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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Salzgitter Flachstahl GmbH

Serial No. 79007387

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(K. Margaret Le, Managing Attorney).

Before Drost, Cataldo, and Mermelstein, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On July 30, 2004, applicant (Salzgitter Flachstahl GmbH) filed an application under the provision of Section 66(a) of the Trademark Act (15 U.S.C. § 1141f) to register the mark HSD, in standard character form, on the Principal Register for goods that were ultimately identified as: "Sheets and plates of metal for further manufacture into land vehicle body parts, namely steel sheets, steel sheets coated on one or both sides with zinc, and steel sheets coated on one or both sides with plastic" in Class 6.

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Applicant's International Registration No. 0839098 issued July 30, 2004. The International Registration is based on an underlying German application (No. 304 06 650.8/06) filed February 2, 2004, which issued on April 8 2004, as German Registration No. 304 06 650.8/06. As a result, applicant is entitled to a priority date of February 2, 2004.

The examining attorney has now refused to register applicant's mark on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act (15 U.S.C. § 1052(e)(1)) for these goods. The examining attorney argues that HSD is an acronym for "High Strength Deformed" for steel and "the proposed mark immediately tells the customer that the goods use high strength deformed or are high strength deformed steel." Brief at unnumbered p. 5. To support his argument, the examining attorney relies on the following evidence.

First, the *Acronym Finder* lists "High Strength Deformed (steel)" as one of the acronym definitions of HSD.¹

Next, the examining attorney submitted an html version of the file entitled VENETO INDIA² that contained numerous

¹ Other definitions include high school diploma, high speed data, high speed diesel, high speed drill, heat sensing device, and hot spot detector.

² http://www.ro.camcom.it/upload/dl/internazionalizzazione/India_business_meetings_programmaeportfolio.pdf.

listings including the following one that is primarily in Italian:

11. *Ditta Purvi Bharat Steels Limited*
Addeti 150
Anno Fond 1997
Fatturato annuo 3.500.000 EUR
Produzione: barre in acciaio
Production: High Strength Deform (H.S.D.), steel bars
Area di interesse/cooperazione richiesta: offerta di capacita produttiva per accordi di subformitura.
Richiesta di know-how assistenza tecnica

Inasmuch as this listing is not primarily in English and there is no translation of the Italian words in the listing, this article is entitled to little weight.

The examining attorney's third piece of evidence is entitled *ISO-9000 Certified SSI/Ancillary Units reimbursed under the Incentive Scheme of the Office of DC(SSI), Ministry of SSI.*³ The 56th listing is the only relevant entry:

56. Barnala Steel Industries Ltd.,
Vill. Vehlana, Meerut Road Muzaffarnagar -2511003 (UP)
Muzaffarnagar UTTAR PRADESH
Certifying Agency : IRQS ISO 9002
Scope : Manufacture & supply of high strength deformed (HSD) steel bars and structural steel
Sanction Letter Date : 18-10-2000

With his final Office action, the examining attorney submitted the following information (except for the ellipsis, the language and punctuation are set out as they

³ www.smallindustryindia.com/iso/isoremb.jsp?var=B.

appear in the original) about M/S Shyam Steel Industries Ltd.⁴

High Strength Deformed Steel Bars is manufactured at our state of the art plants are superior to other conventional Bars available in the market. Our bars bear their origins to raw materials (Billets & Slabs) procured from Steel Authority of India Ltd. Our bars are manufactured in our bars & rod mill which is technologically one of the advanced in India. Strict quality control procedures are applied during all stages of production.

The resultant steel is of superior quality and utmost precision with mechanical qualities, which are consistent and predictable. Unique In-Process quality control ensures excellent dimensional tolerance & surface quality free from scratches & laps. We are also licensed with BIS for IS: 1786, the relevant specification for HSD steel Bars... Our HSD Bars possess a combination of strength and ductility that is far in excess of minimum limits specified in the standard IS: 1786. The yield strength values of our HSD Steel Bars are much higher than the specified value of 415 N/MM².

