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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 14

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re **Hood River Conservation Foundation, Inc.**

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Serial No. 75/453,584

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**Faye L. Tomlinson of Christensen O'Connor Johnson &  
Kindness for Hood River Conservation Foundation, Inc.**

**Kimberly Krehely**, Senior Examining Attorney, Law Office 107  
(Thomas Lamone, Managing Attorney).

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Before Seeherman, Quinn and Rogers, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Hood River Conservation Foundation has applied to register CLIMATE NEUTRAL as a certification mark, based on a bona fide intention to exercise legitimate control over the use of the certification mark in commerce.<sup>1</sup> Applicant has stated that the certification mark, as intended to be used by authorized manufacturers, certifies that such manufacturers meet standards and tests of reducing and

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<sup>1</sup> Application Serial No. 75/453,584, filed March 20, 1998.

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offsetting greenhouse or global warming gases established by the certifier, and that the certification mark, as intended to be used by authorized service providers, certifies that such service providers meet standards and tests of reducing and offsetting greenhouse or global warming gases established by the certifier. Applicant and the Examining Attorney agreed that, because the goods and services to be certified encompass such a broad array, they may be identified as, essentially, the class headings set forth in Rule 6.1, 37 CFR § 6.1.

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 descriptive if it is used in connection with the claimed certification activities. It is the Senior Examining Attorney's position that the mark describes a significant feature of the certified goods and services, namely, that they do not harm the global climate.

Applicant has appealed the refusal. The appeal has been fully briefed, but an oral hearing was not requested.

A term is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Act, if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with

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which it is used or, in the case of a certification mark, those goods or services which it certifies. See **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Moreover, in order for a term to be merely descriptive, it need only describe one of the qualities or properties of the goods. Id. It is not necessary for the term to describe every one of the qualities, characteristics, functions, etc. **In re Venture Lending Associates**, 226 USPQ 285 (TTAB 1985). The determination of mere descriptiveness is not to be made in the abstract, considering the impression of the mark as it is, or is proposed to be, used in connection with the identified goods or services, or, in this case, in connection with the certification of those goods or services. See **In re Abcor Development Corp.**, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

The Senior Examining Attorney has made of record dictionary definitions<sup>2</sup> for "climate" ("the meteorological conditions, including temperature, precipitation, and wind, that characteristically prevail in a particular region") and "neutral" ("belonging to neither kind; not one thing or the other; indifferent"). She has also submitted three articles taken from the NEXIS data base: two are from The

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<sup>2</sup> The American Heritage Dictionary of the English Language, 3d ed. © 1992.

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National Journal Group, Inc. and contain similar information,<sup>3</sup> as follows:

Article 1: "Greenwire," September 25, 1998

Headline: Natural Gas: Hess Launches "Climate-Neutral" Product

UK-based Amerada Hess, a gas marketing company, is launching a "Climate Care Saver" natural gas product, which is believed to be the world's first "climate neutral" gas contract.

Under the program, customers will pay a premium to "offset" the carbon-dioxide emissions associated with natural gas. The money will be used to invest in conservation of Ugandan rainforests.

Article 2: "National Journal's Daily Energy Briefing," September 25, 1998:

... UK-based Amerada Hess, a gas marketing company, is launching a Climate Care Saver tariff, which claims to be the first "climate neutral" gas supply contract. Under the program, customers are told that all carbon-dioxide emissions associated with the gas—which would normally contribute to global warming—will be offset by an investment in Ugandan rainforests (Carl Mortished, London Times, 9/23).<sup>4</sup>

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<sup>3</sup> Applicant treats both of these articles as though they are a single article. However, it is clear from the differences in the manner in which the information is reported that each represents a different publication source.

<sup>4</sup> It appears from the manner in which the news is reported in this article that the "London Times" is listed as source for this particular information.

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The third submission is a transcript from a National Public Radio broadcast of "Talk of the Nation" on June 27, 1997, the subject of which was "the state of the science on climate change, how global warming may be already changing our national parks, and how renewable energy sources like solar or wind power could be the solution to the problem." During that broadcast, one of the panelists, in connection with a discussion about global warming and renewable energy technologies, made the following statement:

... The biomass technologies are essentially converting the energy stored in plants to electricity or liquid fuels. And those technologies are climate neutral in a sense, carbon neutral, because they don't add any net carbon to the environment if we replant the plant material that we've used.

We agree with the Senior Examining Attorney that the dictionary definitions of the words "climate" and "neutral" show that, when these words are combined in the phrase CLIMATE NEUTRAL, the ordinary meaning of the term is neither benefiting nor harming the climate. Further, when the term is used in connection with certifying that goods and services meet standards and tests of reducing and offsetting greenhouse or global warming gases, consumers would immediately understand that the certified goods or services do not, in totality, harm the climate.

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Applicant has pointed out that the phrase "climate neutral" does not appear in the dictionary. However, there is no requirement that a phrase appear in the dictionary in order to find it to be merely descriptive. See **In re Pharmaceutical Innovations, Inc.**, 217 USPQ 365 (TTAB 1983), and cases cited therein. Moreover, dictionaries do not necessarily reflect changes in language at the same pace that technologies advance and scientific discoveries occur.

