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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re F+W Media, Inc.

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Serial No. 85223494

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Michael G. Frey of Wood, Herron & Evans, LLP for applicant.

Brian Pino, Trademark Examining Attorney, Law Office 114 (K. Margaret Le,
Managing Attorney).

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Before Seeherman, Wellington, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

On January 21, 2011, applicant F+W Media, Inc. applied to register on the Principal Register the mark WORLD COIN NEWS (in standard character form) for “magazines published periodically relating to collectible world coins” in International Class 16.¹

The examining attorney has refused registration on the grounds that the mark is generic or, alternatively, merely descriptive of the identified goods pursuant

¹ Application Serial No. 85223494, alleging first use and first use in commerce at least as early as July 2008, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

to Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), and without a sufficient showing of acquired distinctiveness to allow registration under Section 2(f) of the Act, 15 U.S.C. § 1052(f).

Applicant timely appealed. Both the applicant and the examining attorney filed briefs, and applicant filed a reply brief.

Genericness

A mark is a generic name if it refers to the class or category of goods and/or services on or in connection with which it is used. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1811 (Fed. Cir. 2001); *In re Tennis Industry Ass'n*, 102 USPQ2d 1671, 1674 (TTAB 2012). The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the genus of goods in question. *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986) (“*Marvin Ginn*”); *In re Women's Publ'g Co.*, 23 USPQ2d 1876, 1877 (TTAB 1992).

When a proposed mark is refused registration as generic, the Patent and Trademark Office bears the burden of proving genericness by “clear evidence.” *In re Hotels.com, L.P.*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987) (“*Merrill Lynch*”). Doubt on the issue of genericness is resolved in favor of the applicant. *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437 (TTAB 2005).

The examining attorney argues that WORLD COIN NEWS is the apt name of applicant's goods. Aptness, however, is insufficient to prove genericness. The Federal Circuit Court of Appeals has drawn a clear distinction between an apt name and a generic one, providing the following example by way of illustration:

AMERICAN BAR ASSOCIATION is certainly an apt name for a national association of lawyers; however, it is not used as a generic name for national associations of lawyers (see, e.g., NATIONAL ASSOCIATION OF WOMEN LAWYERS; FEDERAL BAR ASSOCIATION; AMERICAN HEALTH LAWYERS ASSOCIATION; NATIONAL LAWYERS ASSOCIATION).

In re American Fertility Soc'y, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999); *see also In re Country Music Ass'n Inc.*, 100 USPQ2d 1824, 1828 (TTAB 2011).

Our primary reviewing court has set forth a two-step inquiry to determine whether a mark, including a magazine title like the one at issue here, is generic: "First, what is the class of publications or magazines at issue? Second, is the title understood by the relevant public to refer primarily to that class of magazines?" *Marvin Ginn*, 228 USPQ at 531-32 (holding FIRE CHIEF not generic for "a magazine directed to the field of fire fighting"). Evidence of the public's understanding of a term may be obtained from any competent source, including purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications. *Merrill Lynch*, 4 USPQ2d at 1143.

Our first task under *Marvin Ginn* is to determine, based on the evidence of record, the genus of applicant's goods. Although applicant suggests that its goods

can be classified as “hobby magazines concerning coin collecting,”² we find that the class of magazines in this case is adequately defined by the goods identified in the application: “magazines published periodically relating to collectible world coins.” See *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007); *In re Trek 2000 Int’l Ltd.*, 97 USPQ2d 1106, 1112 (TTAB 2010).

The second part of the *Marvin Ginn* test is whether the term sought to be registered is understood by the relevant public primarily to refer to that class of magazines. Although neither applicant nor the examining attorney directly identified the relevant purchasing public for applicant’s goods, we conclude that it is collectors of world coins. See Affidavit of James Ogle, applicant’s chief financial officer (“Ogle Affidavit”), at 1 ¶ 7 (stating that applicant’s mark “is well-known among currency collectors, particularly, coin collectors”).³

With this in mind, we must ascertain whether the relevant purchasing public primarily understands the designation WORLD COIN NEWS to refer to a class of magazines featuring collectible world coins. First, we find that the designation WORLD COIN NEWS is a phrase that should be analyzed according to the test set forth in *In re American Fertility Soc’y*, 51 USPQ2d at 1836, and further clarified in *In re Dial-A-Mattress Operating Corp.*, 57 USPQ2d at 1810: “[W]here the proposed mark is a phrase (such as ‘Society for Reproductive Medicine’), the board ‘cannot simply cite definitions and generic uses of the constituent terms of a mark’; it must conduct an inquiry into ‘the meaning of the disputed phrase as a whole.’”

