

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

MARCH 16, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Pure Distributors, Inc.**

Serial No. 75/010,405

John P. Halvonik for **Pure Distributors, Inc.**

Steven R. Foster, Trademark Examining Attorney, Law Office
107 (**Thomas Lamone**, Managing Attorney).

Before **Hohein**, **Hairston** and **Walters**, Administrative
Trademark Judges.

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

Pure Distributors, Inc. has filed an application to register the mark NUTRITION FOR THE SKIN for "skin creams, skin lotions, hair shampoo, skin soap, shaving creams, sun tan lotions and skin moisturizers."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the mark merely describes applicant's goods.

Further, the Examining Attorney has required that applicant specify the type of commerce in which the mark was first used and the method of use.

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

We note that applicant, neither in its appeal brief or during the prosecution of this case, addressed the requirements to specify the type of commerce in which the mark was first used and the method of use. Trademark Rule 2.33 requires, in relevant part, that an application under Section 1(a) of the Trademark Act specify the nature of the commerce in which the mark is used and the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods. Inasmuch as the application fails to specify either of the above, we find the requirements by the Examining Attorney to be proper.

We turn next to the refusal to register under Section 2(e)(1) of the Trademark Act. The Examining Attorney maintains that the phrase NUTRITION FOR THE SKIN "immediately apprises the consumer as to a significant quality, or feature or purpose of [applicant's] goods, which in fact, provide nutrition to the skin." (Final office action, p. 1)

¹ Application Serial No. 75/010,405 filed October 25, 1995; alleging a date of first use of June 15, 1995 and a date of first use in commerce of July 20, 1995.

In support of the refusal to register, the Examining Attorney has submitted excerpts of articles taken from the NEXIS data base. According to the Examining Attorney, these excerpts show that the term "**nutrition**" has been used descriptively in connection with topical skin treatments, for example:

. . . 1.04-ounce multi-biological cream for \$45. A patented molecule that Biotherm calls a "microsphere" enhances the diffusion of Biologics antiaging ingredients, said Aubert. The ingredients include keratin, animal protein and hydrolized protein. "It's giving **nutrition** to the skin to balance the effects of aging," said Aubert. (Women's Wear Daily, December 11, 1987);

. . . Pour Homme Masculus comprises shampoo, conditioner, grooming gel, facial scrub shaving cream, after-shave gel, moisturizing cream and a facial masque. The active ingredients of each of the products are botanical extracts, which according to Michaelson, provide external **nutrition** to the skin. (Daily News Record, July 20, 1988);

The new 14-product line is named for its active ingredients, which the company developed at the research and development plant it built in 1989. Precursors, as they are called in English, are natural-based ingredients that provide the skin with **nutrition** and stimulate the skin's natural healing processes, according to the company. Every item in the line is imbued with the precursors.

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The line is divided into three categories, each with its own primary function. Soins Purette, for clarifying the complexion, includes three cleaning and makeup . . . (Women's Wear Daily, March 19, 1993); and

About 100 people work at the company's existing facility in Irvine, which manufactures vitamins and dietary supplements. The new plant will turn out Alacer's line of vitamin and mineral tablets with a topical **nutrition** skin-care line. (Los Angeles Times, March 20, 1996).

Further, the Examining Attorney submitted a copy of a third-party registration (Registration No. 1,983,777) for the mark shown below which covers hair and skin care preparations. The wording NUTRITION & SHINE have been disclaimed apart from the mark as shown.



g Attorney submitted the following the Random House Unabridged

act or process of nourishing hed. . . 4. food; nutriment.

substance or matter that, g organism, serves to existence, promoting growth, replacing loss, and providing energy. 2. anything that nourishes, nourishment, food.

Applicant, in urging reversal of the refusal to register, contends that the word nutrition does not apply to substances that may be placed on the skin. Applicant maintains that nutrition, as it is commonly understood, pertains not to a topical skin care product, but rather to

food and/or minerals which are ingested. Applicant states that its products do not provide nutrition in the commonly understood sense because the skin does not take in and use these products in the same manner that food is taken in and used by the body. In support of its position, applicant submitted the following definition from Webster's Seventh New Collegiate Dictionary (1969):

nutrition: the act or process of nourishing or being nourished; *specif*: the sum of the processes by which an animal or plant takes in and utilizes food substances.

Further, applicant maintains that the news stories submitted by the Examining Attorney are not reliable evidence of how the public views the word nutrition.

A term is considered to be merely descriptive of goods within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic of feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a single significant attribute or idea about them. In re Venture Associates, 226 USPQ 285 (TTAB 1985). Moreover, the

question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one who sees the mark alone can guess what the applicant's goods are, but rather in relation to the goods for which registration is sought, that is, by asking whether, when the mark is applied to the goods, it immediately conveys information about their nature. In re Bright-Crest, Ltd., 104 USPQ 591 (TTAB 1979).

The dictionary evidence establishes that "nutrition" means "the process of nourishing or being nourished." While the ingestion of food and/or minerals into the body is probably the best known example of this process, the dictionary evidence does not limit nutrition to only this process. Moreover, as evidenced by the excerpts retrieved from the NEXIS database, nutrition is used in describing a function of topical skin care products. As to applicant's contention that the excerpts from the NEXIS data base are not probative evidence, it is well settled that evidence of the purchasing public's understanding of a term may be obtained from sources such as magazines and newspapers. In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

Thus, we agree with the Examining Attorney that when the mark NUTRITION FOR THE SKIN is considered in relation to applicant's skin creams, skin lotions, hair shampoo, skin

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soap, shaving creams, sun tan lotions and skin moisturizers, it directly conveys to prospective purchasers that these goods provide nutrition to, i.e., nourish, the skin.

Decision: The requirements to specify the type of commerce in which the mark was first used and the method of use are affirmed, and the refusal to register under Section 2(e)(1) of the Trademark Act is affirmed.

G. D. Hohein

P. T. Hairston

C. E. Walters
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

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