ESTTA Tracking number: **ESTTA392940**
Filing date: **02/11/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77878600
Applicant	Stork Townsend Inc.
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Submission	Appeal Brief
Attachments	iLinkerAppealBrief.pdf (10 pages)(394969 bytes)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Stork Townsend Inc.	:	
TRADEMARK:	**iLinker** (stylized)	:	BEFORE THE
SERIAL NO:	77/878,600	:	TRADEMARK TRIAL
Filed:	November 23, 2009	:	AND
Class:	007	:	APPEAL BOARD
Exam Atty:	Robert Clark	:	ON APPEAL
Law Office:	101	:	
Atty Dkt No:	T61203US0	:	

APPLICANT'S APPEAL BRIEF

Commissioner for Trademarks
Box TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

Applicant herby appeals the Trademark Examining Attorney's refusal to register the trademark "**iLinker**" under the Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), because Applicant's mark is merely descriptive of a characteristic of Applicant's goods and/or services, namely, "meat processing machines, namely, technologically advanced sausage linking machines."

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office, Trademark Trials & Appeals Board via ESTT-Web (Electronic System for Trademark Trials and Appeals web-based document submission) on this 11th day of February 2011.

Timothy J. Zarley, Reg. No. 45,253

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DESCRIPTION OF THE RECORD

Applicant began using the applied-for mark "iLinker" in commerce on or before October 28, 2009 in conjunction with "meat processing machines, namely, technologically advanced sausage linking machines".

On November 23, 2009, Applicant filed the trademark application at-issue for registration of the mark "iLinker" (stylized) as used in conjunction with "meat processing machines, namely, technologically advanced sausage linking machines".

On March 1, 2010, the Examining Attorney initially refused registration under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1); see TMEP §§1209.01(b), 1209.03 *et seq*. because the applied-for mark merely describes a characteristic of Applicant's goods and/or services.

On August 31, 2010, Applicant filed a response to the Examining Attorney's rejection which argued against the Examining Attorney's reasons for refusal.

On September 17, 2010, the Examining Attorney issued a final rejection of Applicant's trademark application at-issue under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1); see TMEP §§1209.01(b), 1209.03 *et seq*.

Applicant cannot agree with the Examining Attorney's position that the applied-for mark is merely descriptive and therefore Applicant files this Appeal Brief.

STATEMENT OF THE ISSUES

The primary issue before the Board is whether the mark "iLinker" (stylized) is merely descriptive of a characteristic of Applicant's goods and/or services, namely "meat processing machines, namely, technologically advanced sausage linking machines".

RECITATION OF THE FACTS

Applicant began using the applied-for mark "iLinker" in commerce on or before October 28, 2009 in conjunction with "meat processing machines, namely, technologically advanced sausage linking machines". On November 23, 2009, Applicant filed the trademark application at-issue for registration of the mark "iLinker" (stylized) as used in conjunction with "meat processing machines, namely, technologically advanced sausage linking machines".

The Examining Attorney initially refused registration on March 1, 2010, under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1); see TMEP §§1209.01(b), 1209.03 *et seq*. because the applied-for mark merely describes a characteristic of Applicant's goods and/or services.

Applicant filed a response to the Examining Attorney's rejection on August 31, 2010. Applicant's argument centered on the position that Applicant's applied-for mark "iLinker" cannot be considered merely descriptive of Applicant's goods and/or services, namely "meat processing machines, namely, technologically advanced sausage linking machines". More specifically, Applicant argued that Applicant's mark "iLinker" cannot be considered merely descriptive because imagination, thought, and perception are required for a consumer to connect Applicant's mark to Applicant's goods and/or services and therefore Applicant's mark cannot be considered merely descriptive.

Despite these arguments, on September 17, 2010, the Examining Attorney issued a final rejection of Applicant's trademark application at-issue under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1); see TMEP §§1209.01(b), 1209.03 *et seq*. Applicant cannot agree with the Examining Attorney's position that the applied-for mark is merely descriptive and therefore Applicant offers the following argument in support of allowance.

ARGUMENT

The Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(e)(1) on the ground that it is merely descriptive of a characteristic of Applicant's goods. Applicant respectfully disagrees and addresses the reasons therefore below.

