

SECTION 2(d) REFUSAL

The Examining Attorney refuses registration because she states that applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 5135362 as to be likely to cause confusion, to cause mistake or to deceive. Applicant respectfully traverses the rejection.

The cited mark EZ LATCH in the name of Buckley Fence, LLC and covers "gate hardware, namely, metal gate latches; metal locking mechanisms; metal locks; metal locks for securing fence closures." The registrant has disclaimed the term LATCH in its mark.

It may be helpful to provide a brief explanation of the applicant's goods, and its affiliated services. The applicant's system comprises locks, and, in relation to this application, non-metal locks, cameras, digital access panels and/or key access ports and computer programs for managing the system and providing access. These smart locking systems are used for building entrances, common areas, elevators, garage gates, and for apartment entry doors. The system can be managed digitally or with an app. The user can unlock its system from anywhere and share access to his or her home with anyone he or she chooses. The app also allows the user to unlock the door with a gesture or a uniquely generated code. The system employs a camera, for peace of mind, on its exterior that takes photos in specific situations while preserving the user's privacy, so the user can check who entered your space and when. The devices only take photos (1) at public doors in the building (i.e. building entrance, gym, parking garage), (2) when a guest enters a public or private door or (3) when an unauthorized code is entered. The only persons who will see the photos are those who live in the dwelling and authorized building security personnel.

Applicant is the owner of two prior United States registrations, US Reg. No. 4896267 for the mark L LATCH & design, filed September 11, 2014, issued February 2, 2016, and US Reg. No. 4961853 for the mark LATCH Stylized, filed December 2, 2015, issued May 1, 2016. A copy of each registration is attached. It is interesting to note that the registration cited against this application was filed in September 9, 2015 and issued February 7, 2017. By virtue of its earlier registrations, applicant has priority to this mark.

In addition, the cited mark is EZ LATCH, with the dominant term being EZ, particularly since the registrant has disclaimed LATCH.

The goods of the registrant are completely different from that of the applicant. The registrant provides gate hardware, and specifically, metal gate latches, locks, and locking mechanisms. The applicant, on the other hand, provides sophisticated locking systems with its non-metal locks, described above.

Applicant provides its system for multiunit buildings, and its typical customers are property management companies, building operators and parties building multiunit construction. The registrant appears to build horse fences and the "EZ Latch fits a wide range of gates including

the Steel Board Gates and any other vinyl, wood or pipe style gate. It includes provision to lock the gate using a standard pad lock and a convenient loop to hang the lock when not in use.” Thus it is clear that the applicant provides a different type of lock than that of the registrant, a non-metal lock to be used as part of a complex lock system that is vastly different from the registrant’s simple lock product, and the applicant provides the non-metal locks to different parties in different channels of trade. The registrant and its employees would not typically have the expertise to provide applicant’s non-metal locks for its complex lock system. The customer of either party would never turn to the other party for the goods and/or services provided by that first party, and normally, would not encounter the other party in the normal course of its business.

The differences in the marks, and the vast difference between the nature of goods that applicant provides and the goods of the registrant ensures that there will be no confusion as to source should applicant’s application be allowed to register.

DESCRIPTIVENESS REJECTION

The Examining Attorney has also refused to register the trademark because she believes that the applicant’s trademark, when used on or in connection with the identified goods and services, merely describes the goods and services. Applicant respectfully traverses the rejection.

In support of this contention, the Examining Attorney states that a mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified services. She states that the trademark consists of a term that is merely names the goods and describes a feature and characteristic of the applicant’s goods and services, and therefore the mark must be refused registration as merely descriptive.

Applicant’s prior registrations for this mark are noted again, and the Examining Attorney states that the registration of US Reg. No. 4961853 on the Supplemental Register proves that the mark is merely descriptive. Applicant notes, however, that that application was filed and prosecuted without benefit of counsel.

Applicant maintains that this mark is not merely descriptive of the identified goods because it does not describe an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. The trademark gives no direct information about the nature of the goods or services. A purchaser or potential purchaser would not know, from viewing that phrase alone, the nature of the goods or service provided by applicant.

The Examining Attorney notes that the word “latch” refers to a “spring lock” and “to close or lock with a “latch.” Merriam-Webster defines “latch” as “any of various devices in which mating mechanical parts engage to fasten but usually not to lock something, a fastener (as for a door) consisting essentially of a pivoted bar that falls into a notch, and a fastener (as for a door) in which a spring slides a bolt into a hole.” This definition is attached. Clearly, the term latch harks back to an earlier time, when “gates opened with a latch,” or keys turned in the “latch.”

As described above, applicant’s non-metal locks for use in programmable locking system are nothing like fasteners consisting of a pivoted bar that falls into a notch or spring slides a bolt into a hole. As noted in the definition of “latch,” the difference between a latch and a lock is that

“latch” is incapable of fulfilling the intended purpose of applicant’s goods and services, to secure a building or unit in the building.

If the mark was, for example, “LOCK,” it may be perceived that the mark could be held to be merely descriptive for applicant’s goods. Applicant’s mark, however, is “LATCH.” That mark, as a whole, gives no direct information about the goods or services, when viewed by an uninformed consumer, or by a person familiar with the goods and services, the mark merely alludes to the source of the goods and services. It takes imagination on the part of the purchasing public to determine that applicant provides a lock for a system for complete security under this mark. It is therefore incorrect to conclude, as the Examining Attorney has done, that the mark is “merely descriptive” of the goods. Applicant’s mark may be somewhat suggestive of those goods. Trademark law is clear, however, that even highly suggestive marks are entitled to registration on the Principal Register.

Grant of this trademark application will not prevent applicant’s competitors or other merchants from fairly describing their goods and services. The trademark will not stop others from communicating with their customers to any degree. Merchants are left with a plethora of phrases and terms that can be used to describe their products and/or services. Other companies who compete with applicant do not need to use the term “LATCH” to describe their products or services. Applicant’s adoption of the mark “LATCH” is unique.

It is clear that a mark is not descriptive if it suggestive or evocative of some other association. The mark suggests that using applicant’s system will provide the ease of entry that can be found with fasteners found in olden times, a metal bar that slides into a notch or a spring that slides a bolt through a hole, but also provide the security of a modern security system, one that the user can control and allow ease of entry when he or she wants it. This mark is suggestive, and not merely descriptive for all of the identified goods. Consumers, when confronted with the mark LATCH in the marketplace, would not perceive any information communicated as to the nature or intended purpose of the goods. The mark is reminiscent or suggestive of times in which there was no need to secure your home, and your gate was easily unlatched to let in your neighbor or a visiting friend. Nonetheless, using the LATCH non-metal locks, the user will understand that his or home is secure but accessible on command. In this sense, the mark has characteristics of a fanciful mark. The mark’s connotation evokes a non-descriptive idea.

The Examining Attorney is respectfully asked to reconsider her rejection in light of the comments above, and to approve the application and pass it to publication.