

1/5/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 9
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Health Facts, Inc.**

Serial No. 75/439,392

Kenneth E. Kuffner of Kuffner & Associates for **Health Facts, Inc.**

Sophia S. Kim, Trademark Examining Attorney, Law Office 106
(**Mary I. Sparrow**, Managing Attorney).

Before **Quinn, Hohein** and **Holtzman**, Administrative Trademark
Judges.

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

Health Facts, Inc. has filed an application to register
the mark "A MAN'S FACE" for "non-medicated skin care products,
namely, lotions, astringents, balms, creams, cleansers and
powders."¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis
that, when used in connection with applicant's goods, the mark "A
MAN'S FACE" is merely descriptive of them.

¹ Ser. No. 75/439,392, filed on February 24, 1998, which alleges a bona fide intention to use such mark in commerce.

Applicant has appealed. Briefs have been filed, but an oral hearing was not held. We reverse the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

However, a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning process, or the utilization of imagination, thought or

perception, is required in order to determine what attributes of the goods or services the mark indicates. See, e.g., In re Abcor Development Corp., supra at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347, 1349 (TTAB 1984). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985).

According to the Examining Attorney, "[t]he proposed mark 'A MAN'S FACE' is merely descriptive of the intended area of use of the identified goods." In particular, the Examining Attorney contends that "[t]he proposed mark, in relation to the identified goods, clearly and immediately tells prospective consumers that the applicant's skin care goods are to be used on a man's face." Relying upon the common or ordinary significance of the words "man" and "face," definitions of which were made of record with the final refusal,² the Examining Attorney asserts that "[t]he dictionary meanings of the terms are clearly

² Specifically, The American Heritage Dictionary of the English Language (3rd ed. 1992) defines "man" as "[a]n adult male human being" and lists "face" as meaning "**1. a.** The surface of the front of the head from the top of the forehead to the base of the chin and from ear to ear. **b.** A person: *We saw many new faces on the first day of classes.* **2.** A person's countenance."

understandable to the average consumer and there is no ambiguity or *double entendre*, i.e. double meaning, in the terms in relation to the identified goods." Relying also upon excerpts from various periodicals, copies of which were obtained from her searches of the "NEXIS" database,³ the Examining Attorney argues in conclusion that:

As the articles demonstrate, skin care and cosmetic products are no longer just used by women but are being used by men. It appears that more and more skin care and cosmetics companies are creating specific lines of products just for men. Therefore, in light of this trend in the skin care and cosmetics industry, it is likely that the consumers will perceive the proposed mark as merely describing the intended area of use of the identified goods

³ The following examples are representative (**emphasis added**):

"Even men's **cosmetics** are not immune from the macho-man motif. Consider the 'multifunctional system for a **man's face**' by Ralph Lauren, a.k.a., soap, shaving **cream** and moisturizer." -- Denver Post, June 13, 1997;

"SHE: I can't tell you how many times I've looked at a prominent blemish on a **man's face** and ached for it to be camouflaged with a smidge of flesh-toned **cream**." -- L.A. Times, January 15, 1993;

"Most men ... use shaving **creams**. But partly because of advertising and partly because the skin on a **man's face** is so sensitive, there was a strong tendency for men to be brand loyal." -- Drug Store News, December 10, 1990;

"Bronzers, **creams** that give a tanned look to a **man's face**, have been around for 10 or 15 years" -- St. Louis Post-Dispatch (article headlined: "MEN: FLOCKING TO **COSMETICS** COUNTERS"); and

"AVON RECENTLY introduced the Active Fitness System for Men, a complete grooming line to promote long-term skin fitness for a **man's face** and body. The system, fine-tuned to a man's skin chemistry, includes a body **cleanser** gel, skin **lotion**, conditioning shampoo, anti-perspirant and deodorant talcum. The line will be extended in 1986 to include facial skin care products." -- Arkansas Democrat-Gazette, November 14, 1985.

Applicant, on the other hand, maintains that "the mark in question is, at best, 'suggestive' of the goods recited" inasmuch as it requires imagination, thought or perception in order for consumers to reach a conclusion as to the nature of applicant's goods. In this regard, applicant insists that (*emphasis in original*):

The mark under consideration here operates, at best, *to draw attention to* the fact that the goods in question are to be used in some manner on a particular area of the body. However, it does not make a mark merely descriptive and, therefore, unregistrable, merely because it has *the capacity* to draw attention to what the product ... is or what its characteristics are.

Applicant consequently argues that the fact that "the term sought to be registered may be used to describe *how* a product might be used does not, by itself, make the mark descriptive of the goods" (*emphasis in original*). According to applicant, "[a]n analogy [to the Examining Attorney's position] would be the use of the term 'a man's foot' to be descriptive of shoes, rather than where a shoe might be used," but such a "thought requires too much 'stretch' to be reasonable."

While a closer or more apt analogy might be the use of the designation "a man's foot" in connection with a foot balm, cream or powder, we nevertheless are constrained to agree with applicant that, when considered in its entirety, the phrase "A MAN'S FACE" is suggestive rather than merely descriptive of applicant's "non-medicated skin care products, namely, lotions, astringents, balms, creams, cleansers and powders." Literally,

there is no characteristic, feature, purpose or use of any of applicant's goods which constitutes a man's face; instead, the phrase is at best highly suggestive of the area of the body where applicant's goods would be used or applied rather than any aspect of the products themselves.

Moreover, while admittedly a fine line, the phrase "A MAN'S FACE" nevertheless has a suggestive overtone or inference of masculinity, particularly when utilized in connection with non-medicated skin care products for men, given the fact (as reflected in some of the "NEXIS" excerpts) that, until very recently, men customarily did not use such goods or, at least, did not publicly acknowledge use of skin care products. Stated otherwise, applicant's goods are not just for use on a face but are principally intended for application to a *man's* face. The rugged, manly appeal suggested by this *double entendre* is itself sufficient to preclude applicant's mark from being considered as merely descriptive of its goods inasmuch as it imparts a degree of imagination, thought or perception to the mark.

Finally, and in light of the above, at a minimum we have doubt that applicant's mark immediately conveys *only* that its goods are to be used on a man's face, as contended by the Examining Attorney, and thus has no other significant and discernible meaning or suggestion in relation to applicant's goods. In view thereof, we resolve such doubt, in accordance with the Board's practice, in favor of publication of applicant's mark for opposition. See, e.g., *In re Conductive Systems, Inc.*, 220 USPQ 84, 86 (TTAB 1983); *In re Morton-Norwich Products, Inc.*,

Ser. No. 75/439,392

209 USPQ 791 (TTAB 1981); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

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