² Applicant’s Brief at 7.

³ October 19, 2011 response to Office action at 2.

A. Evidence of the Relevant Purchasing Public's Understanding

We turn now to the evidence of record. Sources competent to show the relevant purchasing public's understanding of a contested term include purchaser testimony, consumer surveys, dictionary definitions, trade journals, newspapers, and other publications. *In re Dial-A-Mattress Operating Corp.*, 57 USPQ2d at 1810; *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986).

The examining attorney made of record dictionary definitions of the term "news," which include "recent information: information about recent events or developments."⁴ Applicant's own goods identification demonstrates the generic significance of the phrase "world coins," which we find to retain its generic meaning in singular form (i.e., "world coin"). The record also contains clearly generic references to "world coin" and "world coins," including on applicant's own website and specimen.⁵

The record contains no third-party use of the phrase WORLD COIN NEWS in association with magazines except in reference to applicant's goods. (There are, however, other descriptive uses of that phrase by third parties, which we will discuss *infra*.) Moreover, record evidence indicates that applicant's goods are the only species in the universe of "magazines published periodically relating to collectible world coins" that the relevant public calls by the name WORLD COIN NEWS, although other periodicals do use similar names. Internet evidence submitted by applicant includes the following:

⁴ April 22, 2011 Office action at 20 (from Encarta.MSN.com).

⁵ See, e.g., *id.* at 59-74 from applicant's website Numismaster.com.

- A printout from 2-Clicks-Coins.com titled “How to collect and maintain your old coins.” The page lists five “popular numismatic magazines”: *Numismatic News*, *Coins Magazine*, *World Coin News*, *Coin Connoisseur*, and *Error Trends Coin Magazine*.⁶
- A page on “Coin Collecting Magazines” from BluePage.org listing *Coins Magazine*, *World Coin News*, *Coin Prices*, *Bank Note Reporter*, and *Numismatic News*. Applicant’s publication is described on this page as “often known as the leading magazine of world coins. Published weekly, it offers reports on new coin issues, values of coins worldwide in varying markets. Featured articles are written by experts. The information that you can get from this magazine is of the best that there is to offer.” [sic]⁷
- Printouts of “Coin Collecting FAQ” from the site MyCoinCollecting.com. Eleven periodicals are listed as numismatic publications: *The Celator* (ancients), *Coin World*, *Numismatic News*, *World Coin News*, *Coins Magazine*, *Coin Prices*, *Bank Note Reporter*, *The Numismatist*, *COINage*, *Canadian Coin News*, and *Coin News*.⁸
- Printouts of “Recommended Reading” from Coin-Newbies.com listing the following magazines: *Bank Note Reporter*, *Coin Age*, *Coin Prices*, *Coin World*, *Coins*, *Numismatic News*, and *World Coin News*.⁹
- A printout from “Collectors Corner News Stand” (CollectorsCorner.org) listing the following publications: *Coins*, *Coin Prices*, *Numismatic News*, and *World Coin News*. The latter description states: “If you’re into collecting rubles, lire, pesos, rupees and other foreign coins, you’ll want to check out World Coin News. This magazine spotlights new releases and trends, as well as other historical information and developments of interest to the coin enthusiast.”¹⁰
- Printouts from the Boy Scouts of America website on coin collecting referencing applicant’s magazine among the weekly and monthly periodicals on its list of resources, which include *Bank Note Reporter*,

⁶ October 19, 2011 response to Office action, Exhibit C at 14.

⁷ *Id.*, Exhibit D at 16.

