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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Dayco Products, Inc.
v.
Aquapore Moisture Systems, Inc.

Opposition No. 99,974
to application Serial No. 74/557,819
filed on August4, 1994

Reuben Wolk for Dayco Products, Inc.

Marvin Jacobs of Koppel & Jacobs for Aquapore Moisture Systems, Inc.

Before Cissel, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

Applicant filed the above-referenced application to register the mark "QUICK CONNECT" on the Principal Register for "Non-metal couplings for watering hose ends," in Class 17. The basis for the application was applicant's assertion that it possessed a bona fide intention to use the mark on these goods in commerce.

Following publication of the mark in the Official Gazette, a timely Notice of Opposition was filed by Dayco Products, Inc. on December 4, 1995. As grounds for

opposition, opposer alleged that the term sought to be registered is unregistrable because it is “a generic and common term for the product…” specified in the application. Opposer stated that it is also a variant or abbreviation of other terms, such as “quick connector” and “quick connected,” which have been extensively used by opposer and by others in the trade.

Applicant’s answer to the Notice of Opposition denied the essential allegations of opposer.

A trial was conducted in accordance with the Trademark Rules of Practice, but neither party took testimony.

Opposer bases its case on materials it submitted with two notices of reliance. The first of these was filed under Trademark Rule 2.122(d) on February 10, 1997. It covered twenty-two United States patents, five of which had been assigned to opposer. These patents show the terms “quick connect,” “quick connect-disconnect,” “quick connector,” and “quick connect connector” used in reference to various couplings and related products.

Typical examples are as follows: Patent No. 4,749,214 is titled “QUICK CONNECT FLUID COUPLING.” The abstract describes the invention as “(a) quick connect fluid coupling, and more particularly, a quick connect fluid coupling having a minimum number of parts, which can be quickly assembled…" Patent No. 4,813,716 is for a “QUICK

CONNECT END FITTING." The invention is further described as relating to "end fittings which may be quickly and easily attached to and detached from the end of a tube or hose, with minimum effort." This device is also referred to as a "quick connect/disconnect end fitting." Patent No. 4,819,908 is for a "QUICK CONNECT FLUID COUPLING." Patent No. 4,915,136 identifies the invention as "a quick connect assembly." Patent No. 4,936,544 is for a "SWIVELABLE QUICK CONNECTOR." The abstract describes the invention as a "swivelable quick connect assembly." Patent No. 5,046,763 is for a "QUICK CONNECT HOSE COUPLING ASSEMBLY." Patent No. 5,044,401 is for an "INTEGRAL VALVE AND SEAL FOR A QUICK CONNECT COUPLING." The text of the patent states that "(t)he present invention relates generally to quick connect and disconnect fluid couplings… Quick connect couplings are particularly useful and well-known in the fluid handling art. For example, quick connect couplings are commonly used to join two or more hose sections together in a fluid-tight manner… the need has long existed for a simple, inexpensive and reusable valve mechanism for quick connect couplings." This patent goes on to use the term "quick connect coupling" nineteen more times in reference to the invention.

The second Notice of Reliance, filed under Trademark Rule 2.122(e) on the same day as the opposer's first notice, was an attempt to introduce Exhibits A though I. All but

the last of these exhibits are copies of pages from various catalogs and price lists of manufacturers of couplings. Some are from opposer and some are from other manufacturers. Some of these materials bear dates and others do not. They refer to a “Quick Connect” coupling, “quick connects,” “Quick Connector” fittings, “quick connectors,” “KWIK-CONNECT COUPLINGS,” and “quick disconnect” couplers.

