

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Stork Townsend Inc.

Serial No. 77878600

Timothy J. Zarley of the Zarley Law Firm, P.L.C. for Stork
Townsend Inc.

Robert Clark, Trademark Examining Attorney, Law Office 101
(Ronald R. Sussman, Managing Attorney).

Before Bucher, Zervas, and Lykos, Administrative Trademark
Judges.

Opinion by Lykos, Administrative Trademark Judge:

Stork Townsend Inc. ("applicant") filed an application to
register the mark displayed below

iLinker

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for "meat processing machines, namely, technologically advanced sausage linking machines" in International Class 7.¹

The Trademark Examining Attorney refused registration of applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of applicant's identified goods.

Upon final refusal of registration, applicant filed a timely appeal. Both applicant and the examining attorney filed briefs, and applicant filed a reply.² For the reasons discussed herein, the Board affirms the refusal to register.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the

¹ Serial No. 77878600, filed November 23, 2009, alleging October 28, 2009 as the date of first use anywhere and in commerce.

² Applicant submitted evidence that had not been made of record with its reply brief. Insofar as the evidentiary record should be complete prior to the filing of an ex parte appeal, applicant's newly-submitted evidence has been given no consideration. Trademark Rule 2.142(d). See e.g., *In re Trans Continental Records Inc*, 62 USPQ2d 1541 (TTAB 2002) (materials from web search engines submitted with appeal brief not considered).

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mark describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

We find that applicant's mark immediately conveys to prospective purchasers a significant feature of the identified goods, namely that applicant's meat processing machines consist of an intelligent (or computerized) sausage linker or linking machine.

The examining attorney has made a definition of "i" of record with his first Office action. In that definition, the letter "i" is defined as "intelligence."³ In addition, "intelligence" is defined as "the ability to perform computer functions."⁴ We also take judicial notice of the definition of "link" submitted with the examining attorney's brief from *Merriam-Webster Online*, www.merriam-webster.com; there, "link" is defined as "to couple or connect by or as if by a link." A "linker" is another name for a sausage linking

³ *Merriam-Webster Online*, www.merriam-webster.com.

⁴ We take judicial notice of this term, located at *Merriam-Webster Online*, www.merriam-webster.com. The Board may take judicial notice of dictionary definitions obtained through an Internet web site which exist in printed format. See e.g. *Osmotica Holdings Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010).

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machine.⁵ Since the letter "i" precedes the descriptive noun "linker," it will immediately be perceived by prospective consumers as an abbreviation for "intelligence" (or the adjectival form, "intelligent"), thereby informing consumers that applicant's sausage linking machines use computerized technology. This is confirmed by applicant's own specimen displaying applicant's machine connected to a computer monitor. The third-party registrations submitted by the examining attorney for the marks "iLANCE" and "iMELT" on the Supplemental Register both for industrial controls and sensors, including "computer software for controlling industrial equipment and furnaces" in International Class 9 reinforce our conclusion that applicant's mark is descriptive.⁶ Similar to applicant's mark, a descriptive term is preceded by the lower case letter "i" to signify that the goods are comprised of intelligent or computerized technology.

Applicant contends that its mark is not descriptive because imagination, thought, and perception are required for a consumer to realize that its mark refers to sausage linking processing machines using advanced technology. We disagree. A "compound mark," which consists of two or more words combined to create a

⁵ See *The Portland Press Herald (Maine)*, "Sausage Making Business Links Reporter to Franco Past," March 1, 2010, p. A1 retrieved from the Nexis database attached to the examining attorney's final office action.

⁶ Registration Nos. 3773676 and 3776415.

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single word, is merely descriptive if (1) the individual words are descriptive and retain their descriptive meaning within the compound mark, and (2) the compound mark has no unique or incongruous meaning as applied to the goods and/or services.

See In re Cox Enters., 82 USPQ2d 1040, 1043 (TTAB 2007) (holding THEATL the equivalent of THE ATL, a common nickname for the city of Atlanta, merely descriptive of publications featuring news and information about Atlanta); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002) (holding SMARTTOWER merely descriptive of highly automated cooling towers); *In re Entenmann's, Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990) (holding OATNUT merely descriptive of bread containing oats and hazelnuts), *aff'd per curiam*, 928 F.2d 411 (Fed. Cir. 1991). This precisely describes applicant's applied-for mark. Here, applicant has combined the two descriptive terms "i" and "linker" to create a compound word mark with no other unique or incongruous meaning in relation to the goods other than a sausage linker that uses intelligent or computerized technology.

Applicant further argues that consumers must make a mental leap to realize that a linker can be used with a meat processing machine. These arguments are not persuasive. Determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract.

In re Abcor Dev. Corp., 588 F.2d 811, 814, 200 USPQ 215, 218

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(C.C.P.A. 1978). See, e.g., *In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of "computer programs recorded on disk" where relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). In other words, the issue is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass'n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In addition, applicant submits that the mark is not descriptive because its goods are not "intelligent linkers" but rather "technologically advanced sausage linking machines." Applicant's assertion is belied by the evidence of record and reflects a misunderstanding of the standard for evaluating descriptiveness. As explained above, a sausage linking machine is known as a "linker." The lower case "i" clearly refers to the "intelligent" or "technologically advanced" or computer capabilities of applicant's sausage linker. To be found merely

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descriptive, it is not necessary for the term to refer to the actual genus of the goods themselves.

Lastly, applicant refers to alternative abbreviations for the lower case letter "i". This argument is not convincing. The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Decision: The refusal to register under Section 2(e)(1) is affirmed.⁷

⁷ Applicant's request to amend comes too late in the proceeding, after both applicant and the examining attorney have fully briefed the descriptiveness issue, and without an opportunity for the examining attorney to consider whether the mark may be registered on the Supplemental Register. Even if we considered the request as a request for remand, we would deny it because applicant has not made the requisite showing of good cause. See Trademark Rule 2.142(d). See also TBMP Section 1205.01 (3d ed. 2011). The proper procedure would have been for applicant, at the time it filed its notice of appeal, to file a request for reconsideration of the application to the examining attorney for consideration of an amendment to the Supplemental Register and a request to suspend proceedings in the appeal.