⁸ *Id.* at 18. According to the printout, *Coin News* is published in the United Kingdom. The same list appears on ACSB.com, “Coin Collecting Publications & Resources – Coin Collector’s University.” *Id.* at 36.

⁹ *Id.* at 29-30.

¹⁰ *Id.* at 41-42.

*COINAge, Coin Prices, Coins Magazine, Coin World, Numismatic News, The Numismatist, and World Coin News.*¹¹

B. Third-Party Registrations

Applicant and the examining attorney made of record, cumulatively, numerous third-party registrations for marks incorporating NEWS and similar terms for magazines in Class 16. The examining attorney provided copies of more than a dozen such registrations on the Supplemental Register with NEWS disclaimed, indicating the generic nature of that term. These include titles such as CALIFORNIA HEALTHCARE NEWS,¹² AMERICAN PSYCHIATRY NEWS,¹³ DIRECT SELLING NEWS,¹⁴ and JUNIOR GOLF NEWS.¹⁵

Applicant offers examples of marks with the “_____ NEWS” structure for Class 16 periodical publications, all of which are registered on the Principal Register on the basis of acquired distinctiveness under Trademark Act Section 2(f) with “news” disclaimed. These include AUTOMOTIVE NEWS,¹⁶ CLINICAL ONCOLOGY NEWS,¹⁷ GARAGE DOOR NEWS,¹⁸ METAL CONSTRUCTION

¹¹ *Id.* at 45-46; *see also id.* at 53 (similar list on the American Numismatic Association site Money.org, “Hints to Help Earn the Boy Scout Coin Collecting Badge”).

¹² Registration No. 3776547.

¹³ Registration No. 3424821.

¹⁴ Registration No. 3545488.

¹⁵ Registration No. 3674700.

¹⁶ Registration No. 2457178.

¹⁷ Registration No. 4135582.

¹⁸ Registration No. 2791074.

NEWS,¹⁹ ENDOCRINE NEWS,²⁰ USED CAR NEWS,²¹ FRAME BUILDING NEWS,²² SCHOOL TRANSPORTATION NEWS,²³ AMERICAN LAUNDRY NEWS,²⁴ and APPAREL NEWS.²⁵ Although these registrations, too, show the generic nature of the word NEWS, applicant relies on them to show that the marks in their entireties are registrable, and to support its argument that its mark as a whole is not generic. Applicant also submitted printouts of marks on both registers for otherwise similar formatives with REPORTER, MAGAZINE, or JOURNAL in place of NEWS.²⁶ Acknowledging that these registrations do not mandate registration of its own mark, applicant contends that they are probative to the extent they show how similar marks have been treated by the Trademark Office.

Applicant is correct that we are not bound by these registrations, but they may be viewed as persuasive evidence that the Office has often treated marks analogous to WORLD COIN NEWS as capable of acquiring trademark significance rather than as generic. *See, e.g., In re Waverly Inc.*, 27 USPQ2d 1620 (TTAB 1993) (finding MEDICINE not generic, but a highly descriptive term that had acquired distinctiveness, for medical journals); *In re Women's Publ'g Co.*, 23 USPQ2d at 1877

¹⁹ Registration No. 4030845.

²⁰ Registration No. 4022870.

²¹ Registration No. 3675773.

²² Registration No. 3229797.

²³ Registration No. 3222348.

²⁴ Registration No. 2966625.

²⁵ Registration No. 2775764.

²⁶ In these registrations, the "NEWS" formative word has been disclaimed.

(finding DECORATING DIGEST not generic for magazines but descriptive with secondary meaning).²⁷ As we have said:

“A certain degree of flexibility and an understanding of the commercial realities of both the publishing business and of the business or industry to which a particular publication is directed are very helpful in making the necessarily subjective decision whether a particular title qualifies as a valid trademark. From the publisher’s point of view, it is important to select a title, especially for a trade or technical journal, that conveys some idea of the subject matter of the contents; without at least a suggestive title, it would be hard for the publisher to reach and interest the relatively small (as compared to the general population) number of potential subscribers. From the point of view of competitors of the publisher, it is important not to grant, by way of a trademark registration, rights so broad and encompassing as to render unavailable, at least without the threat or possibility of litigation, the most apt or the only appropriate words to describe a journal’s contents.