Section 2(e)(1) Refusal – Merely Descriptive Refusal:

The Examining Attorney has refused registration of Applicant's mark "iLinker" as merely descriptive of Applicants goods and/or services. Specifically, the Examining Attorney asserts that the mark "iLinker" for "meat processing machines, namely, technologically advanced sausage linking machines" is merely descriptive because the mark immediately conveys information regarding the nature of the goods which include industrial sausage linkers. Applicant respectfully disagrees with the Examining Attorney's assessment of Applicant's mark, and submits the following arguments in support of its position.

The Applicant's goods are defined as "meat processing machines, namely, technologically advanced sausage linking machines," and Applicant asserts that the Applicant's stylized "iLinker" mark is at most suggestive of goods defined as meat processing machines, namely, technologically advanced sausage linking machines.

Marks which are not "merely descriptive" but not purely arbitrary or fanciful are classified as "suggestive". Bennett v. McKinley, 62 F.3d 505 (2d Cir. 1995). "Suggestive" marks merely suggest some quality or ingredient of goods or services. McCarthy on Trademarks, § 11.01 (1995). A term is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of the services. Stix Products, Inc. v. United Merchants & Manufacturers, Inc., 295 F. Supp. 479, 160 USPQ 777 (S.D.N.Y. 1968). The most popular test for determining whether a mark is descriptive or suggestive is the "imagination test". McCarthy on Trademarks, § 11.21 (1995). A mark is merely descriptive if it immediately conveys to one seeing or hearing it knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used; whereas, a mark is suggestive if imagination, thought, or perception is required to reach a conclusion on the nature of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 813-14 (C.C.P.A. 1978). If one must exercise "mature thought or follow a multi-stage reasoning process" to determine attributes of the product, the term is suggestive. In re Tennis in the Round, Inc., 199 USPQ 496 (TTAB 1978). Furthermore, if the mental leap between the word and the products' attributes are not almost instantly perceived, this strongly indicates suggestiveness. See Tanel Corp. v. Reebok International, Ltd., 774 F. Supp. 49, (D.Mass. 1990). For example, "360°" was found to be suggestive of sports shoes because one must use considerable imagination to remember 360 is number of degrees in a circle, connect the circle to movement and imagine that the mark connotates the ability to pivot in the shoe for a full circle. Id.

In this case, it cannot be said that Applicant's mark is merely descriptive of Applicant's goods, because imagination, thought, and perception are required for a consumer to realize that Applicant's mark applies to meat processing machines, and specifically technologically advanced sausage linking machines based upon the stylized mark "iLinker." Like the mark "360°," utilization of the "iLinker" requires consumers to first contemplate the meaning of the term "linker." In doing so, consumers must necessarily imagine and/or form a conception of the many different types of structures, components, and devices which could be considered to be a

linker. Next, while considering the multitude of types of linkers, consumers must imagine the varied uses and applications of the different types of linkers, including but not limited to the types of products that linkers could move or link, and the many types of machines and/or components of linking systems that a linker interacts with and of which a linker forms a constituent part. Then, of all the products, systems, and devices which may utilize or work with a linker, the consumer must make the mental leap to realize, imagine, or understand that a linker can be used or associated with a meat processing machine. Finally, of all the various contemplated ways in which a linker could be incorporated or used with a meat processing machine and of all the meat processing machines that the consumer may or may not be aware of, the consumer must realize that a meat processing machine can comprise a technologically advanced sausage linking machine before ultimately being able to imagine, predict, or form the understanding that the term linker is associated with a meat processing machine and is specifically associated with a technologically advanced sausage linking machine.

Therefore, it would take a great deal of imagination for a consumer encountering Applicant's mark, "iLinker," to realize that Applicant's goods apply to meat processing machines, and specifically technologically advanced sausage linking machines. At most, Applicant's mark "iLinker" is suggestive of "meat processing machines, namely, meat processing machines that are technologically advanced sausage linking machines"."

Furthermore, Applicant's mark does not consist exclusively of the term "linker;" Applicants mark incorporates the prefix "i" to form the unique, stylized mark "iLinker," which, contrary to the Examining Attorney's assertion, creates a new and different commercial impression unique to the meaning as applied to Applicant's goods.