Other evidence consists of an entry for Bhagwandas Metals Limited that explains that the company manufactures "hi-strength Deformed Steel Bars (also called Cold Twisted Deformed Bars) conforming to IS specifications... This urge led to the introduction of HSD Bars which brought about a revolution in the re-inforced concrete construction industry." www.metal-bml.com/product.html. See also <http://www.123india.com/business-and-economy/companies/>

⁴ <http://steelroll.indianyellowpages.com/hsd-steel-bars-1001112.htm>.

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iron-and-steel/ ("Kamdhenu Ispat Ltd. - HSD (High Strength Deformed) steel bars for bridges, railways, etc."); <http://members.tripod.com/str n tips/eq/eq4.htm> (*Earthquake Resistant Construction* - "HSD steel were used for vertical reinforcement").

Another article entitled *Non Engineered Reinforced Concrete Buildings* contains the following information: "Minimum overlap in bars: 45 times the diameter of the bar for plain mild steel and 60 times the diameter for high strength deformed bar. The overlapping portion should preferably be wound with binding wire" and subsequently the listing of "HSD" under a table of "Recommended limits on steel area ratio in beam." www.nicee.org. Finally, a form apparently from an Indian railroad company (www.westcentralrailway.com) specifies as part of its requirements that "all steel bars used in the work shall be H.S.D. bars/TOR steel confirm [sic] to the latest version of IG-1700-1905."

In response, applicant argues that:

The Examiner has shown only that HSD is used for steel bars by a certain manufacturer in India. Of the 43 attachments the Examiner produced to support his contention as to HSD being descriptive of steel products in general, only attachment # 3 2-1 and # 7 4 by a certain manufacturer in India show HSD in relation steel bars. There are no further references evidencing that steel products in general are referred to as HSD.

Applicant submits that applicant's goods are not steel bars but steel sheets for the manufacture of body parts for vehicles, as well as coated steel sheets and plates. Accordingly, HSD is not unequivocally associated with steel as such.

Reply Brief at 2.⁵

For a mark to be merely descriptive, it must immediately convey "knowledge of a quality, feature, function, or characteristics of the goods or services." *In re Bayer Aktiengesellschaft*, ___ F.3d ____, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). To be "merely descriptive," a term need only describe a single significant quality or property of the goods. *Gyulay*, 3 USPQ2d at 1009 (Fed. Cir. 1987); *Meehanite Metal Corp. v. International Nickel Co.*, 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

⁵ The examining attorney has objected to, and we sustain the objection to, the new evidence that applicant submitted with its appeal brief.

In this case, the question is whether the initials HSD are merely descriptive when used on applicant's steel sheets. We point out that applicant is not seeking registration for a word but rather initials. The Court of Customs and Patent Appeals, one of the predecessors of our principal reviewing court, has discussed the question of whether letters that correspond to the initial letters of a descriptive combination of words are similarly descriptive. *Modern Optics, Inc. v. Univis Lens Co.*, 234 F.2d 504, 110 USPQ 293, 295 (CCPA 1956) (citations omitted):

The letters "CV" are, of course, the initial letters of the words "continuous vision," and it is possible for initial letters to become so associated with descriptive words as to become descriptive themselves. It does not follow, however, that all initials or combinations of descriptive words are ipso facto unregistrable. While each case must be determined on the basis of the particular facts involved, it would seem that, as a general rule, initials cannot be considered descriptive unless they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith.

See also *Avtex Fibers Inc. v. Gentex Corporation*, 223 USPQ 625, 626 (TTAB 1984).

In order to find that applicant's term HSD is merely descriptive, we must find that the underlying term "High Strength Deformed (steel) is at least merely descriptive of applicant's goods and that initials HSD are "generally understood as representing descriptive words and are

substantially synonymous with those words. Inasmuch as the evidence does not permit us to conclude that either "High Strength Deformed (steel)" is merely a descriptive term or, even if it were, that HSD is substantially synonymous with that term, we reverse the refusal in this case.

