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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Black & Decker Corporation

Serial No. 85857683

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Before Quinn, Mermelstein and Hightower,
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Black & Decker Corporation filed, on February 22, 2013,
an intent-to-use application to register the mark LINKED SYSTEM
(in standard characters) for the following goods:

Power tools, namely, drills, drivers, hammer
drills, right angle drills, impact driver,
impact wrenches, oscillating tools, saws,
circular saws, reciprocating saws, jig saws,
metal cutting saws, and vacuums (in
International Class 7);

Combined laser level and stud finder;
radios; battery packs and chargers for use
with power tools (in International Class 9);
and

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Flashlights and area lights (in
International Class 11).

The trademark examining attorney has refused registration in each class on the ground that the applied-for mark is merely descriptive of the identified goods pursuant to Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1).

When the refusal was made final, applicant appealed and requested reconsideration. The request for reconsideration was denied and the appeal resumed. Applicant and the examining attorney have filed briefs. We reverse the refusal to register.

Applicant argues that the mark sought to be registered is so vague that it does not convey any immediate idea of any characteristic or feature of the goods; rather, the mark is a play on words and has multiple suggestive meanings. In applicant's words, "the only commonality among Applicant's goods is that they may use an interchangeable lithium ion battery or battery charger." (Brief, p. 3). More specifically, applicant's position comprises four points: using a common battery or charger does not make products "linked" in the ordinary sense of the term, and both consumers and the tool trade do not use "linked" or "linked system" to refer to power tools, nor does anyone else refer to products that have interchangeable batteries as "linked" or a "linked system"; merely having a common battery or charger does not mean that the

products form a "system" as that term is ordinarily used and defined; "Linked System" has no apparent descriptive meaning for power tools either in the abstract or for applicant's products; and in the marketplace applicant highlights the letters "Li" in the word "Linked" to suggest that the LINKED SYSTEM products use a lithium ion battery, given that "Li" is the symbol for the element "lithium." Using the dictionary definitions supplied by the examining attorney, applicant contends that "the products are not linked because they are not connected together, and the products are not a system because they do not form a network to serve a common purpose." (Reply Brief, p. 1). Applicant introduced the declaration of Frank DeSantis (applicant's director of brand marketing) and related exhibits; and internet search result summaries for "linked system" and "power tools."

The examining attorney maintains that applicant's "system of power tools is connected - linked - because multiple tools can be using the same interchangeable battery" and "are connected and recharged with a single recharging system." (Brief, unnumbered p. 4). According to the examining attorney, applicant's power tools and lighting goods will be connected, if only one at a time, to applicant's batteries and battery chargers to form a "linked system," "even if the linked system is only for the purposes of power charging." (Brief, unnumbered p. 5). In his words, "[g]iven that applicant's goods will

create a charging system that is connected, the wording 'LINKED' and 'SYSTEM,' when taken together as a whole and viewed as 'LINKED SYSTEM' in relation to all of the identified goods, provides an apt description of a significant feature of the identified goods within the meaning of Section 2(e)(1)." *Id.* In support of the refusal, the examining attorney introduced dictionary definitions of the terms "linked" and "system." The examining attorney also submitted excerpts of applicant's website, as well as excerpts from a subsidiary's website.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). That is to say, a term is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services]." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976) (emphasis added). Moreover, in order to be descriptive, the term must immediately convey information as to the qualities, features or characteristics of the goods and/or services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-05 (TTAB 1981). Whether a term is merely descriptive must be determined not in the

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abstract, but in relation to the goods or services for which registration is sought, the context in which the term is used, and the possible significance that the term is likely to have to the average purchaser encountering the goods or services in the marketplace. See *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

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." *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). The burden is initially on the Office to make a *prima facie* showing that the mark is merely descriptive from the vantage point of purchasers of applicant's goods or services and, where doubt exists as to whether a mark is descriptive, such doubt should be resolved in favor of the applicant. *In re Box Solutions*, 79 USPQ2d 1953, 1955 (TTAB 2006).

The term "linked" is defined as "anything serving to connect one part or thing with another" (dictionary.com); "connected, especially by or as if by links" (The American Heritage Dictionary of the English Language, 5th ed. 2014). The

term "system" means "a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose" (merriam-webster.com); "a group of interacting, interrelated, or interdependent elements forming a complex whole" (The American Heritage Dictionary of the English Language, 5th ed. 2014).