“From the viewpoint of subscribers, we must recognize that there is a need to locate publications of potential professional interest (which tends toward tolerating greater suggestiveness in titles) while, at the same time, permitting competition among publications (which tends toward forbidding proprietary acquisition of titles that would foreclose effective competition by the preemption of the most, or only, effective names) and enabling subscribers to differentiate among publications in the same field (which tends toward protecting names by their registration as marks whenever this is appropriate).”

Waverly, 27 USPQ2d at 1623 (quoting *In re Distribution Codes, Inc.*, 199 USPQ 508, 511 (TTAB 1978)).

²⁷ *But see In re Kalmbach Publ’g Co.*, 14 USPQ2d 1490 (TTAB 1989) (finding RADIO CONTROL BUYERS GUIDE generic for magazines).

Genericness is a fact-intensive determination and the Board's conclusion must be governed by the record which is presented to it. *In re Country Music Ass'n, Inc.*, 100 USPQ2d at 1832. As noted above, the evidentiary burden of establishing that a term is generic rests with the Office and the showing must be based on clear evidence. *Merrill Lynch*, 4 USPQ2d at 1143. Based on this record, we find that the Office has not met its difficult burden of establishing by clear evidence that the designation WORLD COIN NEWS, as a whole, is used by the public to refer to the class of magazines published periodically relating to collectible world coins, and therefore is generic. We resolve any doubt, as we must, in applicant's favor.

Descriptiveness and Acquired Distinctiveness

Because we find that WORD COIN NEWS in its entirety is not generic for applicant's goods, we next address the refusal based on descriptiveness and whether applicant has submitted sufficient evidence to demonstrate that its mark has become distinctive of its goods in commerce under Section 2(f) of the Trademark Act. In this case, applicant amended its application to include a claim of acquired distinctiveness after registration was initially refused on the ground of mere descriptiveness under Section 2(e)(1) of the Act.²⁸ When an applicant responds to a refusal based on mere descriptiveness of a mark by claiming acquired distinctiveness, such amendment to seek registration under Section 2(f) of the Trademark Act is considered an admission that the proposed mark is not inherently distinctive and, thus, not registrable on the Principal Register absent proof of

²⁸ October 19, 2011 response to Office action.

acquired distinctiveness. *See Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988). In addition, applicant characterizes its mark as descriptive in its briefing.²⁹ We therefore find WORLD COIN NEWS to be merely descriptive of applicant's goods.

The applicant has the burden to establish secondary meaning by a preponderance of the evidence. *Yamaha Int'l Corp.*, 6 USPQ2d at 1008. The amount and character of evidence required to establish acquired distinctiveness depends on the facts of each case and particularly on the nature of the mark sought to be registered. *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 227 USPQ 417, 422 (Fed. Cir. 1985); *Roux Labs., Inc. v. Clairol Inc.*, 427 F.2d 823, 166 USPQ 34, 39 (CCPA 1970); *In re Gammon Reel, Inc.*, 227 USPQ 729, 730 (TTAB 1985). Typically, more evidence is required where a mark is so highly descriptive that purchasers seeing the matter in relation to the named goods or services would be less likely to believe that it indicates source in any one party. *See, e.g., In re Seaman & Assocs. Inc.*, 1 USPQ2d 1657, 1659 (TTAB 1986); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 919 (TTAB 1984). The applicant may present any competent evidence to establish that a mark has acquired distinctiveness.

In addition to the evidence discussed *supra*, applicant submitted the following evidence relevant to our secondary meaning analysis:

²⁹ *See* Applicant's Brief at 16 ("For the foregoing reasons, Applicant submits that its mark . . . is not generic, but is instead a descriptive mark which has acquired distinctiveness."); Reply Brief at 5 ("Descriptive designations, like Applicant's mark, describe something about the goods – a characteristic, quality or feature, for example.").

