

RE: APPEAL FROM THE  
EXAMINER'S FINAL  
REJECTION OF TRADE-  
MARK APPLICATIONS

Trademark Application Serial  
Nos. 65408 and 65409  
both filed August 5, 1988  
Trademarks : T-JOISTS and TEE-  
JOISTS, respectively  
Applicant : Jackbilt Concrete Block  
Co., Inc.  
Used on : Floor and roof system

JACKBILT CONCRETE BLOCK CO., INC.,  
Applicant-Appellant.

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DECISION NO. 89-102 (TM)  
December 18, 1989

### DECISION

This is an appeal to the Director re final rejection by the Examiner-in-Charge of the applications for the trademarks "T-JOISTS" and "TEE-JOISTS"

The applications for the subject marks were filed last August 8, 1988. One of the issues raised on the very first action paper (Paper No. 6) made by the Examiner was the issue of genericness of subject marks.

The mark of a product is said to be generic when it tells the buyer what the product is. The trademark Manual of Examining Procedure (January 1986 edition) considers a term generic when the same is "the actual name of the product x x x". Generic names", says J.T. McCarthy in his book "Trademarks and Unfair Competition", "are regarded by the law as free for all to use. They are in the public domain." (Underscoring Supplied)

The subject marks are used on goods ostensibly described in the application as "floor and roof system". However, a perusal of the application papers reveals that the marks are used on joists shaped like the capital letter T. Photographs on file show the marks printed on T-shaped joists.

The 1981 Webster's Third New International Dictionary defines "joists" as "(a) any of the small rectangular-sectioned timbers or rolled iron or steel beams ranged parallel from wall to wall in a structure or resting on beams or girders to support the planking pavement, tiling or flagging of a floor or the laths or furring strips of a ceiling; (b) a similar timber supporting the floor of a bridge or other structure". (underscoring supplied)

The same dictionary defines "tee" as "something that is shaped like capital T".

All of the foregoing premises lead to the conclusion that the mark is generic; hence, unregistrable in the Principal Register. That the mark is "hyphenated" is of no moment. The addition or combination of "T" with the word "joists", or "TEE" with the same word does not make the resulting hyphenated mark distinctive. The joists precisely have to be formed into a T to serve their functions.

As to the willingness of the applicant to disclaim any word or to convert the subject applications such that the same would qualify for the Supplemental Register, the applicant may do so subject to the findings of the Examiner of their registrability in said register.

WHEREFORE, the appeal is DENIED. The applications are, however, remanded to the assigned Examiner for determination of their registrability in the Supplemental Register.

SO ORDERED.

IGNACIO S. SAPALO  
Director