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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 Steelbuilding.com, Inc.¹

Serial Nos. 76280389 and 76280390

Michael M. Zadrozny of Shlesinger, Arkwright & Garvey,
L.L.P., for Steelbuilding.com, Inc.

Khanh M. Le, Trademark Examining Attorney, Law Office 113
(Odette Bonnet, Managing Attorney).

Before Rogers, Drost, and Walsh, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On July 3, 2001, applicant, Steelbuilding.com, Inc.,
applied to register two marks on the Principal Register for
services ultimately identified as "computerized on-line
retail services in the field of pre-engineered steel

¹ On November 8, 2007, the Office recorded an assignment of the
marks at issue in this appeal to NCI Group, Inc., a Nevada
corporation. Reel/Frame No. 3658/0162.

buildings and roofing systems" in Class 35. The first application (Serial No. 76280389) is for the mark:



The second application (Serial No. 76280390) is for the mark STEELBUILDING.COM THE FUTURE OF METAL BUILDINGS in typed or standard character form and applicant has disclaimed the term "Metal Buildings." Both applications alleged a date of first use anywhere of June 1, 2000 and a date of first use in commerce of September 29, 2000.

The examining attorney required a disclaimer of the term "Steelbuilding.com" in both applications under Section 6 of the Trademark Act on the ground that the term is merely descriptive of applicant's services. 15 U.S.C. §§ 1052(e)(1) and 1058. Applicant responded by seeking registration of its marks with a claim of acquired distinctiveness as to the term "Steelbuilding.com" under Section 2(f) of the Trademark Act. 15 U.S.C. § 1052(f). The examining attorney was not persuaded that the term "Steelbuilding.com" had acquired distinctiveness. After applicant appealed to this board, on July 12, 2006, it

requested that the appeals be consolidated. The board, in an order dated October 19, 2006, granted that request.²

Issue

The issue in both cases is whether the term STEELBUILDING.COM has acquired distinctiveness.

Background

After the applications were initially refused registration, action on the cases was suspended pending the outcome of the appeal of the board's decision involving another application (No. 75934927) filed by applicant for the mark STEELBUILDING.COM for virtually identical services.³ On July 11, 2005, the Federal Circuit held, with one judge concurring in part and dissenting in part, that the term STEELBUILDING.COM was not generic, that it was merely descriptive, and that applicant had not demonstrated that the term had acquired distinctiveness. *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420 (Fed. Cir. 2005). In affirming on the descriptiveness and lack of acquired distinctiveness issues, the Court held that the

² References to the record in this opinion will be to the record in Serial No. 76280389.

³ We note that in the 75934927 application, the services were identified as being in the field of "... pre-engineered *metal* buildings." *Steelbuilding.com*, 75 USPQ2d at 1421. In the current applications, the field is identified as "... pre-engineered *steel* buildings."

"... proposed mark is highly descriptive. Therefore, applicant had the burden to show a concomitantly high level of secondary meaning. The Board correctly determined that, on this record, 'applicant's evidence falls far short of its burden.'" 75 USPQ2d at 1424.

Subsequently, applicant in these consolidated cases submitted a claim that its marks had become distinctive as a result of its five years use in commerce as well as additional evidence. The examining attorney denied applicant's request for reconsideration and an oral hearing was held on April 18, 2007.

In light of the Federal Circuit's determination that the term STEELBUILDING.COM was highly descriptive and applicant's amendment to seek registration of the involved marks on the Principal Register under Section 2(f) of the Trademark Act, the only issue in this case involves the question of whether applicant has met its burden of showing that the term STEELBUILDING.COM has acquired distinctiveness. *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988) ("Where, as here, an applicant seeks a registration based on acquired distinctiveness under Section 2(f), the statute accepts a lack of inherent distinctiveness as an established fact"). Applicant has the burden of

establishing acquired distinctiveness in ex parte proceedings before the USPTO. *Id.* at 1004. See also *In re Hollywood Brands, Inc.*, 214 F.2d 139, 102 USPQ 294, 295 (CCPA 1954) ("[T]here is no doubt that Congress intended that the burden of proof [under Section 2(f)] should rest upon the applicant"). The Federal Circuit has commented that "logically that standard becomes more difficult to meet as the mark's descriptiveness increases." *Yamaha* at 1008.