The Examining Attorney asserts, in-part, that "the applicant has merely put together descriptive terms to create a descriptive mark". However, the Examining Attorney has not identified or advanced any rationale as to how or why the prefix "i" in the mark "iLinker" is descriptive as applied to Applicant's goods, other than providing a listing from MERRIAM-WEBSTER ONLINE DICTIONARY of definitions for abbreviations of the letter "i" which include "industrial, initial, intelligence, intensity, interlaced, intransitive, and island or isle" and showing LEXISNEXIS downloads which show the use of the term "linking" in association with sausage making as a basis for the assertion that Applicant's mark is merely descriptive as it

immediately conveys information regarding the nature of the goods which include industrial meat processing machines which have linkers.

Applicant respectfully disagrees, because Applicant's use of the prefix "i" when used in combination with the term "linker" does not immediately provide consumers with a clear understanding of what the prefix "i" is meant to stand for, particularly given that Applicant's goods with which the mark "iLinker" is applied are meat processing machines. Applicant's use of the prefix "i" when used in combination with the term "linker" for goods relating to meat processing machines does not provide consumers with a clear understanding of what the prefix "i" is meant to stand for. Furthermore, no evidence has been presented which establishes that the prefix "i" when used in combination with meat processing machines is commonly understood by consumers to mean "industrial," particularly to the exclusion of other conceivably applicable terms which could correspond to the prefix "i" when used in combination with the word "linker" for meat processing machines, including, for illustration purposes only, "interactive," "inventory," "inertial," "intermediate," "incremental," "intelligent," and/or even "internet."

Furthermore, the Examining Attorney's own evidence supports Applicant's position that Applicant's mark cannot be considered merely descriptive. Again, to be merely descriptive, Applicant's mark must immediately convey to one seeing or hearing it knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In re Abcor Development Corp., 588 F.2d 811, 813-14 (C.C.P.A. 1978). The Examining Attorney's own evidence shows that the prefix "i" can stand as an abbreviation for a plethora of words or terms, i.e. industrial, initial, intelligence, intensity, interlaced, intransitive, island, isle, each of which have wildly different meanings. This means that when a consumer encounter's Applicant's mark "iLinker" the consumer must first recognize that the mark is a composite of two terms, (1) the letter "i" and (2) the term "Linker". Next, the consumer must recognize that the letter "i" is an abbreviation of another term which starts with the letter "i". Next, the consumer must select the appropriate term for which the letter "i" is an abbreviation of (i.e. industrial, initial, intelligence, intensity, interlaced, intransitive, island, isle) and connect that meaning to the term "Linker". Finally, this process must bring the consumer to a meaning which is merely descriptive of Applicant's goods and/or services. This multi-step reasoning process which requires imagination, though and perception is exactly what was described in In re Tennis

in the Round, Inc., 199 USPQ 496 (TTAB 1978) as qualifying as a suggestive mark, and not a merely descriptive mark.

Finally, while the Examining Attorney has presented evidence that shows use of the letter "i" as an abbreviation for various words, nowhere has the Examining Attorney shown prior use of the term "iLinker" to describe "meat processing machines, namely technologically advanced sausage linking machines"." If the term "iLinker" truly was descriptive of a "meat processing machines, namely technologically advanced sausage linking machines" the Examining Attorney's evidence should have uncovered such uses. However, the Examining Attorney has not presented such evidence. In contrast, to the best of Applicant's knowledge, Applicant's mark "iLinker" (stylized) is a never-before used mark created by Applicant. As such, prior to Applicant's use there was no such thing as an "iLinker".

Therefore, Applicant's use of the stylized mark "iLinker" for meat processing machines is not merely descriptive, but instead creates a 'unique and distinctive unitary mark' in addition to a new and different commercial impression unique to the meaning as applied to Applicant's goods. Particularly given that unlike Applicant's mark, even generic or merely descriptive marks have been held to be registrable on the Principal Register when combined with a distinctive stylization or design. See In re Jackson Hole Ski Corp., 190 USPQ 175, 176 (TTAB 1976).

For these reasons, Applicant's mark is not merely descriptive of the Applicant's goods, and Applicant thus respectfully requests that the refusal to register the mark "iLinker" under Trademark Act Section 2(e)(1) be withdrawn.

SUMMARY

For the above-stated reasons, Applicant respectfully requests that the Examining Attorney's refusal to register under Trademark Act Section 2(e)(1) be withdrawn, and it is believed the outstanding issues of the application have been resolved. Applicant respectfully requests that the application be forwarded for publication.

Respectfully submitted,

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