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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re BAE SYSTEMS Information and Electronic Integration, Inc.

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Serial No. 76512472
Serial No. 76552608

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Daniel J. Long of BAE SYSTEMS Information and Electronic Integration, Inc.

Tracy Cross, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney)

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Before Walters, Holtzman, and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

BAE SYSTEMS Information and Electronic Integration, Inc. filed intent-to-use applications to register the marks LASERLINK[1] and LAZ-R-LINC[2] (in standard character format) for the following goods, as amended:

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[1] Application Serial No. 76512472, filed April 15, 2003.
[2] Application Serial No. 76552608, filed October 20, 2003.

> A commandable electro-optical (E/O) apparatus for free space transmission of data for the selective establishment of a link to a moving or stationary platform in a space, air or ground environment, including air to air, air to satellite, air to ground, ground to air, ground to satellite, and ground to ground, which includes an airborne terminal; lasers; light detectors; communications equipment comprised of an optical modem, a routing device, a wide data distribution device, and a device for interfacing with a plurality of standard data network protocols; and a beam pointing device, namely a plurality of Risley prisms, a gimbal, or an optical phase array, all for use in national defense, in Class 9.[3]

Registration was refused on the ground that LASERLINK and LAZ-R-LINC when used in connection with a laser communication system are merely descriptive. Section 2(e)(1) of the Lanham Act, 15 U.S.C. §1052(e)(1). When the refusals were made final, the applicant appealed. Applicant and the examining attorney filed briefs. We affirm.

[3] Applicant explains that, "The goods are used to transmit data by laser in space, air to air, air to satellite, air to ground, ground to air, ground to satellite, and ground to ground." (Applicant's December 21, 2004 Response in Serial No. 76512472 and November 24, 2004 Response in Serial No. 76552608). Accordingly, applicant's goods are essentially a laser based communication system.

Inasmuch as the applications have been filed by the same applicant and involve common questions of fact and law, we will decide the appeals in one decision.

The examining attorney contends that the marks are merely descriptive because they are proposed for use in connection with a system that uses a laser to form a communications link and, therefore, the word "Laser" describes a feature of the product and the word "Link" describes the purpose of the product. The examining attorney asserts that the combination of the descriptive words "Laser" and "Link" retain their descriptive significance and do not form an inherently distinctive composite mark. Finally, with respect to the mark LAZ-R-LINC, the examining attorney argues that, where as here, a novel spelling of a term that is merely descriptive remains merely descriptive because purchasers will perceive the unique spelling as the equivalent of the descriptive term.

The examining attorney relies on the following evidence to support her refusal:

1. The definition of the word "Link" as "a broadcasting unit or system used to relay radio or television signals, e.g. a transmitter, receiver, or relay station." (MSN.Encarta Dictionary at http://encarta.msn.com);[4]

[4] The examining attorney requests that we take judicial notice of definitions from the online versions of the Encarta World English Dictionary, North American Edition and the Compact Oxford English

2. An October 28, 2004 press release on applicant's website (www.na.baesystems.com) that references applicant's "LaserLink" contract to build a "free-space laser communications terminal" and "to develop and demonstrate the potential of laser communications"; and,

3. Statements in applicant's December 21, 2004 and November 24, 2004 responses wherein applicant explained that through its product "a link may be selectively established to transmit data to either a moving platform in space, air or ground environment." Applicant also explained, "The apparatus for which the mark is intended to be used would be interfaceable with any standard network protocol, or at least a plurality of such protocols."

The applicant argues that the marks are not merely descriptive because they do not "clearly describe the very specific commandable system for free space transmission of data which is recited in the present application so that a potential customer would understand what the goods are or their function or characteristics." In other words, the marks might suggest "any one of a large variety of

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Dictionary. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH,* 78 USPQ2d 1375, 1377 (TTAB 2006). The source of the MSN.Encarta definition is the Encarta World English Dictionary (North American Edition (2006). While that "publication" may not be available as a print publication, it is a widely known reference that is readily available. Thus, it is the electronic equivalent of a print publication and applicant may easily verify the definition. For this reason, we find it is acceptable material for judicial notice. *Id.* We hasten to add, however, that the preferable procedure would have been to for the definition and argument associated therewith to have been submitted during examination.

communication systems which includes a laser and a data path." (Applicant's Briefs, p. 2). With respect to the mark LAZ-R-LINC, applicant argues that LAZ-R is unique, and because it is not an easily recognizable misspelling, the mark is not merely descriptive.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services with which it is used, or intended to be used. *In re Gyulay,* 820 F.2d 1216, 3 USPQ 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, or is intended to be used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.,* 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle,* 66 USPQ 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the goods or services are will understand the mark to convey information about them. *In re Tower Tech, Inc.,* 64 USPQ 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.,* 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville,* 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.,* 226 UPSQ 365, 366 (TTAB 1985).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See, In re Tower Tech, Inc., supra* (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.,* 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putnam Publishing Co.,* 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of new information services in the food processing industry).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive. *In re Tennis in the Round, Inc.,* 199 USPQ 496, 497 (TTAB 1978). *See also, In re Shutts,* 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.,* 209 USPQ 165, 166 (TTAB 1980).

With respect to the LAZ-R-LINC trademark, we agree with the examining attorney that a misspelling of a word will not turn a descriptive word into a nondescriptive word. *In re Hubbard Milling Co.,* 6 UPSQ2d 1239, 1240 (TTAB 1988)("Mineral-Lyx" is the phonetic equivalent of "Mineral Licks" which is descriptive of mineral licks for animals); *In re State Chemical Manufacturing Co.,* 225 USPQ 687, 689 (TTAB 1985)("Fom" is the phonetic equivalent of "Foam" which is descriptive of cleaners for rugs and carpets).

In analyzing the descriptiveness issue, we must consider the mark sought to be registered in the context of the product on which it is used and how the purchaser would view the mark in its marketplace setting. *In re State Chemical Manufacturing Co., supra.* LAZ-R-LINC is proposed for use in connection with a laser based communication system designed to create a link to a moving platform. Based on the description of goods, purchasers would perceive LAZ-R-LINC as the phonetic equivalent of "Laser Link."

The combination of the words "Laser" and "Link" in the LASERLINK trademark (and the LAZ-R-LINC trademark) maintain their descriptive significance if used in connection applicant's laser communication system. The components of the mark are common words with readily understood meanings,

which when combined, produce a mark with descriptive significance. A "laser" is a component of applicant's laser communication system whose purpose is to create a "link" with a moving platform. Based on the record before us, the marks LASER LINK and LAZ-R-LINC, if used in connection with a laser communication system to create a "link" with a moving platform, immediately describes a feature and purpose of the product without resort to imagination, conjecture, or speculation.

Contrary to applicant's argument, the marks do not have to "describe the very specific commandable system for free space transmission of data . . . so that a potential consumer would understand what the goods are or their function or characteristics." (Applicant's Briefs, at p. 2). "The question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc., supra.* Moreover, the marks do not have to describe every quality, feature, function, etc. of the products to be merely descriptive. *Id.* In this case, we have no doubt that a person who is familiar with applicant's product will understand that the marks LASERLINK and LAZ-R-LINC refer to a laser communication system.

In view of the foregoing, we find that the marks LASERLINK and LAZ-R-LINC if used in connection with a laser communication system are merely descriptive.

Decision: The refusal to register is affirmed.