and 20.

Applicant then filed a notice of appeal.<sup>2</sup> Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.<sup>3</sup>

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<sup>2</sup> We note that applicant submitted a total amount of \$300.00 in connection with its appeal. Presumably, this amount was to cover the fees for classes 6, 9, and 20.

<sup>3</sup> Applicant, for the first time in its brief, makes reference to a third-party registration, namely, Registration No. 2,030,580 for the mark E-LOC for "electronic door locks for motor vehicles." The Examining Attorney, in his brief, has objected to applicant's reference to this registration as untimely. We note that applicant did not submit a copy of the registration and the Board does not take judicial notice of registrations residing in the Patent and Trademark Office. However, even if applicant had submitted a copy of the registration, it would have been untimely because Trademark Rule 2.142(d) requires that the record in an application be complete prior to appeal. Under the circumstances, the Examining Attorney's objection is well taken and we will not consider the registration. We should add that third-party registrations are of limited value in a case such as this because each case must be decided on its own merits. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1655 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court."].

We turn first to the issue of whether the proposed class 9 identification of goods set forth below is acceptable.

"furniture, drawer, and cabinet security systems comprised of self-locking drawers and cabinets, electronic controllers, programmable hand-held transmitters and programming key, and components parts therefor."

It is the Examining Attorney's position that the identification is overly broad and that:

In particular, the wording identifies goods classified in both International Class 9 and International Class 20. Furniture is properly classified in International Class 20 whereas electronic locks are properly classified in International Class 9. As the identification is currently written, it is not known whether applicant intends to register the mark for furniture, electronic security systems or both.

(Brief, p. 7).

Applicant, in its appeal brief, simply states "Applicant will agree with the Examining Attorney to a satisfactory description of the goods." (Brief, p. 3). Thus, it appears that applicant does not dispute that the proposed class 9 identification of goods is unacceptable. In view thereof, and for the reasons set forth by the Examining Attorney, we find that the proposed class 9 identification of goods is not sufficiently specific and the Examining Attorney's refusal to register the mark in

the absence of an acceptable identification of goods is affirmed.

We turn next to the refusal to register under Section 2(e)(1). The Examining Attorney argues that the term E-LOCK merely describes the primary feature of applicant's goods. According to the Examining Attorney, the letter "e" is a commonly used abbreviation for the word "electronic," and that when joined with the word "lock," the combined mark E-LOCK "is merely descriptive of characteristics, functions and uses of applicant's locking security systems in that the goods are electronic locks." (Brief, p. 4). In support of the refusal, the Examining Attorney submitted an excerpt from the on-line version of Merriam-Webster's Collegiate Dictionary which shows that "e-" is a prefix for "electronic" and an excerpt from the on-line Acronym Finder which includes a listing of "E" as an initial for, inter alia, "Electronic/Electronics." Also, the Examining Attorney submitted several web pages downloaded from the Internet which refer to "electronic locks."

Applicant, in urging reversal of the refusal to register, maintains that the mark E-LOCK does not immediately describe a characteristic or feature of the goods and that a multi-stage reasoning process is required before a purchaser would associate the mark with

applicant's furniture, drawer, and cabinet security systems and components. Applicant points out that the Acronym Finder web site shows that "E" is an initial for many other terms. Further, applicant argues that the Examining Attorney has failed to furnish any evidence that shows that E-LOCK is in general use. In particular, there is no dictionary entry for the term E-LOCK and the web pages submitted by the Examining Attorney do not show use of E-LOCK, but rather "electronic locks." Finally, applicant requests that we resolve any doubt as to whether E-LOCK is merely descriptive in its favor.

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 (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 descriptive thereof; rather, it is sufficient if the term describes a single significant attribute or idea about them. In re Venture Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a mark is merely descriptive must be

determined not in the abstract, that is, not by asking whether one who sees the mark alone can guess what the applicant's goods are, but rather in relation to the goods for which registration is sought, that is, by asking whether, when the mark is applied to the goods, it immediately conveys information about their nature. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

In this case, applicant's proposed class 6 and 9 identifications of goods are clearly broad enough to encompass all types of metal locks including electronic locks, and furniture, drawer and cabinet security systems, and components which feature electronic locks. The web pages submitted by the Examining Attorney show that the term "electronic lock" is used to describe a lock which is electronic in nature or has electronic features. Moreover, the dictionary and Acronym Finder excerpts show that "e-" is a prefix or initial for "electronic." That "e-" is also a prefix or initial for other terms is of no consequence because, as previously noted, the question of whether a term is merely descriptive must be determined in relation to the identified goods. Thus, when "e-" is joined with the descriptive word "lock" to form E-LOCK, we have no doubt that the relevant purchasers of the identified goods would readily understand that they are electronic locks,

and drawer, and cabinet security systems, and components which feature electronic locks. Contrary to applicant's contention, no amount of imagination, mental processing or gathering of further information would be necessary in order for purchasers and prospective customers of the identified goods to readily perceive the merely descriptive significance of the term E-LOCK as it pertains to the goods. Further, as the Examining Attorney has pointed out, applicant's proposed class 9 identification of goods states, in particular, that such goods are comprised of ". . . electronic controllers, programmable hand-held transmitters and programming key . . ." (emphasis added). It would certainly appear from this that such goods will feature electronic locks.

Finally, it is not dispositive that the term E-LOCK does not appear in the dictionary, or that applicant may be the first or only user of the term. See, e.g., In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983).

In sum, we find that E-LOCK is merely descriptive of applicant's goods.

**Decision:** The requirement for an acceptable identification of goods and the refusal to register in the absence thereof is affirmed, and the refusal to register

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under Section 2(e)(1) is affirmed as to the proposed identification of goods in classes 6 and 9.