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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alternative Processing Systems, Inc.

Serial No. 78556095

Albert L. Schmeiser, Esq. for Alternative Processing
Systems, Inc.

Jeffrey S. DeFord, Trademark Examining Attorney, Law Office
115 (Tomas V. Vlcek, Managing Attorney).

Before Hairston, Kuhlke and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On January 8, 2005 Alternative Processing Systems,
Inc. (applicant) applied to register AT STORE RECLAMATION
in standard-character form on the Principal Register for
services now identified as "inventory control services,
namely, unsaleable damaged goods reclamation services" in
International Class 37.¹ Applicant seeks registration both

¹ The Examining Attorney's final action also required amendment to the identification of services. In his brief the Examining Attorney refers to the amended identification referenced here and states that it is acceptable and that the requirement is moot.

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based on its bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), and based on its ownership of a Canadian registration under Trademark Act Section 44(e), 15 U.S.C. 1126(e).

The Examining Attorney finally refused registration on the grounds that the mark merely describes the identified services under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Applicant appealed. Applicant and the Examining Attorney have filed briefs. We affirm.

A term is merely descriptive of 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 services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's services in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the services. See *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

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Whether a term is merely descriptive is determined not in the abstract, but in relation to the services identified in the application, and the possible significance that the term would have to the average purchaser (user) of the services because of the manner of use. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

When two or more merely descriptive terms are combined, we must determine whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the services, then the resulting combination is also merely descriptive. *See, e.g., In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317 (TTAB 2002) (SMARTTOWER held merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS held merely descriptive of computer software for use in development and deployment of application programs on a global computer network); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE held merely descriptive of news and information service for the food processing industry).

Applicant argues as follows:

... Applicant's mark AT STORE RECLAMATION may be suggestive of an attribute of Applicant's service but it certainly does not, in any precipatory way, convey an idea as to what Applicant's services are. Nothing in the Mark indicates that Applicant's services pertain to unsaleable grocery store products. It is impossible to discern from Applicant's Mark what Applicant's services are... The consumer, in fact, needs additional information to understand that the Mark is referencing an inventory control system for grocery store products and the other services provided within a system for reclamation of grocery store products...

Applicant's Brief at 3.

In posing these arguments, applicant first overlooks the fact that it identifies its services as "inventory control services, namely, unsaleable damaged goods reclamation services." We must view the mark in relation to that description, not in the abstract. *In re Bright-Crest, Ltd.*, 204 USPQ at 593. The essence of the identified service is a reclamation service. As identified, the service could apply to various types of goods, including grocery store products. Also, the fact that the mark does not describe each and every aspect of the service in no way renders it distinctive. *In re MBAssociates*, 180 USPQ at 339. The mark, in fact, describes the essence of the service, that is, RECLAMATION.

The only other term in the mark "AT STORE" merely further defines/describes the service. The Examining

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Attorney has made of record pages from applicant's web site which states, "At Store Reclamation - A Common Sense Approach - At Store Reclamation™ a proven, economical and trusted process that reclaims unsaleable products directly from grocery stores..." Attachment to Examining Attorney's First Action. Applicant's description of its service on its site also contrasts its service with "traditional reclamation services" which require that unsaleable products be "... back hauled to a distributor's warehouse or central facility." *Id.* Thus, "AT STORE" merely describes a particular advantageous feature of applicant's reclamation service, that is, the fact that applicant identifies and collects the unsaleable products *at stores*. Accordingly, there is nothing incongruous or distinctive about the combination of AT STORE and RECLAMATION as applied to the identified services. *In re Putnam Publishing Co.*, 39 USPQ2d at 2022 (ONLINE merely indicates that the information service is provided "via interactive computer access."). We dismiss out of hand applicant's suggestion that its mark is in any way similar to SNO-RAKE or other marks found to be incongruous and distinctive. *See In re Shutts*, 217 USPQ 363 (TTAB 1983). Thus, the mark is nothing more than the sum of its merely descriptive parts. Therefore, we conclude that AT STORE RECLAMATION is

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merely descriptive of "inventory control services, namely, unsaleable damaged goods reclamation services."

Applicant poses a number of additional arguments, all of which we find unpersuasive. We will address some of the more prominent arguments briefly here.

Applicant also argues that its mark is not merely descriptive because it cannot be found in a dictionary. However, it is not necessary to show that a term is in the dictionary to find that it is merely descriptive. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987).

Applicant argues further that it will, in fact, use AT STORE RECLAMATION in the manner of a mark and not descriptively in conducting its business. However, applicant's mere intention to use AT STORE RECLAMATION as a trademark is not sufficient, by itself, to render it distinctive. *In re Remington Products, Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987).

Applicant also argues that no one else uses the term AT STORE RECLAMATION, and therefore, it is not merely descriptive. However, the fact that a party may be the first or only party to use a term does not, by itself, render it distinctive. *In re Acuson*, 225 USPQ 790 (TTAB 1985).

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Finally, in its response to the refusal in the first office action applicant referred to certain information regarding two existing registrations for marks which include RECLAMATION as justification for registration of its mark. The Examining Attorney objected to the form of the evidence in his final refusal, citing *In re Duofold*, 184 USPQ 638, 641 (TTAB 1974) (Applicants may not rely on listings of third-party registrations but must submit copies of related USPTO records.).

Applicant did submit copies of the registrations from USPTO electronic records with its main brief, and the Examining Attorney then objected to consideration of the records on the ground that the submission was late under 37 C.F.R. § 2.142(d). The rule requires that the record be complete prior to the filing of an appeal. While the better practice would have been for applicant to submit the copies of the USPTO records in a request for reconsideration, the procedural point ultimately has no bearing on our conclusion here. If we were to consider the registrations, the records would lend greater support to the Examining Attorney's position.

First, Registration No. 2799812 is for the mark AIM INC. ON SITE RECLAMATION and Design for "reclamation of bulk contaminated industrial fluids." The entire phrase

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"ON SITE RECLAMATION" is disclaimed. If this registration shows anything relevant here, it is that the disclaimed phrase, "ON SITE RECLAMATION," a phrase highly similar to applicant's entire mark, is merely descriptive of the identified services, again services which are highly similar to those identified by applicant.

Secondly, Registration No. 3008841 is for the mark ENVIRONMENTAL RECLAMATION SERVICES, INC. and Design for "recycling services for empty laser cartridges, empty inkjet cartridges, cell phones and other electronic products." Here, all wording in the mark is disclaimed, again indicating that it is merely descriptive. Therefore, these registrations in no way support applicant's position.

Applicant also discussed a number of other cases at some length. We have given careful consideration to those discussions and related arguments, as well as to other arguments raised by applicant not discussed specifically here. We find all of them unpersuasive.

In conclusion, for the reasons stated here, we find AT STORE RECLAMATION merely descriptive of "inventory control services, namely, unsaleable damaged goods reclamation services."

Decision: We affirm the refusal to register applicant's mark under Trademark Act Section 2(e)(1).