Evidence

Applicant and the examining attorney submitted a significant amount of evidence before and after the applications were suspended pending the outcome in Application No. 75934927. Applicant relies, inter alia, on the declarations of its marketing director, Tom Hockersmith. Mr. Hockersmith provided the following information:

The primary products offered by Steelbuilding.com are various types of pre-engineered metal buildings. More specifically, within the overall class of pre-engineered metal buildings, Steelbuilding.com confines itself to simpler and smaller designs, ranging from about 900 square feet up to 30,000 square feet and even larger. Some typical uses for our products include agricultural buildings, small warehouses, mini-storage complexes, work shops, auto garages, and various types of utility and storage buildings.

Though products similar in type and quality to those of Steelbuilding.com are available through numerous

sources, Steelbuilding.com offers a unique service. Through Steelbuilding.com's web site and its proprietary interactive systems, Steelbuilding.com provides the only method and medium by which potential retail buyers can get an accurate price quote for a particular building design without the aid of trained estimators. Steelbuilding.com's system is so unusual and so useful that no one who is actively considering purchasing a pre-engineered metal building is likely to forget it once he or she has used it. It even offers advantages over the computer-based pricing systems that are available to industry professionals. Most pricing systems require extensive training in the use of the system as well as specialized knowledge of pre-engineered metal buildings. Steelbuilding.com's system requires neither and can be easily operated by almost everyone who knows what kind of building he or she wants.

Hockersmith declaration, ¶¶ 2 and 3.

Applicant describes its promotional efforts as follows:

The marketing efforts of Steelbuilding.com are aimed at two distinct types of consumers of pre-engineered metal buildings: end-users and resellers.

Hockersmith declaration, ¶ 4.

Applicant's print advertisement efforts directed toward resellers include special account agreements under their "private label program" marketing campaign. For the period extending from September 6 to November 12, 2001, Applicant adopted twenty-one new resellers into the program, two of which resulted in purchases between \$49,000 and \$80,000.

Request for Reconsideration of October 18, 2002 at 6. See also Hockersmith declaration, ¶ 10.

In addition, applicant has placed full page ads in *Metal Construction News*, *Inside Self-Storage*, and *Self-Storage Now*. Hockersmith declaration, ¶¶ 5 and 6.

Applicant also points to its sales figures for 2002 (\$11,930,838), 2003 (\$12,379,618), 2004 (\$22,535,464), and 2005 (\$21,472,368) and the money it spent on advertising promotions for 2002 (\$673,296), 2003 (\$560,423), 2004 (\$986,805), and 2005 (\$981,040) as evidence that its mark has acquired distinctiveness. Moore declaration dated March 9, 2006, ¶¶ 3 and 4.

Furthermore, during "2005, website traffic to our STEELBUILDING.COM website ranged between 49,789 visitors per month to 102,806 visitors per month" and that visitor "traffic to our STEELBUILDING.COM website is greater than that of any of our competitors and among our competitors we are currently ranked first in visitor traffic." Moore declaration dated March 9, 2006, ¶¶ 5 and 6.

Earlier, applicant explained its internet advertising strategy as follows:

Steelbuilding.com has established long-term contracts with four of the best known and most popular search-engines on the Internet - Yahoo!, Microsoft Network (msn.com), AltaVista, and America Online (aol.com) - for exclusive advertising rights for the search results on the key terms related to its products and services. For example, each time a person uses Yahoo! to search for information on a term like "metal building," a graphical banner advertisement promoting

Steelbuilding.com will be displayed at the top and bottom of every page that lists the results of this search.

Currently, Steelbuilding.com banners on these four search engines are being displayed about 75,000 times a month in conjunction with the results of searches for information related to pre-engineered metal buildings. It can be assumed that exposure to these graphical advertisements is increasing awareness of Steelbuilding.com's offer of products and services among a substantial number of potential consumers; however, evidence suggests that Steelbuilding.com's tightly focused banner campaign is also very effective at directing people to Steelbuilding.com's place of business - its Internet site. The average "click-through rate" - the number of times viewers click the hyperlinked banner to be taken to the advertised web site compared to the total number of times a banner is displayed, expressed as a percentage - is less than one per-cent for Internet banner ads. Steelbuilding.com's banners receive click-through rates as high as 8% on highly relevant search terms like "metal building."

