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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 MTS Products

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Serial No. 78921611

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Ben M. Hsia for MTS Products.

Jessica A. Powers, Trademark Examining Attorney, Law Office  
104 (Chris Doninger, Managing Attorney).

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Before Quinn, Hairston and Walters, Administrative  
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

MTS Products filed an application to register the mark  
IC POWER ("POWER" disclaimed) for a wide variety of  
computer hardware and accessories; and a wide variety of  
other electronic products, including audio equipment, video  
and digital cameras, phones, and televisions.<sup>1</sup>

The trademark examining attorney refused registration  
under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

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<sup>1</sup> Application Serial No. 78921611, filed July 1, 2006, alleging  
first use anywhere and first use in commerce in 2005.

§1052(e)(1), on the ground that applicant's mark, when used in connection with applicant's goods, is merely descriptive thereof.

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

The examining attorney maintains that the letters "IC" are an abbreviation for "integrated circuit." Accordingly, the examining attorney argues that the proposed mark, IC POWER, immediately describes an important feature of the goods, namely that they contain integrated circuit power sources. In support of the refusal, the examining attorney submitted dictionary evidence relating to "IC," "POWER" and "integrated circuit."<sup>2</sup> Also of record are excerpts of Internet articles, and a portion of the file history of applicant's Registration No. 3228340 of the mark IC POWER and design ("IC POWER" disclaimed) for goods identical to or closely related to the goods involved herein.

Although applicant agrees that the term "POWER" is merely descriptive of its goods, applicant argues that the mark as a whole is just suggestive. In this connection applicant contends that the letters "IC" have many

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<sup>2</sup> Pursuant to the examining attorney's request, we take judicial notice of the dictionary definitions set forth in her appeal brief. See *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

different meanings and, therefore, the mark is a double entendre. In urging reversal of the refusal applicant introduced copies of twenty-five third-party registrations of marks comprising, in whole or in part, the letters "IC" for goods in International Class 9. In each instance, there is no disclaimer of the letters.

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 Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007); and *In re Abcor Development*, 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 goods or services in order to be considered merely descriptive; rather, it is sufficient 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). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services,

and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; contrary to the gist of a portion of applicant's argument, that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, 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.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of applicant's goods or services. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

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, e.g., In*

re *Tower Tech Inc.*, supra [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; and *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs].

The dictionary evidence shows that the letters "IC" are an abbreviation for "integrated circuit." See, e.g., The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000). The other dictionary listings show the same information. The term "power", already disclaimed by applicant, is defined as "the energy or motive force by which a physical system or machine is operated; electrical or mechanical energy; the product of applied potential difference and current in a direct-current circuit." Id.

The record further includes a listing for "integrated circuit" appearing in Wikipedia:

A monolithic integrated circuit (also known as IC, microcircuit, microchip, silicon chip, or chip) is a miniaturized electronic circuit (consisting mainly of semiconductor devices, as well as passive components) that has been manufactured in the surface of a thin substrate of semiconductor material...there are two main advantages of ICs over discrete circuits...performance is high since the components switch quickly and consume little power...integrated circuits have become ubiquitous. Computers, cellular phones, and other

digital appliances are now inextricable parts of the structure of modern societies. That is, modern computing, communications, manufacturing and transport systems, including the Internet, all depend on the existence of integrated circuits.

The examining attorney also introduced excerpts of articles retrieved from the Internet showing descriptive uses of "IC" or "IC power":

Minimize IC power without sacrificing performance  
This paper outlines the various techniques available for designing low-power chips....  
(www.eetimes.com, 7/15/2004)

IC Power Control Experts Capture \$15 Million in Second Round  
The funds will be used to continue the development and commercialization of a new power management solution for the growing "un-plugged" electronics market... "With our unrivaled backing, we can continue to grow our high-caliber engineering team as we get ready to unleash a revolution in the design of ICs for power management."  
(Market Wire, September 2003)

Types of Power Supply ICs  
Personal computers, AV equipment, and other common electronic devices incorporate a number of electronic components in order to realize the function of those devices. "Power supply" is the name given to the functional block that supplies the voltage or current required to operate the electronic components... The power supply IC in this power supply block is used to convert the rectifying circuit output to the required stabilized DC

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voltage...This is where a power supply  
IC of NEC Electronics can be used  
effectively.  
(www.necel.com)

Based on the meanings of the individual terms and the other evidence of record, we find that the combination IC POWER also is as merely descriptive as the individual terms. When the proposed mark is viewed in the context of applicant's goods, the term immediately informs prospective customers that applicant's electronic goods utilize integrated circuit ("IC") power supplies. In fact, applicant concedes that the Internet evidence "does suggest that IC and POWER are commonly used to describe integrated circuit power sources." (Brief, p. 11). Applicant's concession is further borne out by its own Registration No. 3228340, issued April 10, 2007, of the mark shown below



for goods that are largely identical (or closely related) to the goods involved in the present application. In the registration, applicant disclaimed the exclusive right to use "ic POWER" apart from the mark. Applicant stated in the underlying application that "ic appearing in the mark

means or signifies integrated circuits [in] the relevant trade or industry or as applied to the goods/services listed in the application.”<sup>3</sup>

Applicant’s argument that the letters “IC” have many meanings other than “integrated circuit” and, thus, the mark is a double entendre is ill founded. Firstly, mere descriptiveness is determined in relation to the goods for which registration is sought. Accordingly, as indicated earlier, that a term may have a different meaning(s) in a different context is not controlling. See *In re Chopper Industries*, 222 USPQ 258 (TTAB 1984). The fact that the letters “IC” also act as an abbreviation for “internal combustion (engine),” “Iceland” and “intracellular” is irrelevant in the context of applicant’s particular goods. Secondly, in each of the double entendre cases cited by applicant, the secondary interpretations that make each expression a double entendre consist of an association that the public would make quite readily, and the new

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<sup>3</sup> Although we have considered applicant’s prior disclaimer and statement, they are by no means dispositive of this appeal. So as to be clear, we have considered the entire evidentiary record in reaching our decision. Further, applicant misses the mark in arguing that the prior disclaimer does not prejudice its rights thereafter in the disclaimed matter. As spelled out in Section 6(b) of the Trademark Act, 15 U.S.C. §1056(b), there is no prejudice *if* the disclaimed matter has become distinctive of applicant’s goods. In the present case, applicant has not claimed acquired distinctiveness under Section 2(f). See TMEP §1213.11 (5<sup>th</sup> ed. 2007).

combination creates another meaning that renders the combination registrable as a mark. As indicated above, applicant's theory of a double entendre based on the multiple meanings of "IC" is off base. Applicant has offered no other theories for its argument, and we find in any event that the instant mark is not analogous to the marks involved in the cases cited by applicant.

In finding that IC POWER is merely descriptive, we have considered the evidence of third-party registrations of IC marks, wherein there is no disclaimer of the letters "IC," for goods listed in Class 9. While uniform treatment under the Trademark Act is an administrative goal, our task in this appeal is to determine, based on the record before us, whether IC POWER is merely descriptive (determining in the process, of course, whether "IC" is descriptive). The existence of these registrations does not compel a different result herein. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the board or this court."]. As often stated, each case must stand on its own record. The present record amply supports our conclusion in this appeal.

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We conclude that applicant's proposed mark IC POWER, as applied to applicant's goods, is merely descriptive thereof under Section 2(e)(1). The mark describes a significant feature or characteristic of applicant's electronic goods, namely that they contain an integrated circuit power supply.

**Decision:** The refusal to register is affirmed.