- Ogle Affidavit. The affidavit from applicant's chief financial officer, dated October 14, 2011, states in part that:
 - ¶ 2. "The mark was first used in 1973, and has been in continuous use by Applicant and its predecessors-in-interest since then as a trademark identifying the source of a magazine whose subject matter relates to collectible world coins."
 - ¶ 3. "The magazine is presently published in both print and electronic formats. Circulation figures have varied over the years. Presently, the magazine's print circulation is approximately 3800."
 - ¶ 5. "Applicant also promotes its WORLD COIN NEWS mark by sponsoring the Chicago International Coin Fair, an annual event which has been held thirty-six times through 2011. The WORLD COIN NEWS mark is displayed prominently at the expo."
 - ¶ 6. "Applicant's WORLD COIN NEWS magazine and mark also garner recognition through Applicant's bestowal of the Coin of the Year Awards and People's Choice Coin of the Year Award given annually at the International World Money Fair."³⁰
- Third-party recognition of the "Coin of the Year" award sponsored by applicant's publication, including:
 - A September 2000 statement of U.S. Mint Director Jay W. Johnson before the U.S. Senate Banking Committee Symposium on U.S. Coin Designs noting that: "The World Coin News 'Coin of the Year' program, launched in 1983, has honored many of our commemorative coins," and naming several such coins.³¹
 - A January 16, 2010 story titled "Latvia Wins 2010 Coin of the Year Award, Hungary Takes People's Choice" by David C. Harper of *Numismatic News*, on CoinNews.net.³²
 - A January 6, 2010 announcement of awards to 2008-dated coins titled "World Coin News Names Coin of the Year Winners" on CollectOs.com.³³

³⁰ October 19, 2011 response to Office action at 2-3.

³¹ *Id.*, Exhibit E at 59.

³² *Id.* at 63-73. The site's copyright notice references CoinNews Media Group LLC.

- A December 19, 2007 article titled “Vote for Coin of the Year (COTY Award)” on Coins.About.com, which begins: “The Coin of the Year (COTY) awards are one of the most prestigious accolades a coin designer or national mint can be honored with. Sponsored by Krause Publications and *World Coin News*, the COTY awards in 2008 will be celebrating 25 years of recognizing the finest coins in the world issued every year.”³⁴
- What appears to be a press release about the 2007 Coin of the Year award on News-Antique.com.³⁵

Each of the articles references applicant’s publication. The examining attorney questions whether the exhibits submitted by applicant are from sites that are truly independent or paid by the applicant,³⁶ but the references are not from applicant’s own website and applicant states that the sites are not compensated by applicant for their mention of its publication.³⁷ Also, a party’s own promotional activities can be used as evidence of acquired distinctiveness, so the evidence would still have probative value even if applicant were involved in the mentions of its mark.

Applicant submitted no evidence regarding its sales, advertising, or market share, nor any direct evidence of secondary meaning (e.g., consumer surveys or declarations). Applicant did make of record a printout from the website of the American Numismatic Association stating that it has nearly 33,000 members.³⁸ In comparison, applicant’s monthly circulation of 3800 is not large, particularly since applicant did not indicate how many of its subscribers are in the United States.

³³ *Id.* at 60.

³⁴ *Id.* at 62.

³⁵ *Id.* at 74-75.

³⁶ Examiner’s Brief at unnumbered page 13.

³⁷ Reply Brief at 12.

³⁸ October 19, 2011 response to Office action, Exhibit B at 11 (printout from Money.org).

We find that the Ogle Affidavit is sufficient to support applicant's claim of nearly 40 years of continuous use. The examining attorney questions this claim, arguing that it "is not accurate as the dates of use [] in the application show use since July 2008."³⁹ It is not clear to us why applicant used the 2008 date in its current application, but applicant may rely on the affidavit of its chief financial officer to prove use by it and its predecessors-in-interest dating to 1973. The testimony in that affidavit clearly shows such a first use date. *See, e.g., Threshold.TV, Inc. v. Metronome Enters., Inc.*, 96 USPQ2d 1031, 1036 (TTAB 2010); *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1294 (TTAB 1999). We also note applicant's expired registration for the following composite mark:



for "magazines published periodically relating to collectible world coins, with emphasis [sic] non-U.S. issues" in International Class 16, which claimed first use and first use in commerce as of September 22, 1973.⁴⁰

Although long use of a mark in commerce is one relevant factor in assessing whether a mark has acquired distinctiveness, such use is not in itself conclusive. *See, e.g., In re Noon Hour Food Prods., Inc.*, 88 USPQ2d 1172, 1181 (TTAB 2008)

³⁹ Examiner's Brief at unnumbered page 10.