Hockersmith declaration, ¶¶ 16 and 17.

Applicant also relies on its claim that it has substantially exclusive and continuous use of STEELBUIDING.COM for at least five years. Moore declaration dated November 11, 2005. Other evidence includes declarations and statements from customers as well as professionals in the metal building industry. Some examples are set out below:

I am employed as Vice-President, Marketing at Ceco Building Systems, one of the leading companies in the metal building industry since 1947... For me, the mark STEELBUILDING.COM does not indicate any particular characteristic of retail services or computerized on-line retail services in the field of

pre-engineered steel buildings and roofing systems but rather indicates the particular retail services offered by Steelbuilding.com, Inc.

Jurney declaration dated November 9, 2001.

1. I am employed as National Sales Manager of Bay Insulation, which is the largest producer and distributor of a complete line of metal building insulation materials and accessories with 22 locations...
2. I became aware of STEELBUILDING.COM through conversations with its owners.
3. I associate the term STEELBUILDING.COM with retail services in the field of pre-engineered steel buildings and roofing systems offered by STEELBUILDING.com, Inc. and not with any other company offering retail services in the same field.

Ron Holder declaration dated November 13, 2001.

2. I am employed as Chairman of the Board of NCI Building Systems, which is the largest producer and distributor of metal components for the construction industry and the third largest producer of pre-engineered metal building systems in the United States...
3. I became aware of STEELBUILDING.COM through conversations with its owners and visits to its Internet site.
4. I associate the term STEELBUILDING.COM with retail services in the field of pre-engineered steel buildings and roofing systems offered by STEELBUILDING.com, Inc. and not with any other company offering retail services in the same field.

Ginn Declaration dated November 6, 2001.

Applicant also submitted emails from customers to show that STEELBUILDING.COM has acquired distinctiveness. See Kunke email ("I appreciate your position and that of Steelbuilding.com"); Smith email ("You can rest assure[d] that Steelbuilding.com will be the first stop on our list

when we get ready to purchase our structures"); Bjorneboe email ("I have researched over twenty steel building manufacturers using the WEB, none of them even come close to providing the information Steelbuilding.com provides"); Steklenski email ("I will definitely keep steelbuilding.com at the top of my list"); and Brookbank email ("When I choose to buy a steel building, it will be from your company... and your website will be a big part of the reason why I'll choose steelbuilding.com over the competition").

Applicant's declarant submits that it "continues to receive a great deal of attention from the trade press. Steelbuilding.com was the subject of feature articles published in *Metalmag* (July/August 2002) and *Inside Self Storage* (September 2002)... Moreover, I was approached by the magazine *Commercial Building* and asked to write a four-page article discussing technological trends in the metal-building industry using Steelbuilding.com's successful application of Internet technology as a primary example." Hockersmith supplemental declaration, ¶ 3.

During prosecution of the applications, the examining attorney also submitted evidence to support her position. Some of the evidence demonstrates common use of the term "pre-engineered steel building."

They also helped workers at the company - which builds pre-engineered **steel buildings** - improve their safety training...

The Sunday Oklahoman, September 23, 2001.

He attended the North Dakota School of Science in Wahpeton. He owned and operated Quality Design Built Inc., which manufactured pre-engineered **steel buildings**.

Denver Post, October 10, 2001.

Engineers attributed the damage to the heavy snow load on the pre-engineered **steel building** during the past year.

Union Leader (Manchester, NH), May 23, 2001.

Although the majority of his pre-engineered **steel buildings** are for commercial customers, they can be built in any size.

Virginian-Pilot, May 26, 2000.

They're a dealer in pre-engineered **steel buildings** and will work all the way from showing catalogs of available designs to turnkey operation of commercial space.

Middlesex Magazine & Business Review, February 1999.

Ganneston Construction designed a pre-engineered **steel building** to "meet Guilford's needs." He said.

Bangor Daily News, September 25, 1996.

Star Building Systems is a manufacturer of pre-engineered **steel buildings**.

Springfield Business Journal, April 6, 1998.