The examining attorney also introduced excerpts of the websites of applicant and Porter Cable (apparently a subsidiary of applicant). (11/1/13 Office action). This evidence shows that applicant's multiple power and lighting tools may be recharged with a single interchangeable battery.

As indicated above, applicant introduced the declaration of Frank DeSantis. (10/15/13 Request for Reconsideration). Mr. DeSantis states, in relevant part:

Although the mark is used to identify several different products, the products themselves are not linked together in any sense. They are not physically linked. They do not communicate with each other or interact with each other. In fact, the only commonality that the products have is that they are all operated using a lithium battery.

The LINKED SYSTEM mark was selected to be a play on words with the element symbol for lithium, Li. The LINKED SYSTEM mark appears in the marketplace with the "Li" emphasized in red font with the "i" in lower case format, whereas the remainder of the LINKED SYSTEM mark appears in black capital letters.

This play on words has been picked up by the press. For example, ToolGuyd wrote about the LINKED SYSTEM brand:

Linked System is only a play on words - it appears that the branding simply refers to how the tools are designed around Li-ion battery technology.

I am not aware of any other business in the tools industry that uses the term "linked system" to describe their tools or other products.

Applicant also submitted search summaries of the combination "linked system" "power tools" using three internet search engines (Google, Bing and Yahoo!); the searches did not reveal any descriptive uses of the term "linked system" in connection with power tools. (Exhibits A-C, 3/20/13 response).

We find, based on the evidence of record, that the Office has not established that the applied-for mark is *merely* descriptive. There is often a fine line between merely descriptive marks and those which are just suggestive. These determinations are often subjective, this case being no exception. The determination of whether a mark is descriptive or suggestive is not an exact science. Our primary reviewing court has observed:

In the complex world of etymology, connotation, syntax, and meaning, a term may possess elements of suggestiveness and descriptiveness at the same time. No clean boundaries separate these legal categories. Rather, a term may slide along the continuum

between suggestiveness and descriptiveness depending on usage, context, and other factors that affect the relevant public's perception of the term.

In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Applicant's mark LINKED SYSTEM falls on the suggestive side of the line. The mark does not immediately describe a characteristic or feature of applicant's goods with any degree of particularity, especially given the dictionary definitions relied upon by the examining attorney. At most, the mark suggests that applicant's goods are somehow connected without saying how; that the goods may be "connected" by virtue of their compatibility with a common battery source would not be readily apparent to a consumer when encountering the mark on applicant's goods.

It is not fatal that a mark conveys some information in addition to indicating the source of the goods or services. One may be informed by suggestion as well as by description. *In re Reynolds Metals Company*, 480 F.2d 902, 178 USPQ 296 (CCPA 1973). The mark at issue, LINKED SYSTEM, is typical of so many marks that consumers encounter in the marketplace: a highly suggestive mark that tells consumers something general about the product, without being specific or immediately telling consumers anything with a degree of particularity. The information given

by the mark is indirect and vague. When confronting the mark LINKED SYSTEM on the goods, the ordinary consumer will pause and reflect on the use of the mark before understanding anything specific about a feature or characteristic of the goods. One must exercise thought or engage in a multi-step reasoning process to determine what attribute may be identified by the mark. See, e.g., *In re Phoseon Technology Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012). The mark does not, in any clear or precise way, serve to immediately describe a particular characteristic or feature of the goods with any degree of particularity.

In sum, the mark LINKED SYSTEM does not serve to directly tell a consumer anything other than the goods may be connected in some unknown way. The mark is ambiguous and consumers are likely to have various ideas about how applicant's power tools and lighting goods may be "connected."¹

Although we have some concerns about the descriptiveness of applicant's mark, it is the record evidence that controls the determination, not general legal rules or our own subjective opinions. Any doubts raised by the lack of evidence must be

¹ So as to be clear, we have made our decision without giving any weight to applicant's "play on words" argument. Applicant contends that its mark as actually used in the marketplace appears with the "Li" emphasized in red font with the "i" in lower case format as a reference to the element symbol "Li" for lithium. This argument is of no consequence inasmuch as the applied-for mark is shown in standard character form; further, the evidence shows multiple uses wherein the "Li" portion is not in red font.

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resolved in applicant's favor. Further, on a different and more complete record, such as might be adduced by a competitor in an opposition proceeding, we might arrive at a different result on the issue of mere descriptiveness.

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