

THIS OPINION IS
NOT PRECEDENT OF
THE TTAB

Mailed: January 19, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Greenwood, Inc.

Serial No. 78566061

Douglas J. McEvoy of Gifford, Krass, Groh, Sprinkle, Anderson for
Greenwood, Inc.

Alex Seong Keam, Trademark Examining Attorney, Law Office 114 (K.
Margaret Le, Managing Attorney).

Before Holtzman, Zervas and Kuhlke, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Greenwood, Inc. (applicant)
to register the mark ALUMABRONZE (in standard character format)
for the following goods, as amended:¹

Personalized engraved memorials, namely, bronze tomb plaques
in Class 6;

Personalized engraved memorials, namely, medallions in Class
14; and

¹ Application Serial No. 78566061, filed February 11, 2005, based on an
allegation of a bona fide intention to use the mark in commerce.

Serial No. 78566061

Personalized engraved memorials, namely, funerary urns in Class 20.

The trademark examining attorney has refused registration on the ground that the mark is merely descriptive of the goods under Section 2(e)(1) of the Trademark Act.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.²

We affirm the refusal.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). A mark does not have to describe every such attribute of the goods in order to be found merely descriptive; it is sufficient for the purpose if the mark describes a single significant attribute. See In re Patent & Trademark Services Inc., 49 USPQ2d 1537 (TTAB 1998); and In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term is used, and the possible significance that the term is

² The examining attorney's objection to the materials attached to applicant's brief as untimely is not well taken. The attachments are

Serial No. 78566061

likely to have to average purchasers as they encounter the goods or services in the marketplace. See *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986).

Applicant intends to use the mark ALUMABRONZE in connection with personalized engraved memorials consisting of bronze tomb plaques (Class 6), medallions (Class 14) and funerary urns (Class 20). The term ALUMABRONZE directly conveys information about a significant attribute of applicant's engraved memorials, namely the composition of or finish applied to the goods. The examining attorney has submitted pages from a number of websites showing that "alumabronze" is a metal alloy, that the alloy is used in making a variety of products, including both industrial and consumer goods, and that the term is commonly used by others to indicate that their products are made from or with this alloy. Excerpts of these web pages are shown below (emphasis added).

- * *www.plaquesandletters.com*
PLAQUES&LETTERS.com
Engraved Bronze & Aluminum Pricing Factors
Length x Width (in ") x \$2.00 for Bronze, \$1.00 for
Aluminum and **AlumaBronze** (*which appears bronze*).
[Italics in original.]
...

- * *www.specialtypetproducts.com*
This urn features a high resolution casting of your
pet's image (from your photograph), along with your
personalized text. The urn is hand-crafted from cast
aluminum then powder coated with a bronze finish.
...

simply duplicates of materials which were timely made of record prior to appeal.

Serial No. 78566061

Photographic **AlumaBronze** Urn

- * www.dogwalkforlife.pmboard.net
The Place For Pets
...
Memorialize and dedicate your effort to a special pet or person in your life by purchasing a 4"x 5" **alumabronze** medallion memorial, made by The Place 4 Pets.
...
- * www.mcfarlaneaviation.com
McFarlane
Aviation Products
...
...The Teledyne/Continental carburetor heat boxes are made from brazed steel and are used on many of the older light aircraft. Repair kit includes replacement butterfly shaft assembly with detent spring, bearings, bearing housing, This improved kit has solid **alumabronze** bearing for better vibration resistance and longer life.
- * www.clamptitertools.com
THE OFFICIAL CLAMPTITE WEBSITE
Clamp Anything...Any Size, Any Shape, Any Where
The Clamp Making Tool
...
Just under 6 inches in length the CLAMPTITE tool is about the size of a pencil and is precision machined from stainless steel and **alumabronze**.
- * www.gagosian.com [artists/Frank Stella]
[photograph of sculpture]
Wappinger Falls, 1995
Steel, **alumabronze** and aluminum. 81 x 159 x 114 inches
- * <http://...theforce.org>
Alumabronze
Category: Technology
Type: Materials
An alloy used in making door casings and other interior structures
- * www.sierranet.net
HMT HORN MACHINE TOOLS

Serial No. 78566061

...
SPECIFICATIONS/CAPACITY
Steel tubing YP to 40,000 PSI...
EQUIPPED WITH
...
Steel Slides With **Alumabronze** Wear Strips
...