The examining attorney also provided definitions that explain the significance of the term ".com." See, e.g., Office Action dated March 25, 2003, attachment ("A domain name suffix denoting commercial entities such as corporations and companies"). Furthermore, the examining attorney included examples of other entities using

variations of "steelbuilding.com" in internet domain names.

See Office Action dated April 24, 2006, attachments:

www.unitedsteelbuilding.com
Price Your Building Now!
Price a steel building online using our easy to use
system

Metal buildings from Best-Steel-Building.com
Best-Steel-Buildings.com Metal buildings Buildings
cost significantly less than other types of
construction... Best-Steel-Building.com is the leader in
Metal buildings.
www.metal-buildings.best-steel-building.com

The examining attorney also submitted the results of
Google searches. These results included several examples
for websites apparently using "steel-building.com" as part
of their respective domain names. A sample of the
information provided by the results is set out below
(punctuation and wording appears as it does in the
original):

Metal Building Depot is the worlds leading online
retailer of commercial buildings, steel homes, mini
storage and component parts ... contractor aircraft
hanger prefabricated steel building prefabricated
steel building ... of these custom designs allow for ...
steel building system can be designed, manufactured,
delivered...
www.curvco-steel-building.com

There are two other similar website results for
www.surplus-steel-building.com and www.premier-steel-
building.com, at least one of which contains a similar
reference to the same entity (Metal Building Depot)

identified in the Curvco website. Because we only have abbreviated search results for these sites rather than information from the sites themselves, we cannot give this evidence much weight. *In re Remacle*, 66 USPQ2d 1222, 1222 n.2 (TTAB 2002) ("The examining attorney's print-out of the results of an Internet search by the Yahoo search engine are of little probative value, largely because insufficient text is available to determine the nature of the information and, thus, its relevance"). See also *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) ("Search engine results – which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link – may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations").

We add that applicant itself submitted an example of another entity apparently using the internet address www.steelbuildings.com. See Chipsoles email ("I also wanted to let you know that when I typed steelbuilding.com tonight, I inadvertently added an 's' at the end of steelbuilding, and it took me to somebody else's site. Too bad you can't get those close spellings redirected to your site"). In addition, the examining attorney has also

included information from a website identified as www.steelbuilding.net as follows:

Steelbuilding
... Today we specialize in steel buildings for
residential, business and commercial

We also note that, with applicant's Response dated September 12, 2003, it submitted copies of numerous registrations for various marks that it argues (p.7) "comprise a generic term or word for the identified services or goods with a 'dot.com' suffix." The vast majority of these registrations are registered on the Supplemental Register.

Additionally, applicant submitted a poll from a website. We will give this poll the same weight that it was given previously:

The Board considered applicant's Internet poll on name recognition. The poll, at a web site named MetalBuilding.com, first asked visitors a few questions about current events or sports, e.g., "Who will win Election 2000? Who will win the NBA title?," then asked "which one of the following building manufacturers is the most recognizable?" In the poll, the applicant was more recognizable than the others on the list: "Package Industries," "Parkline," "Steelox," and "US Structures." This court agrees with the Board that this particular poll lacked sufficient signs of reliability. For instance, the poll results do not indicate the number of actual participants. The poll did not attempt to prevent visitors from voting more than once. The poll did not prevent interested parties, such as friends or associates or even employees of the applicant, from voting multiple times to skew the results. In sum, this poll does not even remotely follow the precepts of standard trademark

name-recognition polls. Although the Board was correct to consider the survey for its very limited value, the survey did not show sufficient reliability to constitute sufficient evidence of acquired distinctiveness. *Id.* at *12 ("occasionally, people may recognize applicant's term as a trademark but much of this evidence may be attributable to domain name recognition").

Steelbuilding.com, 75 USPQ2d at 1424.

Acquired Distinctiveness

Inasmuch as the issues of whether the term STEELBUILDING.COM is generic or merely descriptive have been resolved, the only issue in this case is whether applicant has shown that the term in its marks has acquired distinctiveness. Because applicant has submitted substantial new evidence on the issue of acquired distinctiveness, we take a new look at this issue. *Accord In re Superior Outdoor Display, Inc.*, 478 F.2d 1388, 178 USPQ 151, 153 (CCPA 1973) ("[T]he earlier decision, though it may have been correct on an earlier and different record, is irrelevant here. The question is not whether the additional evidence (the agreement) overcame the earlier decision. Nor is it whether the agreement negated the statute or stripped the Patent Office of its responsibility. Congress alone can do that. The question is whether the total record, now including the agreement, indicates a likelihood or nonlikelihood of confusion").

