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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Superconductor Technologies, Inc.**

Serial No. 74/**633,855**

Corrine M. Freeman of Lyon & Lyon for Superconductor
Technologies, Inc.

Angela Lykos, Trademark Examining Attorney, Law Office 102
(Myra Kurzbard, Managing Attorney).

Before Simms, Seeherman and Hohein, Administrative Trademark
Judges.

Opinion by **Seeherman**, Administrative Trademark Judge:

Superconductor Technologies, Inc. has appealed from the
refusal of the Trademark Examining Attorney to register
SUPERFILTER for "filters, namely cryogenic electronic
filters and cooled electronic filters formed from
superconductive materials."¹ Registration has been refused
pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C.
1052(e)(1), on the ground that applicant's mark is merely

¹ Application Serial No. 74/633,855, filed February 13, 1995
and asserting a bona fide intention to use the mark in commerce.

descriptive of its goods. Specifically, the Examining Attorney asserts that the mark consists of the generic name for the goods, FILTER, and the laudatory term, SUPER, and that when these terms are combined as SUPERFILTER, the mark directly conveys to consumers that the filters are superior.

Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

In support of her position that the mark is merely descriptive, the Examining Attorney has made of record dictionary definitions for the word "filter" which include, inter alia, "a porous substance through which a liquid or gas is passed in order to remove constituents such as suspended matter"; "a device containing or composed of such a substance so used"; and "an electric, electronic, acoustic or optical device used to reject signals, vibrations, or radiations of certain frequencies while allowing others to pass" and definitions of the prefix "super" which include "superior in size, quality, number, or degree" and "exceeding a norm."² We also judicially notice the definitions of the word "super" as meaning "of a superfine grade or quality" and "of great worth, value, excellence, or superiority."³

² WEBSTER'S II New Riverside University Dictionary (1994).

³ Webster's Third New International Dictionary, unabridged (1976). The Board may take judicial notice of dictionary definitions. **University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), *aff'd*. 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

In addition, the Examining Attorney has pointed to a line of cases in which marks comprising the word SUPER combined with the generic term for the goods have been held to be merely descriptive. See **Quaker State Oil Refining Corp. v. Quaker Oil Corp.**, 453 F.2d 1296, 172 USPQ 361 (CCPA 1972) (SUPER BLEND found to be merely descriptive of blend of motor oils); **In re United States Steel Corp.**, 225 USPQ 751 (TTAB 1985) (SUPERROPE held merely descriptive of wire rope); **In re Carter Wallace, Inc.**, 222 USPQ 729 (TTAB 1984) (SUPER GEL held merely descriptive of lathering gel for shaving); **In re Samuel Moore & Co.**, 195 USPQ 237 (TTAB 1977) (SUPERHOSE! held merely descriptive of hydraulic hoses made of synthetic resinous material).

Applicant argues that the present situation is distinguishable from these cases because SUPER, as used in its mark SUPERFILTER, does not have only a laudatory significance with respect to its goods. Applicant contends that the sophisticated purchasers of the identified goods will recognize SUPER as a suggestive reference to the superconductor materials used in the goods, and also as a reference to the source of the goods--applicant, Superconductor Technologies, Inc.⁴ As a result, applicant

⁴ The Examining Attorney has made of record excerpts from the Acronyms, Initialisms & Abbreviations Dictionary, 20th ed. (1996), showing that "super" is not a recognized abbreviation for "superconductor" or "superconductive." Thus, aside from any question of whether SUPERFILTER has a laudatory descriptive significance, this evidence tends to support applicant's position that SUPERFILTER would be suggestive, and not descriptive, of filters made from superconductive material.

asserts that the consumers of the goods will realize that SUPER, as used in the mark, is not meant to be laudatory. Applicant also analogizes this case to **Blisscraft of Hollywood v. United Plastics Co.**, 294 F. 2d 694, 131 USPQ 55 (2d Cir. 1961), in which POLY PITCHER was found not to be merely descriptive of polyethylene pitchers because, in addition to indicating the plastic ingredient of the product, it suggested the historical figure Molly Pitcher, and to **Application of Colonial Stores, Inc.**, 394 F. 2d 549, 157 USPQ 382 (CCPA 1968), in which SUGAR & SPICE was found not merely descriptive of bakery products because, in addition to describing the ingredients of the products, it evoked the nursery rhyme.

Whether a given mark is suggestive, and therefore registrable without evidence of acquired distinctiveness, or merely descriptive, depends on whether the mark immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used, or whether imagination, thought, or perception is required to reach a conclusion on the nature of the goods. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). The Courts have long recognized that there is often but a thin line of distinction between a suggestive and a merely descriptive term, and it is frequently difficult to determine when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness. See **In re Recovery, Inc.**, 196 USPQ 830 (TTAB 1977)

That determination is made even more difficult in the present case, because the application is based not on use in commerce, but on an intention to use the mark. Thus, we have no specimens which could help us in assessing the reaction of consumers for the identified filters. In these circumstances, and in view of applicant's assertions that the clearly sophisticated consumers of these goods would view SUPERFILTER not as a laudatory term for filters of superior quality, but as a suggestive term indicating the material from which the filters are formed, we believe, at the very least, that doubt exists about the mere descriptiveness of the mark.⁵ Such doubt must, as is well-established by trademark law, be resolved in applicant's favor. **In re The Gracious Lady Service, Inc.**, 175 USPQ 380 (TTAB 1972).⁶

⁵ We also note that the Courts and the Board have treated SUPER marks somewhat inconsistently. Although, in general, marks consisting of SUPER combined with the generic term for the goods have been found to be merely descriptive, there is at least one case where a "SUPER mark" was found to connote a vague desirable characteristic or quality, such that the mark as a whole was held to be not merely descriptive. See **In re Ralston Purina Company**, 191 USPQ 237 (TTAB 1976) (SUPER SLUSH for concentrate for making a slush type soft drink).

⁶ We would point out, however, that if the specimens which applicant submits with its Statement of Use show that the mark SUPERFILTER clearly conveys to consumers a laudatory descriptive significance of a super or superior filter, it would not be inappropriate to refuse registration pursuant to Section 2(e)(1) at that time. See TMEP Section 1105.05(f)(ii).

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Decision: The refusal of registration is reversed.

R. L. Simms

E. J. Seeherman

G. D. Hohein
Administrative Trademark Judges
Trademark Trial and Appeal Board