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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re K-2 Corporation

Serial No. 78364151

Cindy L. Caditz of Klarquist Sparkman, LLP for K-2 Corporation.

M. Catherine Faint, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Quinn, Drost and Zervas, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

K-2 Corporation has appealed from the final refusal of the examining attorney to register on the Principal Register the term CINCH (in standard character form) as a trademark for the following goods: "sports equipment, namely snowboard bindings" in International Class 28.¹

¹ Application Serial No. 78364151 was filed on February 6, 2004, based on applicant's assertion of its bona fide intention to use the mark in commerce.

The examining attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used on applicant's goods, the mark CINCH would be merely descriptive of such goods.

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs.

The examining attorney maintains that the mark "describes a significant function of the goods, namely to tighten the snowboard bindings." Brief at unnumbered p. 7. In support of her refusal, the examining attorney relies on several dictionary definitions of "cinch." The dictionary definition taken from www.msn.encyarta.com, submitted with the first Office action, states:

noun ...

1. something easily done: something that can be done or achieved with very little effort (informal) **2. something certain:** something that is absolutely certain to happen (informal) **3. RIDING strong girth:** a girth for a saddle, consisting of a thick strap secured by passing the end through two metal rings **4. firm grip:** a firm grip (archaic)

transitive verb ...

1. tighten: to tighten something by constricting it **2. RIDING put cinch on horse:** to put a cinch on a horse **3. grasp something around middle:** to grasp something around the middle, as a belt does (informal) **4. make certain of:** to make certain of something (dated informal)

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The examining attorney also included with her October 26, 2005 denial of applicant's request for reconsideration the following definitions of "cinch": "a tight grip" from www.m-w.com; "A tight grip" and "To get a tight grip on" from www.bartleby.com; "a firm hold or tight grip" and "to gird with a cinch; gird or bind firmly" from www.infoplease.com; and "to place a cinch on; attach securely, tighten" from www.wordsmyth.net. Additionally, the examining attorney relies on four web pages, made of record with her Office actions, which state in relevant part:

1. From www.wakepics.com (involving wakeboarding)

Title: Bindings of the Future. Enter Zeus.

They weigh just over 3 lbs each, which is pretty standard for a high-end binding that has a solid base plate. ... There a[re] two cinch locations - one at the top that supports your upper ankle, and a second on the top of your foot that allows for a higher level of board control. These bindings come in an assortment of sizes that will fit just about any rider ranging from size 5-14.

2. From www.buychoice.com (involving a snowshoe)

We all know that the binding is the heart of a snowshoe. ... The binding draws tight with a bootlace that runs through huge 3/8 inch speed laces, so even frozen laces flow smoothly. The laces cinch with a cam type cord lock that is easy to use with mittens and will not loosen with use. ...

Specs

- Simple cord closure binding
- Cam locking cord cinch for easy, secure operation

3. From www.stokecity.ca ("Canada's Online Wakeboard and Wakeskate Community.")²

Hyperlite Split Bindings

... Three easy to cinch front lace guides combined with an adjustable Velcro toe and top strap with the similar eva toe and heel material found in our high-end models.

4. From www.wildsnow.com (involving skiing)

Randonne alpine touring "AT" ski gear - What is Hip"

...

As parallel technique and gear improved, skiers wanted more resistance to heel lift. An interesting development that resulted was the Amstutz Spring. This fascinating device, which would still work well today, was simply a strap you cinched around your instep, then attached to a spring or rubber band that was anchored to your ski behind your heel. Perfect. You could lift your heels with adjustable resistance - or cinch down for an almost modern alpine like feel.

The examining attorney concludes that these articles "show that those who use bindings with sports gear expect to be able to tighten those bindings and they do this by 'cinching' them ..." Brief at unnumbered p. 3.

² Although this web site is from Canada, we consider it because applicant has not objected to it on the basis that it is from Canada and because the information provided on the web site is largely informational. See *In re King Koil Licensing Company, Inc.*, 79 USPQ2d 1048 (TTAB 2006).

Applicant argues that the examining attorney has not presented a prima facie case because the evidence presented by the examining attorney is "negligible" and because CINCH has multiple "meanings and connotations" when applied to applicant's snowboard binding, i.e.:

... applicant's snowboard bindings are easy to use;

... the snowboard bindings will facilitate the performance of snowboarding tricks by a user;

... the snowboard bindings will keep the user securely fastened to the snowboard;

... the performance of the bindings will make snowboarding easier than other bindings; and

... the snowboard bindings can be tightened by the user to achieve an optimal fit.