Applicant also points to meanings of the individual words in its mark to show that its mark is not merely descriptive, arguing that people view "climate" as referring to the weather system of a particular region rather than the entire globe, and that the definition of "neutral" as "indifferent," results in a meaningless concept of "an indifferent climate." Brief, p. 4. However, although different regions may have different climates, the term may also be used to refer to the global climate, as is shown in the National Public Radio transcript, at pp. 2-3: "And the overall statement, which is now fairly widely known, is that the balance of evidence suggests a discernible human influence on global climate." Applicant's argument that CLIMATE NEUTRAL would be perceived as "indifferent climate" is unpersuasive. Applicant's focus on "neutral" as meaning "indifferent"

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ignores the meaning of "neutral" as "not causing or reflecting a change in something: *It is believed that the new tax law will be revenue neutral.*"<sup>5</sup> Further, consumers are used to seeing such a phrase as "revenue neutral" in connection with legislation which, for example, raises taxes for certain things while lowering them for others, so that the result is revenue neutral. As a result, they will ascribe the same significance to the phrase CLIMATE NEUTRAL when it is used in connection with goods and services which are certified to meet standards of reducing and offsetting greenhouse or global warming gases. That is, they will view these goods or services as not having an overall negative effect on the climate because any negative impact will be offset by a positive impact.

Applicant asserts that "even arguably in the environmental field, the combination of the terms 'climate' and 'neutral' are [sic] more likely to be readily understood as a qualification that, for example, irrespective of varying climate conditions, the cities of Johannesburg and London will be compared; or, irrespective of whether one lives in Johannesburg or London, one can

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<sup>5</sup> The Random House Dictionary of the English Language, 2d ed., unabridged, © 1987. 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).

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expect substantially the same results from such-and-such product." Brief, p. 5.

The difficulty with this argument is that it would have us consider the mark in a vacuum. Applicant is not seeking registration of CLIMATE NEUTRAL as a certification mark for comparing geographic places, or determining whether goods are equally effective in different climates. Rather, applicant is certifying that the manufacturers and service providers meet standards for reducing and offsetting greenhouse or global warming gases. When the mark is viewed in connection with such certification, it is clear that consumers will immediately understand the mark to certify that the goods or services are produced in a manner in which any negative impact on the climate will be offset by a positive impact, such that the goods or services do not harm the climate.

Our decision that the mark is merely descriptive does not rest solely on the dictionary definitions. The NEXIS excerpts, although obviously limited in nature,<sup>6</sup> show that

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<sup>6</sup> Applicant states that the Examining Attorney did not disclose how many total documents containing relevant uses of the term CLIMATE NEUTRAL were found during the NEXIS search. The search query is, indeed, part of the file, and shows that 25 stories were retrieved by the search. As the Board stated in **In re Federated Department Stores, Inc.**, 3 USPQ2d 1541 (TTAB 1987), the Examining Attorney has the option of providing whatever material he or she feels is helpful in proving the point he or she is attempting to make. It is up to the applicant to rebut that

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at least one reporter and one panelist have used the phrase CLIMATE NEUTRAL to describe, for example, activities with negative effects on the climate being offset by those with positive effects. The limited references to CLIMATE NEUTRAL can be attributed to the fact that it is a relatively new concept to offset damage to, or not affect, the climate as one manufactures products or provides services, in the same manner that the identification of and concern about global warming is a relatively new phenomenon. In addition to the NEXIS excerpts, applicant itself has found other uses of CLIMATE NEUTRAL. In its brief applicant has stated that a search of the Internet for CLIMATE NEUTRAL retrieved 18 hits, and that 9 of these hits use this term, primarily in the title or header.<sup>7</sup> This evidence reinforces the Senior Examining Attorney's position that this term is being used by those in the

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evidence. Thus, the Examining Attorney is not obliged to file every story found in a NEXIS search. In this case, we presume that the other stories, which were not made of record, were either "noise" or were irrelevant to the issue at hand. In any event, it is general practice for the Board to assume that the Examining Attorney has made the best case possible, and that if only three stories were made of record, these were the only stories that supported her position.

<sup>7</sup> Applicant did not supply copies of this evidence, merely referring to it in its brief. Normally such evidence would not be considered, but in this case the Senior Examining Attorney expressly referred to it in her brief. Accordingly, we deem her to have stipulated it into the record, and we have therefore considered applicant's statements.

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environmental community, and that public exposure to it is growing.

Applicant appears to take the position that allowing it to register CLIMATE NEUTRAL as its certification mark would work no competitive disadvantage because uses of this term are so limited, and because the use of quotes around it in the two National Journal articles indicates that CLIMATE NEUTRAL is not a common term.<sup>8</sup> However, it is well-established that a mark may be merely descriptive even if the applicant is the first or only party to use it. See **In re Pharmaceutical Innovations, Inc.**, supra. In this case, as we stated above, the limited usage of the term can be attributed to the relatively recent phenomenon which the term describes. Moreover, it must be remembered that applicant seeks to register its mark to certify literally every kind of product and service on which a mark may be used. To effectively preclude third parties from being able to use the short phrase CLIMATE NEUTRAL to indicate that their products and services do not have a negative effect on the global climate would indeed have a negative effect on competitors.

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<sup>8</sup> Although the articles do, indeed, use quotes for CLIMATE NEUTRAL, the author seems to have a penchant for quotation marks, also using them for the word "offset."

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Decision: The refusal of registration is affirmed.