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PRECEDENT OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Liberty Hardware Mfg. Corp.

Serial No. 77075756

Edgar A. Zarins of Masco Corporation for Liberty Hardware Mfg. Corp.

Marcie R. Frum Milone, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Seeherman, Quinn and Bucher, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Liberty Hardware Mfg. Corp. has appealed from the final refusal of the trademark examining attorney to register PALLADIUM, in standard character format, as a trademark for "metal pulls and knobs for cabinetry" in Class 6 and "bath accessories, namely towel bars, towel rings, toilet tissue holders, and toothbrushbtumbler

holders" in Class 20.¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of the goods, in that it describes the color of the goods.²

Applicant and the examining attorney filed appeal briefs. Applicant did not submit a reply brief.

We affirm the refusal.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(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 Abcor Development Corp., 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 to be merely descriptive; rather, it is

¹ Application Serial No. 77075756, filed January 4, 2007, based on Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b) (intent-to-use).

² Registration was initially refused pursuant to Section 2(d) on the ground that applicant's mark was likely to cause confusion with three registered marks, and pursuant to Section 2(e)(1) on the ground that the mark was deceptively misdescriptive. The examining attorney withdrew these refusals after considering applicant's arguments and its amendment to delete one of the classes of goods.

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); 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; that a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The examining attorney has submitted evidence that shows "palladium" is a color. In particular, an Internet advertisement at Technical-Gear.com states, for Costa del Mar sunglasses, "These sleek, frameless metals feature spring hinges and are available in our new Satin palladium color." This website also lists, under the heading "frame color," "palladium frame" and "gunmetal frame." Webpages from CarCareAid.com list models of Porsche cars; the first model for the 911 Carrera is in "Palladium color." A listing on Ebay, <http://cgi.ebay.com>, is headed "Hugo Boss 0020/S Sunglasses @New@ Palladium Color," while another

listing for the S.T. Dupont James Bond 007 Limited Edition Fountain Pen states that one of the photos shows it in "palladium color." A review of the Lamy Studio Palladium fountain pen states that "The pen is a brushed palladium color and basically looks like it is made of aluminum." www.fountainpennetwork.com. Another website says, "Sea Gull Lighting 47251-824 Two-Light Highlands Wall Fixture Dusted Ivory Glass Palladium Color." <http://electric-supplieson-line.stores.yahoo.net>. Many of these webpages show the item as being in a silver-like color. The use of "palladium" as the name of a color appears to be derived from the metal "palladium," a "lustrous silver-white metal of the platinum group used as a catalyst, especially in electrical contacts and in alloys."³

The evidence of record shows that the word "palladium" describes a color, and that this color is used for many different types of goods. As a result, consumers of the specific goods identified in applicant's application, metal pulls and knobs for cabinetry, and bath accessories, will immediately understand that PALLADIUM describes a characteristic of the goods, namely, the color. As the

³ See definition quoted in "Palladium, Metal of the 21st Century," www.stillwaterpalladium.com, made of record with the Office action mailed May 4, 2007.

examining attorney points out, as depicted on applicant's website its goods do, in fact, have a silvery color. We note applicant's argument that most consumers would not even know that palladium is a metal, let alone be able to identify the color of this metal. However, whether or not consumers will know the color of the metal "palladium" is not the point. The evidence shows that the term "palladium" is a recognized term used to describe the color of goods, and it is this association, rather than whether consumers would know the derivation of the name of the color, that is relevant.

Applicant has also argued that it chose the mark because of the association with historic theaters in London and the United States called "Palladium." Applicant submitted an article on the "London Palladium" taken from Wikipedia which states that it is a 2,286 seat West End theatre. Applicant also submitted webpages for a "Palladium Ballroom" located in Dallas, Texas, "Palladium" in Worcester, MA, and "The Palladium at St. Petersburg College." Applicant claims that this evidence shows that there are associations with the word PALLADIUM other than that of a color, and therefore the mark cannot be merely descriptive (the emphasis is applicant's). We are not persuaded by this argument. Applicant appears to believe

that if PALLADIUM has meanings or associations other than that of a color, then PALLADIUM cannot be merely or only descriptive. However, as stated above, the fact that a term may have other meanings in different contexts is not controlling. Nothing in the record before us demonstrates that consumers would associate pulls and knobs for cabinetry, or bath accessories, with theaters, nor do we understand why applicant's attempt to associate its goods with the trademarks or service marks of others should be a basis to find that the mark does not describe the color of applicant's goods.⁴

In conclusion, because the evidence of record demonstrates that PALLADIUM is the name of a color, and that this color can be used (and, as shown on applicant's website, is used) for the goods identified in applicant's application, the mark immediately and directly conveys information about a significant characteristic of applicant's goods, namely, that their color is palladium.

Decision: The refusal of registration is affirmed.

⁴ Applicant also submitted the webpage for Palladium Books® Online.