Brief at p. 6. According to applicant, "the Examiner isolates one definition ('to tighten something by constricting it') and rejects out of hand any notion that the word 'cinch' can have any other connotation relevant to snowboard bindings." *Id.* Applicant argues that because the examining attorney has not established that the immediate meaning of "cinch" in connection with snowboard bindings in the mind of a consumer is the "tightening" definition, and the evidence is inadequate to support the contention that the mark is merely descriptive, the examining attorney has failed to carry her burden of establishing a prima facie case. Reply at p. 7.

Additionally, applicant argues that if the examining attorney has presented a prima facie case, applicant's evidence overcomes that prima facie case. *Id.* Specifically, applicant notes that its "bindings feature innovative technology that enable a user to easily attach to, or detach from, a snowboard, as well as to make quick adjustments for an optimal fit, without compromising support or control"; and that "a key feature and selling point of Applicant's bindings is that they are easy to use without sacrificing high performance." Brief at p. 9. This feature is touted in a webpage from www.shorelinesnowboards.com, made of record by the examining attorney with her first Office action. The webpage itself states:

The new K2 Cinch binding is one of hte [sic] fastest binding [sic] to get in and out of, with all of the feel and performance of a strap binding. The highbackfolds [sic] back and the ankle strap lifts up ath [sic] the same time, allowing for an opening of the system, without compromission [sic] the snug fit or the comfortable performnce [sic] of the ankle strap.

In this regard, applicant argues that a consumer is "just as likely to associate the indisputably suggestive 'ease' definition of 'cinch'"; and that there is a double entendre in relation to applicant's snowboard bindings. Reply at pp. 7-9. Applicant concludes that its mark is suggestive

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because none of the "meanings and connotations" noted above "about Applicant's snowboard bindings is 'immediately' conveyed ... [and] it takes some imagination to perceive these thoughts." Brief at p. 11.

Applicant has also argued that the Office has consistently found the word "cinch" suggestive, noting "over 150 registrations or applications ... include the word 'cinch'"; and that "many of these specifically claim a tightening function, but were nevertheless approved and registered by the Trademark Office." Brief at p. 12. Applicant has submitted the TESS records for only nine registrations with its request for reconsideration filed October 3, 2005.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *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 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property

of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

We first consider whether the examining attorney has made out a prima facie case of mere descriptiveness. The examining attorney has submitted several dictionary definitions of "cinch," which include "tighten: to tighten something by constricting it"; and a "tight grip." Also, the examining attorney has submitted pages from several web sites showing use of "cinch" as "tighten" or a "tight grip" in the context of bindings used in sports in which a board is secured to an athlete's foot by bindings. Further, a depiction of applicant's binding, submitted with the first Office action, shows a binding with two straps that may be tightened. This evidence establishes prima facie that "cinch" describes a feature of applicant's goods, i.e., that tightening is required of the binding straps.

We next consider whether applicant has rebutted the examining attorney's prima facie case.³ The record reflects

³ In this regard, we note that the copies of the registrations for marks containing CINCH submitted by applicant are of limited probative value. Specifically, none of the registrations cover goods that are similar to applicant's goods. Further, one registration, i.e., Registration No. 2541911 for the mark CINCH-BELT, is registered on the Supplemental Register, not the Principal Register. Also, prior decisions of examining attorneys "are not binding on the agency or the Board. Each case must be

that there are multiple definitions of "cinch" and that one of such definitions is "something easily done." The evidence from www.shorelinesnowboards.com emphasizes the speed with which one may get into and out of applicant's snowboard binding - ease in getting into and out of applicant's snowboard binding hence is a desirable feature of applicant's bindings. Thus, "easy to use" is one connotation that consumers would also likely attribute to applicant's mark.

There is no evidence in the record beyond the dictionary definitions to support any suggestion that this "easy to use" connotation is merely descriptive, and the examining attorney does not so contend. "It is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork." See *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). Inasmuch as both the "tightening" and "easy to use" connotations are connotations that purchasers may attribute to the mark, and because the record does not suggest that the "easy to use" connotation immediately describes a feature, function, characteristic or purpose of applicant's goods, we have doubts as to whether applicant's mark is

decided on its own merits." *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984).

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merely descriptive. In such situations, we are required to resolve those doubts in applicant's favor. *In re Morton-Norwich Products, Inc.*, 209 USPQ 791, 791 (TTAB 1981) (The Board's practice is "to resolve doubts in applicant's favor and publish the mark for opposition."). See also *Remacle*, 66 USPQ2d at 1224. We do so, and find that applicant has rebutted the examining attorney's prima facie case of mere descriptiveness.

Decision: The refusal to register the mark as merely descriptive under Section 2(e)(1) of the Trademark Act is reversed.