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Mailed: 5/31/11

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kinetic Energy Corporation

Serial No. 77707733

John J. Dresch of Dresch IP Law for Kinetic Energy Corporation.

Kaelie Kung, Trademark Examining Attorney, Law Office 103
(Michael Hamilton, Managing Attorney).

Before Quinn, Bucher and Wolfson, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Kinetic Energy Corporation filed, on April 6, 2009, an intent-to-use application to register the mark MOTIONPOWER (in standard characters) for

AC generators; electric generators; electricity generators; generators of electricity (in International Class 7); and

energy recycling services, namely, capturing and conversion of wasted energy into electricity and useful steam; generation of electricity; generation of energy; generation of power; generation of power through operation of power generation equipment

and facilities; leasing of energy
generating equipment (in International
Class 40).

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

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

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

Applicant argues that its mark is only suggestive
because no direct information about the nature of the goods
and/or services is given to the consumer. Applicant claims
that each of the words comprising its mark, "motion" and
"power," has a variety of meanings, and that a multi-step
reasoning process is required to discern any quality or
characteristic of the goods and/or services. Applicant
argues that the power generated by a moving vehicle would
be described by terms such as "vehicle power," "car power,"
or "truck power." Applicant also asserts that others in
the industry neither use the term "motion power" nor have a
competitive need to do so. The fact that others may use
the term "kinetic energy power" is not probative in showing
the mere descriptiveness of the applied-for term
MOTIONPOWER. In support of its position applicant

introduced excerpts of its website, as well as third-party websites. Applicant also provided narrative information about its pending patent applications covering the goods identified herein, and dictionary definitions.

The examining attorney maintains that MOTIONPOWER merely describes a characteristic or feature of the goods and/or services, namely that "applicant's goods utilize MOTION as a source to generate POWER and applicant's services capture and convert MOTION-generated POWER into electricity and lease goods capable of such capture and conversion." (Brief, unnumbered p. 4). The examining attorney points to the evidence, concluding that the term "motion power" is equivalent to "kinetic power" or "kinetic energy power," terms that are commonly used in connection with goods that generate energy from movement; that is, the goods utilize motion as a source to generate power. In the words of the examining attorney, "[t]he moving vehicle is in 'motion' while generating 'power'; therefore, the power generated by the vehicle is 'motion power,' as power generated by the movement of wind by windmills is 'wind power,' power generated by the sun's solar rays is 'solar power,' power generated by water movement is 'hydro power,' etc." (Brief, unnumbered p. 11). In support of the refusal, the examining attorney submitted dictionary

definitions of the words "motion" and "power," as well as the term "kinetic energy"; excerpts from printed publications; applicant's website and third-party websites; and applicant's press releases.

A mark 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 (TTAB 2007); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark 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 mark 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 mark 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 mark would have to the average purchaser of the goods or services because of

the manner of its use. *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).

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 Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM is merely descriptive of computer game software); *In re Tower Tech Inc.*, 64 USPQ2d at 1317 (SMARTTOWER is merely descriptive of commercial and industrial cooling towers); and *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS is merely descriptive of computer programs for use in development and deployment of application programs).

The term "motion" means "the act or process of changing position or place; active operation; the ability or power to move." (www.education.yahoo.com).

The term "power" is defined as "a source or means of supplying energy; *especially*: Electricity; motive power." (www.merriam-webster.com). The term also is defined as "the energy or motive force by which a physical system or machine is operated: *turbines turned by steam power; a sailing ship driven by wind power.*" (www.education.yahoo.com).

The term "kinetic energy" is defined as "energy associated with motion." (www.merriam-webster.com).

Information about applicant's goods shows that the goods are capable of generating power from the motion of cars. (www.newenergytechnologies.com).¹

Introducing MotionPower™
Harnessing the Energy Beneath Your
Tires
Our technology is similar to what is
used to power hybrid cars, but instead
of being installed in each vehicle,
it's installed in the roadways,
capturing the friction energy that is
otherwise dissipated as heat.
MotionPower™ Kinetic Technology is
Simple and Efficient
For the first time ever, we stand to
generate valuable electricity merely by

¹ Pursuant to the examining attorney's request for information, applicant indicates that it is "a wholly owned subsidiary of parent company New Energy Technologies, Inc., which owns the website." (Response, Dec. 28, 2009).

driving our cars over simple energy-capturing devices.

Like the name says, renewable energy can be replaced constantly...Its sources include...motion energy like wind and MotionPower.™

Motion Capture

The United States has about 250 million registered vehicles, which adds up to a lot of pollution and burning of fossil fuels...We see those 250 million vehicles as a potential energy source and have developed a prototype engineered to harness some of the kinetic energy being generated, and wasted, by moving cars and light vehicles.

Other information on applicant's website reads as follows:

How MotionPower™ Energy Harvesting Works

Kinetic energy is the energy of motion...Of course, one of the most common and also most powerful kind of kinetic energy is the energy produced from a moving vehicle. All vehicles in motion possess kinetic energy.

[Applicant's] technology harvests a vehicle's motion energy into a form that can be used external to the vehicle. For example, a device that can capture and convert the wasted energy from a moving vehicle into useful energy such as electricity...The prospect of sustainably converting the motion of these vehicles into electricity to power homes, commercial buildings, street intersections, commercial applications and more represents a significant opportunity.

The website goes on to compare applicant's technology with other major sources of renewable energy, including "wind

power," "solar power," "hydro power" and "geothermal power." Further, applicant's press releases consistently and continually refer to generating electricity from the motion of vehicles.

An article about a third-party's device indicates the following:

VIVACE: "fish" inspired energy device captures power from slow moving currents
The array of devices doesn't depend on waves, tides, turbines or dams, instead it is a unique hydrokinetic energy system that relies on "vortex induced vibrations" that have damaged bridges for decades. Rather than try to avoid damage by these vibrations, VIVACE captures the motion power by mimicking the movement of fish.
(www.memebox.com)

Based on the meanings of the individual words of applicant's applied-for mark, "MOTION" and "POWER," as well as the Internet evidence, we find that the combination MOTIONPOWER is merely descriptive of applicant's goods and services for use in generating power from motion. The individual merely descriptive terms retain their descriptive character when combined to form the composite MOTIONPOWER. The evidence shows that kinetic energy, the type of energy involved in applicant's goods and services, is energy associated with motion. The evidence also shows use of terms such as "solar power" (generation of power

from the sun), "wind power" (generation of power from the wind) and "hydro power" (generation of power from water). The construction of applicant's term MOTIONPOWER is similar, and consumers are likely to perceive applicant's designation as merely descriptive when used in connection with goods or services that feature the generation of power from motion. No imagination is required by a purchaser or user to discern that the applied-for mark, when used in connection with the goods and services, describes the principal function or purpose of them, namely the generation of power from motion.

Applicant's arguments do not persuade us to reach a different result. Descriptiveness is determined in relation to the goods or services for which registration is sought. Therefore, the fact that "motion" and/or "power" may have a different meaning in a different context is not controlling. *See In re Chopper Industries*, 222 USPQ 258 (TTAB 1984). The fact that applicant may be the first and only user of a merely descriptive term does not justify registration if the only significance conveyed by the term is merely descriptive. *See In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983). Lastly, the use of the designation "™" in conjunction with MOTIONPOWER

Ser. No. 77707733

does not magically transform this merely descriptive term into one that is inherently distinctive.

We conclude that the term MOTIONPOWER as a whole is merely descriptive of applicant's goods and services.

Decision: The refusal to register in each class is affirmed.