Ultimately, the issue here comes down to what conclusion the evidence permits us to draw. The examining attorney's evidence consists of essentially two types. We begin, perhaps not at the beginning, but by considering the Acronym Finder and the Free Dictionary by Farlex entries, which do list "High Strength Deformed (steel)" as one of the definitions of HSD. Certainly, this is some evidence to show that initials are merely descriptive. However, it is not conclusive, and we must look for other evidence that shows that the initials are commonly understood as representing descriptive terms. See, e.g., *Capital Project Management Inc. v. IMDISI Inc.*, 70 USPQ2d 1172, 1182 (TTAB 2003) ("Based on the extensive record in this case, we conclude that the initialism 'TIA' has become so generally understood as representing the generic term 'time impact analysis' as to be accepted as substantially synonymous therewith").

Therefore, we look at the second type of evidence that the examining attorney has presented. This evidence

consists of Internet evidence. As we already pointed out, one submission is almost entirely in Italian without an English translation, although several English words appear in the article. It is entitled to little weight. See *In re International Business Machines Corp.*, 81 USPQ2d 1677, 1681 n.7 (TTAB 2006) (emphasis added) ("In this case involving computer technology, it is reasonable to consider a relevant article regarding computer hardware from an Internet web site, *in English* in another country").

The other articles are in English but they seem primarily to involve uses in India. The board has relaxed our earlier rulings that limited the use of foreign publications.

[I]t is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium. Further, the Internet is a resource that is widely available to these same professionals and to the general public in the United States. Particularly in the case before us, involving sophisticated medical technology, it is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country, Great Britain in this case, because that research is likely to be of interest worldwide regardless of its country of origin.

In re Remacle, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002).

The Federal Circuit has recently endorsed and encouraged the use of these foreign Internet publications.

Bayer, 82 USPQ2d at 1835 (“Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark”). Therefore, we will consider whether these foreign, apparently Indian, articles help the examining attorney meet his burden of showing that the mark HSD is merely descriptive for applicant’s goods.

Ultimately, when there is a question of descriptiveness, we must determine whether consumers in the United States would consider the mark to be descriptive. Id. In this case, the few articles of record, at the very least, leave us with doubts that applicant’s mark is merely descriptive, at least with respect to consumers in the United States. Since we agree with applicant that the purchasers of its steel would be sophisticated purchasers, these would be the type of purchasers that would be “professionals ... [who] are likely to utilize all available resources, regardless of country of origin or medium.”

Remacle, 66 USPQ2d at 1224 n.5.⁶ However, when we look at

⁶ We cannot accept the examining attorney’s argument that we “must presume that the goods are sold in small quantities at small cost to ‘mom and pop’ type purchasers such as car repair shops.” Brief at unnumbered p.6. There is no evidence that “mom and pop” shops purchase “sheets and plates of metal for further manufacture into land vehicle body parts.”

the few foreign articles of record, it is not clear if these purchasers of steel sheets and plates in the United States would be interested or place great significance on (1) an article in which the term and the initials are not used together; (2) the use of the term in Clause 120 of an Indian Railway document; (3) a single entry of "Iron and Steel" sites in India; (4) the 56th entry in a list of "Certified SSI/Ancillary Units reimbursed under the Incentive Scheme of Office of DC(SSI), Ministry of SSI" in India; and (5) an isolated reference to "HSD steel" in an article entitled "Earthquake Resistant Construction." All these entries are apparently from India. These cryptic references hardly show that the initials are merely descriptive in the United States. Finally, the information about Bhagwandas Metals and Shyam Steel does not convince us that even the words "High Strength Deformed" are merely descriptive, much less that the initials HSD are "generally understood as representing descriptive words" in the United States.

We are constrained to base our decision on the limited evidence we have before us in this case. One final consideration in descriptiveness cases is that we must resolve any doubts that we may have about whether applicant's mark is merely descriptive in applicant's

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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. In this case, we certainly do have doubts whether the term HSD is merely descriptive for applicant's goods in the United States.

Decision: We reverse the refusal to register applicant's mark on the ground that it is merely descriptive for applicant's goods.