The last of these exhibits, Exhibit I, is a group of copies of pages from the 1995 edition of the Thomas Register. They show use of the term “quick connect” in reference to hose couplings. Under the heading “Couplings, hose,” there are multiple references to “Quick Disconnect Connectors,” and several of the listings refer to “quick connectors” as well. For example, Sudy Corporation’s “Huron Quick Connectors. Metal or Plastic. Standard or Custom-Designed”; “Twenty First Century/Hydra Shield…(Hydrant Quick Connect)”; “Rogan and Stanley…hoses, couplings, quick connect couplings and fittings…”;

In fact, there is a separate heading in the Thomas Register for this type of hose coupling. The category is designated “COUPLINGS, QUICK CONNECT, PERMANENT.” Under this heading is a full-page advertisement for “Huron® Quick Connectors.” Under the “Quick Disconnect Coupling” heading is an ad for Production Control Units, Inc. couplings entitled “Quick connect couplings for all fluids.”

A large number of the advertisements under both the "Quick Connect" and Quick Disconnect" hose coupling headings refer to "quick connective" couplings or to "quick connected." One advises customers to "Get Quick Connected with the best. World leaders in quick coupling technology."

A Notice of Reliance was filed by applicant on April 22, 1997. It covered sixteen third-party United States trademark registrations for marks which are combinations of the words "QUICK," or variations of its phonetic equivalent, and "CONNECT" or "CONNECTIONS." One of these registrations[1] specifies the goods as "couplings or hose adaptors for use on heat exchangers adapted to cool torque converter fluid, engine oil, power steering fluid and other fluid asociated with hydraulic drives of land vehicles," in Class 12. The other registrations list goods or services which appear to be unrelated to quick connect hose couplings.

An oral hearing before the Board was not requested, but both parties filed briefs presenting their arguments. Based on consideration of the briefs and the record before us in this opposition proceeding, we hold that although some of the evidence opposer attempted to make of record cannot be considered, opposer has nonetheless established that the term applicant seeks to register is unregistrable for the

[1] Reg. No. 1,195,976, issued to Hayden, Inc. on May 18, 1982.

goods specified in the application because it is a generic term for these kinds of hose couplings.

In its brief, applicant objects to some of the evidence opposer listed in its notices of reliance.

The first objection is that the copies of the patents should have been introduced under Rule 2.122(e) of the Trademark Rules of Practice, rather than Rule 2.122(d), which opposer cited in the Notice of Reliance. Applicant is, of course, correct in noting that the rule cited by opposer applies to trademark registrations, rather than to patents, and that the appropriate rule under which patents may be made of record is Rule 2.122(e). The mistaken reference to the wrong rule is not fatal to the notice of reliance, however. This evidence is admissible under paragraph (e) of the cited rule. We have considered this evidence as if it had been introduced with reference to the proper paragraph.

The second objection applicant raises in its brief is to the materials submitted with the second notice of reliance. Applicant argues that exhibits C, F, G and H are undated, whereas paragraph (e) of Rule 2.122 requires that both the source and the date of the publication be provided. Applicant argues that these exhibits cannot be authenticated without the dates of their publication, and that therefore they are inadmissible. Applicant goes on to challenge the

admissibility of Exhibits A, B, D, F and H on the ground that catalogs, price listings and other printed materials may not be admitted by notice of reliance, but rather must be made of record in connection with testimony or in some other way consistent with the rules.

Applicant's objections are well taken. Not only are some of these items undated, which falls short of the requirement of the rule, but none of them is the type of publication which may be introduced by means of a notice of reliance. These are not "printed publications, such as books or periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under the issue in [this] proceeding," as Rule 2.122(e) requires. As applicant points out, they are the kinds of documentary exhibits which must be introduced in connection with testimony in order to establish their authenticity. Andrea Radio Corporation v. Premium Import Co., Inc., 191 USPQ 232(TTAB 1976). Accordingly, we have not considered opposer's Exhibits A through H.

Exhibit I, however, the copies from the Thomas Register, are not the subject of applicant's objection, and this exhibit is properly of record in any event because it is the type of evidence described in the rule as appropriate for introduction by notice of reliance.