It is clear from the evidence that the metal alloy "alumabronze" is used in making, among other goods, the very types of goods identified in the application, namely, engraved memorials such as bronze plaques (*plaquesandletters.com*), medallions (*dogwalkforlife.pmboard.net*) and urns (*specialtypetproducts.com*). While ALUMABRONZE appears to have certain protective qualities when applied to industrial goods (see, e.g., *mcfarlaneaviation.com*), the evidence shows that the metal also has certain decorative properties that would make it appealing to purchasers of engraved memorials. It creates a bronze-like finish on the products while being less expensive than solid bronze. See *plaquesandletters.com*, under "pricing factors" for plaques made with aluminum and alumabronze "which appears bronze." See also *specialtypetproducts.com*, describing urns that are "hand-crafted from cast aluminum then powder coated with a bronze finish."

Applicant does not dispute that ALUMABRONZE is a metal or that its goods are intended to be made from or with this metal. Instead, applicant argues that the evidence serves to show that

Serial No. 78566061

the mark is suggestive of applicant's goods. In particular, applicant states,

Each [website] references a different type of goods. These include clamping assemblies, door casing alloys,³ alloy wearstrips employed in rotary hydraulic tube bending machines, and bearings for aircraft mounting plates.

In this regard, applicant also points to a TESS printout of an abandoned application, Serial No. 73211508, for the mark ALUMABRONZE for "surface treatment of aluminum and other metals to provide decorative and protective coating thereon."⁴

Applicant argues, based on the evidence, that because the mark is "capable of being applied to many types of goods and services, additional to those in the present application" the mark is suggestive, reasoning that,

Applicant's unique use and scripting of the term...for its various memorial items is, by definition, a suggestive use in that it requires that additional ingredient of thought,

³ The printout from *theforce.org* provides a definition of "alumabronze" ("an alloy used in making door casings...") but it appears from the excerpt of record that this is a website with fantasy content (relating to "Star Wars" movies) and the listed definition must be viewed in that context. Therefore, while we do not give this evidence much weight as an official or a recognized definition of "alumabronze," since applicant has relied on this definition to show that the metal has this additional use, we will consider it for this purpose as well.

⁴ Applicant also argues, based on this abandoned application, that the Office "previously approved the same mark for publication" meaning, according to applicant, that applicant's mark should not be considered descriptive and should be entitled to register. First, an application is not evidence of anything except that it was filed on a certain date. It is certainly not evidence that the mark is not descriptive of the applied-for goods. In any event, we are not bound by a previous examining attorney's determination regarding descriptiveness. We must decide this case based on the record we have before us. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

imagination or perception which is required before a conclusion is reached as to the nature of the goods. This is in contrast to a situation in which all supposed descriptive uses of a name are applied to goods of a similar nature (not the case here).

The fact that "alumabronze" may not be used exclusively on the goods in applicant's field may be true, but it is not relevant. Merely because the metal is used in or on other goods, including various industrial goods, in addition to applicant's types of goods, in no way diminishes the descriptive meaning of ALUMABRONZE as applied to applicant's goods. If anything, the evidence may serve to show that ALUMABRONZE is descriptive of those other products as well.

Contrary to applicant's apparent contention, applicant's use of ALUMABRONZE on engraved memorials is not a "unique use."⁵ As noted earlier, others are using "alumabronze" in or on the very same types of products. However, even if applicant were the only source of engraved memorials made with ALUMABRONZE, the term would still be descriptive as applied to those goods.

There is no question that purchasers of applicant's personalized engraved memorials would, without any guesswork or the exercise of any imagination, immediately understand that applicant's goods are made of or finished with the metal

⁵ If by "unique use" applicant is referring to its asserted "scripting of the term," this assertion is not understood. This is an intent-to-use application and there is no evidence of use of the mark in the

Serial No. 78566061

"alumabronze." Thus, purchasers would perceive ALUMABRONZE as describing the composition or finish of the memorials, not as indicating a particular source of the goods. This is a descriptive term that competitors of applicant should be free to use in connection with their own sale of engraved memorials to inform purchasers about this feature or characteristic of the goods.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed.

record. Besides, applicant is seeking registration of the mark in standard character format without any particular type of script.