

Paper No. 11
HRW

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 23, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re PH Pure Health

Serial No. 75/048,250

Faye L. Mattson of Christensen O'Connor Johnson & Kindness
for PH Pure Health.

Alec Powers, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Cissel, Hairston and Wendel, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

PH Pure Health has filed an application to register
the mark SUPER OXIDE for:

chemicals, namely, alkaline and acidic water for use
in food processing and preserving, industrial waste
and agriculture in Class 1;
alkaline and acidic water for use as a topical
disinfectant in Class 5;
water and electrolysis distilling units for producing
alkaline or acidic water for use in agriculture, food

processing, industrial waste treatment, and topical disinfectants in Class 11.¹

Registration has been finally refused on the ground that the proposed mark SUPER OXIDE is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney has relied upon the following dictionary definitions from Webster's II New Riverside University Dictionary (1994) for the two terms in the mark:

super: an article or product of superior size or quality;
oxide: a binary compound of an element or radical with oxygen.

On the basis of these definitions, the Examining Attorney takes the position that SUPER OXIDE merely describes a feature or characteristic of applicant's goods, namely, that the goods contain oxide in an unusually high proportion or of a superior quality. In other words, from the Examining Attorney's viewpoint, the mark is no more than the combination of the laudatory term "SUPER" with the name of a common chemical ingredient, an "OXIDE."

Applicant argues that the mark SUPER OXIDE must be considered in its entirety and that, as such, the composite mark is not merely descriptive of applicant's goods.

¹ Ser. No. 75/048,250, filed Jan. 25, 1996, based on a bona fide

Looking to the dictionary definitions per se, applicant contends that "super" as used in its mark neither conveys the idea of different grades or sizes, nor is it simply combined with the name of the goods. As for "oxide," applicant insists that a multi-stage process is necessary to associate this term with applicant's product. In applicant's words, "the first step in the multi-stage process is that the purchaser must know what a binary compound is," "the second step is to determine what to combine with oxygen to form the binary compound," and the final step is to determine "how that binary compound is associated with [applicant's] goods." (Applicant's brief p. 6).

In addition, applicant points to the absence of any evidence in the record that competitors in the field either use the phrase "super oxide" or that competitors would need the phrase to adequately identify similar products.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, use, function, or feature of the goods with which it is being used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that the term or phrase

intention to use.

describe all the characteristics or features of the goods in order to be merely descriptive; it is sufficient if the term or phrase describes a significant attribute thereof. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

In the present case, we cannot see how SUPER OXIDE immediately conveys specific information with respect to applicant's alkaline and acidic water products or the distilling units for producing the same. From the dictionary definition of an "oxide" it is clear that this term covers an entire class or category of chemical compounds. The particular "oxide" or "binary compound" that is formed is dependent upon the "element" or "radical" with which oxygen is combined. Thus, the term "oxide" in itself cannot be merely descriptive of any particular product, but rather only of an entire category of products. The fact that applicant's water products may contain one particular oxide does not make the term "oxide" merely descriptive of these products. We agree with applicant that a multi-stage reasoning process would be required before purchasers would make an association of the term "oxide" with applicant's products.

Nor do we find the term "super" as used in the present mark to be simply a laudatory, descriptive term. Since the term "oxide" is neither the name of applicant's products

nor a specific component of the products, the dictionary definitions of "super" are not applicable. There is no particular item or component of the goods which "super" describes in terms of quality or proportion. Instead, we find the use of "super" in applicant's mark to be no more than suggestive of the desirable attributes of its products. See *In re Ralston Purina Co.*, 191 USPQ 237 (TTAB 1976)[SUPER not merely descriptive as used in RALSTON SUPER SLUSH since it only connotes a vague desirable characteristic or quality of the goods]. Furthermore, since there is no evidence of record of any use by others of the phrase "super oxide," we have no reason to conclude that "super," when used in this context, is simply a laudatory term without any source-indicating significance. Cf. *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995)[SUPER BUY widely used as laudatory expression indicating bargains of exceptional value and thus merely descriptive of applicant's tobacco products].

Accordingly, we find the mark SUPER OXIDE not to be merely descriptive of applicant's goods.

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Decision: The refusal to register under Section
2(e)(1) is reversed.

R. F. Cissel

P. T. Hairston

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board

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