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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Universal Remote Control, Inc.

Serial No. 78561702

Martin Pfeffer of Ostrolenk, Faber, Gerb & Soffen, LLP for
Universal Remote Control, Inc.

Richard A. Straser, Trademark Examining Attorney, Law
Office 114 (K. Margaret Le, Managing Attorney).

Before Bucher, Grendel and Walsh, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Universal Remote Control, Inc., applicant herein,
seeks registration on the Principal Register of the slogan
THE FIRST IN REMOTE CONTROL TECHNOLOGIES (in standard
character form) for goods identified in the application as

"remote controls for radio, televisions, stereos, cable television and satellite television."¹

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that it is merely descriptive of the identified goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Applicant has appealed the final refusal. After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

A mark is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act 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. See, e.g., *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, 217-18 (CCPA 1978).

Laudatory marks are a species of merely descriptive marks. If the purchaser would view the mark as mere puffery, then the mark is deemed to be merely descriptive rather than inherently distinctive, and it therefore is

¹ Serial No. 78561702, filed on February 7, 2005. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

unregistrable under Section 2(e)(1). "Marks that are merely laudatory and descriptive of the alleged merit of a product are also regarded as being descriptive... Self-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods." *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 1373, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA for beer and ale found to be laudatory and incapable of distinguishing source). *See also In re Nett Designs Inc.*, 236 F.3d 1338, 57 USPQ2d 1564 (Fed. Cir. 2001) (THE ULTIMATE BIKE RACK found to be a laudatory descriptive phrase that touts the superiority of Nett Designs' bike racks); *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005) (THE GREATEST BAR found to be laudatory and thus merely descriptive of restaurant and bar services). *Cf. Hoover Co. v. Royal Appliance Manufacturing Co.*, 238 F.3d 1357, 57 USPQ2d 1720 (Fed. Cir. 2001) (NUMBER ONE IN FLOORCARE is laudatory and thus not inherently distinctive as applied to vacuum cleaners).

In the present case, we find that the phrase applicant seeks to register as a trademark, THE FIRST IN REMOTE CONTROL TECHNOLOGIES, is a laudatory slogan that would be regarded by purchasers not as a trademark but rather as mere puffery touting the superior quality of applicant's

remote controls and the technologies used in their design and manufacture. The words THE FIRST IN are equivalent to the laudatory words present in the marks in the cases cited above, i.e., BEST, ULTIMATE, GREATEST and NUMBER ONE.

The record includes an entry for the word "first" from the MSN Encarta Dictionary, which defines the word as an adjective meaning "best: best in quality or achievement," and as a noun meaning "one ahead of any other: the one positioned before any other in achievement, rank, quality, or time." Likewise, the record shows that The American Heritage Dictionary of the English Language (4th ed. 2000) defines "first" as "ranking above all others, as in importance or quality; foremost." Based on these definitions, we find that the words THE FIRST IN in applicant's slogan would be viewed primarily in their laudatory sense, connoting that applicant's goods are of first quality due to the superior technologies utilized in their design and manufacture.

As applicant notes, these dictionaries include other definitions of the word "first," but we find that the word as it appears in applicant's phrase and as applied to applicant's goods primarily has the meanings set forth above, i.e., it denotes the highest or best in quality. Purchasers are less likely to attribute to the word the

meaning applicant attributes to it, i.e., as denoting "first in time" or "first in a series." In this regard, we note that in the *In re Nett Designs Inc.* case, *supra*, the word "ultimate" in THE ULTIMATE BIKE RACK was found to be a laudatory term denoting superior or the best quality. This is so despite the fact that "ultimate" also carries the meaning of "being last in a series, process, or progression." The American Heritage Dictionary of the English Language (4th ed. 2000). Just as the word ULTIMATE in the phrase THE ULTIMATE BIKE RACK was found to be a laudatory term primarily connoting "highest quality" rather than "last in a series, process, or progression," we find that the primary significance to purchasers of the word FIRST in applicant's slogan THE FIRST IN REMOTE CONTROL TECHNOLOGIES would be its laudatory connotation, rather than the "first in a series" or "first in time" connotation.

Moreover, even if purchasers would view THE FIRST IN REMOTE CONTROL TECHNOLOGIES in the manner suggested by applicant, i.e., as meaning that applicant was the first or original developer of remote control technologies, or that applicant is on the cutting edge and is the first in the industry to develop new remote control technologies, the

slogan still would be viewed as laudatory and as mere puffery.

Applicant has made of record ten third-party registrations of marks which include the phrase FIRST IN, which were registered on the Principal Register without resort to a claim of acquired distinctiveness. The Trademark Examining Attorney has countered with ten third-party registrations of FIRST IN marks which the Office allowed to be registered only on the Supplemental Register or pursuant to a claim of acquired distinctiveness. We have considered these registrations, but it is settled that our decision must be based on our analysis of the facts before us in this case. *In re Nett Designs Inc., supra.*

For the reasons discussed above, we find that the slogan THE FIRST IN REMOTE CONTROL TECHNOLOGIES would be viewed by purchasers merely as applicant's claim that its remote controls are of first or superior quality because they utilize superior technologies in their design and manufacture. The slogan is laudatory and thus merely descriptive.

Decision: The refusal to register is affirmed.