⁴⁰ October 19, 2011 response to Office action, Exhibit A at 8-9, Registration No. 2420911 (with "FROM THE PUBLISHERS OF" disclaimed), registered on the Principal Register pursuant to Trademark Act Section 2(f) on January 16, 2001, cancelled August 17, 2011. The March 2, 2010 assignment from registrant Krause Publications, Inc. to applicant F+W Media, Inc. is recorded in the Office records at Reel/Frame Numbers 4158/0667.

(finding that applicant failed to make a prima facie showing of acquired distinctiveness despite nearly 100 years of use in commerce of highly descriptive designation).

The record establishes that applicant's mark is highly descriptive. Competing periodicals use titles similar to applicant's WORLD COIN NEWS mark, including at least *Coin World* and *Coins Magazine*. Other related publications with similar titles include WORLD OF COINS AND COIN COLLECTING,⁴¹ STANDARD CATALOGUE OF WORLD COINS,⁴² and THE COIN WORLD ENCYCLOPEDIA.⁴³ Further, the examining attorney submitted evidence of descriptive use of the phrase "world coin news" by third parties providing news about world coins, including the following:

- A blog titled "World Coin News" offering "Daily information of new world coin types and varieties." Although the screenshots of record indicate that the author is David Rivera of Bilbao, Spain, the blog is in English and appears accessible to U.S. collectors on the website WorldCoinNews.Blogspot.com.⁴⁴
- A link to a news feed titled "World Coin News" on the Support Services page of the CoinLink website (CoinLink.com).⁴⁵
- A subheading for "World Coin News," above what appear to be links to three stories, on the "Coin News" page of the Black Mountain Coins website (BlackMountainCoins.com).⁴⁶

⁴¹ *E.g.*, October 19, 2011 response to Office action, Exhibit D at 32 (list of recommended reading from the Coin-Newbies.com site).

⁴² *Id.*

⁴³ *Id.* at 36 ("Coin Collector's University" on the site ACSB.com).

⁴⁴ June 5, 2012 final Office action at 4; *see also id.* at 12, linking to the "World Coin News" blog as the featured web page of the week on E-Sylum, an electronic publication of the Numismatic Bibliomania Society (CoinBooks.org).

⁴⁵ *Id.* at 22.

⁴⁶ *Id.* at 9.

- A link titled “World Coin News” on the Monaco Rare Coins website (MonacoRareCoins.com).⁴⁷

In light of the highly descriptive nature of the mark WORLD COIN NEWS, use of that mark for 40 years and circumstantial evidence of some recognition by third parties are insufficient to meet applicant’s heavy burden. As noted *supra*, applicant did not provide U.S. subscription information, but its total monthly circulation appears small in context of the relevant market. Nor did applicant submit any evidence regarding its sales, advertising, or market share. Most important, there is no direct evidence that relevant consumers view WORLD COIN NEWS as a distinctive source indicator for applicant’s goods. *Cf. Target Brands Inc. v. Hughes*, 85 USPQ2d 1676, 1681-82 (TTAB 2007); *In re Packaging Specialists, Inc.*, 221 USPQ at 920 & n.4; and evidence of secondary meaning in the cases discussed therein. We are not persuaded that applicant has established by a preponderance of the evidence that its mark has acquired distinctiveness as a source-identifier under Lanham Act § 1052(f).

Decision: The refusal under Section 2(e)(1) of the Trademark Act on the ground that the proposed mark is generic for the goods identified in the application is reversed. The refusal under Section 2(f) of the Trademark Act on the ground that the proposed mark is merely descriptive and has not acquired distinctiveness is affirmed.

⁴⁷ *Id.* at 3.