As we indicated earlier, applicant has the burden and "logically that standard becomes more difficult as the mark's descriptiveness increases." *Yamaha*, 6 USPQ2d at 1008. Furthermore, simply because an applicant can show significant sales and advertising, this does not necessarily equate with acquired distinctiveness. See *In re Leatherman Tool Group Inc.*, 32 USPQ2d 1443, 1450 (TTAB 1994):

Absent, therefore, anything to link applicant's gross sales of over \$20 million and advertising expenditures of \$200,000, which were generated and spent in connection with its marketing of in excess of one million tools during a nearly ten-year period, with use in contexts which would condition customers to react to or recognize the designation "POCKET SURVIVAL TOOL" as an indication of source rather than as a description of a category of product, there is no convincing basis for finding that such designation functions other than as a generic name.

We also note that recently the Federal Circuit decided the case of *In re Reed Elsevier Properties Inc.*, 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007). In that case, the Court held that the term LAWYERS.COM was generic for an online interactive database featuring information exchange in the fields of law, legal news, and legal services. Among other things, the Court held that:

Moreover, in determining what the relevant public would understand LAWYERS.COM to mean, the board considered eight websites containing "lawyer.com" or "lawyers.com" in the domain name, e.g., www.massachusetts-lawyers.com, www.truckerlawyers.com,

and www.medialawyer.com. It discussed the services provided by these websites in order to illuminate what services the relevant public would understand a website operating under Reed's mark to provide. These websites are competent sources under *In re Merrill Lynch*, 828 F.2d at 1570, and they provide substantial evidence to support the board's finding.

Id. at 1381.

When we review and weigh the evidence of record, we are persuaded that applicant has demonstrated that the term STEELBUILDING.COM has acquired distinctiveness.

We start by noting that the issue in this case is not the genericness of the term STEELBUILDING.COM. After the Federal Circuit's decision in *Steelbuilding.com*, the examining attorney withdrew the genericness refusal.

Second, applicant has now been using the term for more than five years.

Third, applicant has shown that its sales have increased from approximately \$11 million in 2002 to more than \$21 million in 2005. Over that same period applicant's advertising expenses have risen from \$673,000 to almost a million dollars. Applicant points out that the advertising has had some effect to the extent that:

Visitor traffic to our STEELBUILDING.COM website is greater than that of any of our competitors and among our competitors we are currently ranked first in visitor traffic.

Moore declaration dated March 6, 2006, ¶ 6.

Applicant has also advertised or been featured in various trade publications. One of the magazines is Metal Construction News, which "has a circulation of about 36,000 subscribers, virtually all of whom are either metal building manufacturers, dealers, resellers, contractors, or erectors." Hockersmith declaration, ¶ 4.

Applicant has also compared itself to its sister corporation, Heritage Building Systems, which it described as "one of the best known, most widely respected, and most successful companies in the metal building industry." Hockersmith declaration, ¶ 22. In 2001, shortly after its September 29, 2000 alleged date of first use in commerce of its STEELBUILDING.COM mark in its previous application, its sales were already approximately 25% of the Heritage company in number of units and approximately 12% in the number of dollars. Hockersmith declaration, ¶ 24. Four years later, applicant's sales nearly doubled. Applicant is also issuing four times the price quotes of the Heritage company. Hockersmith declaration, ¶ 10. It also ranks among all websites, Yahoo being first, as the 120,570th most visited website, while Heritage Building Systems website is the 259,264th most visited website. Moore declaration dated March 6, 2006, ¶ 6 and Ex. A.

Applicant has also submitted evidence in the form of declarations and emails to show that competitors, others in the building industry, and consumers recognize the term Steelbuilding.com as a reference to applicant. Indeed, applicant also reports that it has between approximately 50,000 to 100,000 visitors to its website each month in 2005. Moore declaration dated March 6, ¶ 5. Earlier, applicant's declarant reported that its "banners receive click-through rates as high as 8% on highly relevant search terms" while the average rate "is less than one per-cent." Hockersmith declaration, ¶ 17.