The evidence of record clearly establishes that the term sought to be registered would be understood by the relevant purchasing public to refer to the category or class of hose coupling known and referred to as “quick connect.”

Determining whether a term is generic, and hence unregistrable under any circumstances, requires two inquiries. First, the genus of the goods in question must be determined. Second, we must decide if the term sought to be registered is understood by the relevant purchasing public as primarily referring to that genus of goods. H. Marvin Ginn Corp. v. International Assn. Of Fore Chiefs, 228 USPQ 528(Fed. Cir. 1986). The term sought to be registered in the case at hand, “QUICK CONNECT,” when used in connection with applicant’s couplings for hoses, is generic because it would be perceived as being a nonproprietary name of a genus or category into which the goods fall, i.e., “quick connect” hose couplings.

Although “QUICK CONNECT” is not a nominative term, i.e., the common or apt name for the products themselves, as “quick connect couplings” would be, the term sought to be registered is a generic adjective, and such terms have been denied registration by the Office just as if they were generic nouns. See In re Pennzoil Products Co., 20 USPQ2d 1753(TTAB 1991); In re Reckitt & Colman, North America Inc., 18 USPQ2d 1389(TTAB 1991); A. J. Canfield Co. v. Honickman,

et al., 1 USPQ2d 1364(3rd Cir. 1986); In re Northern Aluminum Products, Inc., 227 USPQ 961(Fed. Cir. 1985); In re Sun Oil Company, 165 USPQ 718(CCPA 1970); and In re Helena Rubinstein, Inc., 161 USPQ 606(CCPA 1970).

Applicant's contention that the third-party registrations it made of record mandate registration of applicant's mark is not well taken, nor is the argument that the opposition cannot be sustained without testimony from at least one witness stating that usage in the marketplace has reduced "QUICK CONNECT" to a generic term.

As to the first point, the third-party registrations do not defeat opposer's claim that the term is recognized as the generic name for a category or type of hose coupling. Of the sixteen registrations, all but one are for goods and services totally unrelated to couplings for hoses. This list includes: thermal time delay relays; an accessory for a camera; computer programs; electrical contacts and printed circuit boards; furniture; telecommunications services; banking services; a clutch brake for land vehicles; heart rate monitor electrodes; computer dating services and travel agency services. That the term in question (or variations on it) is distinctive for these products and therefore has been registered for them has no bearing on the issue of whether it is generic for the kind of hose couplings specified in the application.

The closest the third-party registrations get to applicant's goods is the registration of "QUICK CONNECT" for "couplings or hose adaptors for use on heat exchangers adapted to cool torque converter fluid, engine oil, power steering fluid and other fluid associated with hydraulic drives of land vehicles."[2] That registration is on the Supplemental Register, which is an admission by that registrant that the term is merely descriptive as applied to those goods. In re Consolidated Foods Corp., 200 USPQ477(TTAB 1978). We are not privy, however, to the record upon which the Examining Attorney in that case based the conclusion that the term was only descriptive, and not generic. In any event, the Board is not bound by previous decisions of Examining Attorneys in applications which are not before us, and we would not be required to adopt whatever reasoning led to registration in that case, especially if it appeared to be erroneous.

Applicant's argument that opposer's proof is somehow deficient because it does not include "direct testimony of consumers, consumer surveys, dictionary listings, as well as newspapers and other publications" is not well taken. There is no authority cited for this assertion. The admissible evidence opposer properly made of record, including the patent excerpts and the copies from the Thomas Register,

[2] Reg. No. 1,195,976, issued to Hayden, Inc. on My 18, 1982;

clearly establish the genericness of “QUICK CONNECT” as applied to couplings for watering hose. Surveys or direct testimony are simply not required.

Accordingly, the opposition is sustained and registration to applicant is refused.

R. F. Cissel

E. W. Hanak

P. T. Hairston
Administrative Trademark Judges
Trademark Trial & Appeal Board

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affidavit under Section 8 received.