When we view this evidence, we find that applicant has shown that it has substantially increased its sales and advertising between 2001 and 2005. Applicant first began using its involved STEELBUILDING.COM marks in 2000. During that period of time, it has achieved substantial success. Numerous competitors and others in the building trade have indicated that they recognize the term STEELBUILDING.COM as a term that identifies applicant. Potential purchasers have emailed applicant and referred to it by the term STEELBUILDING.COM. It has achieved success that is in a league with its sister corporation. We note that it prominently displays the term STEELBUILDING.COM on its website and in its advertising. Indeed, it is not clear

how else purchasers could refer to applicant besides by Steelbuilding.com. We note that applicant often uses the TM symbol in association with the term STEELBUILDING.COM. See Hockersmith declaration, Exhibits 2, 3b, and 4. We consider this as some evidence of applicant's efforts to educate the public that it considers STEELBUILDING.COM its trademark. *In re Industrial Washing Machine Corporation*, 201 USPQ 953 (TTAB 1979):

In the present case, "INDUSTRIAL" has been strongly emphasized in the trade name signature in the advertisements by the size and color of the type used for "INDUSTRIAL" contrasted with the typography used for 'Washing Machine Corporation' and, in some instances, by the use of the symbol "TM" next to the word "INDUSTRIAL", which shows applicant's intention to claim "INDUSTRIAL" per se as a trademark.

See also In re Mine Safety Appliances Co., 66 USPQ2d 1694, 1700 (TTAB 2002):

While, among other things, it is well settled that use of the symbol "TM" in connection with otherwise unregistrable matter does not make such matter a trademark, the use thereof by applicant in connection with its advertising and promotional materials for its "WORKMASK" self-contained breathing apparatus is evidence of applicant's attempts and intent to educate the trade and purchasing public that it regards the term "WORKMASK" as its trademark for such goods.

When we view this evidence as a whole, we disagree with the examining attorney's argument that "the public understanding of the words 'steelbuilding.com' remains their ordinary descriptive meanings rather than as an

indicator of a single source for the services." Brief at unnumbered p. 7. The few scattered uses of steel-building.com with other material for different websites does not demonstrate that in light of the evidence of record that the term STEELBUILDING.COM has not acquired distinctiveness in relation to applicant's identified services. The fact that the term may be used descriptively in these web addresses does not necessarily prohibit applicant's descriptive term from acquiring distinctiveness. *Industrial Washing Machine Corp.*, 201 USPQ at 957 ("This letter not only attests to the reputation of the source indicator 'INDUSTRIAL' but also shows that it is possible to distinguish between the trademark significance of 'INDUSTRIAL' and the common adjectival meaning of 'industrial'"). See also *In re The Chesapeake Corporation of Virginia*, 420 F.2d 754, 164 USPQ 395, 396-97 (CCPA 1970) ("In response to the board's view that the registration here sought would preclude others from describing the finish of their products, we note this court's observation in *In re Automatic Radio Mfg. Co.*, 56 CCPA 817, 404 F.2d 1391, 160 USPQ 233, 236 (1969), that 'descriptive words may become trademarks and subject to protection as such, without inhibiting the use of the same words in a non-trademark sense'").

Ultimately, we conclude that the applicant has shown that the term STEELBUILDING.COM in its involved marks has acquired distinctiveness. See *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1878 (TTAB 1992):

We have reviewed applicant's evidence of acquired distinctiveness, including the affidavits relating to the promotion and use of the mark over the years and the affidavits of individuals who state that they recognize applicant's mark as identifying and distinguishing applicant's magazines from those of others. We agree with applicant that its evidence of extensive and successful use and promotion of the mark DECORATING DIGEST demonstrates, at least prima facie, that these words have become distinctive of applicant's magazines and that they are registrable on the Principal Register.

Decision: The refusals to register applicant's marks on the ground that the term STEELBUILDING.COM must be disclaimed because it is merely descriptive and that applicant has not shown that the term has acquired distinctiveness are reversed.