

11/27/01

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

Paper No. 9  
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re *Sirius Products, Inc.*

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Serial No. 75/585,837

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*Mark B. Harrison* of Venable, Baetjer and Howard, LLP for *Sirius Products, Inc.*

*William G. Breckenfeld*, Trademark Examining Attorney, Law Office 112 (*Janice O'Lear*, Managing Attorney).

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Before *Hohein, Bucher* and *Bottorff*, Administrative Trademark Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

*Sirius Products, Inc.* has filed an application to register the term "HARD WATER" for goods identified as a "cleaning preparation for all surfaces."<sup>1</sup>

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<sup>1</sup> Ser. No. 75/585,837, filed on November 10, 1998, which is based on an allegation of a bona fide intention to use such term in commerce.

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 term "HARD WATER" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm 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 an immediate idea of any 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).

Applicant argues that, applying the above test, "it seems clear that the mark HARD WATER does not, with any certainty, forthwith convey an immediate idea of the subject matter or any quality, characteristic, function or feature of applicant's goods." Specifically, with respect to the Examining Attorney's contention in his final refusal that the term "HARD WATER" is merely descriptive "because it describes a feature of the goods, namely, that the preparation cleans hard water stains," applicant asserts that "a consumer presented with a cleaning preparation bearing the mark HARD WATER would not immediately know whether the goods are 'designed to clean stains created by hard water' as alleged by the Examining Attorney, or whether the goods are formulated to clean more efficiently in 'hard water,' or whether a primary ingredient of the goods is 'hard water.'" According to applicant, because "[m]ore information would be required," "a consumer would be hardpressed to 'immediately and forthwith' understand the significance of the term 'HARD WATER' as used in connection with applicant's goods." In particular, applicant insists that "[w]hile

consumers may understand that the goods have something to do with 'hard water,' that term per se gives no indication of the nature or type of relationship the goods have to 'hard water.'" Thus, according to applicant, such term "is at best suggestive, and does not immediately and forthwith convey any idea of the function of the goods."

The Examining Attorney, on the other hand, contends that the term "HARD WATER" is merely descriptive of "a feature and use of applicant's all-surface cleaning preparation inasmuch as such product will clean hard water stains or deposits. In support of his position, the Examining Attorney relies, in part, on dictionary definitions from the electronic version of The American Heritage Dictionary of the English Language (3rd ed. 1992), which in relevant portions list "hard" as an adjective meaning "16. Containing dissolved salts that interfere with the lathering action of soap. Used of water" and defines "water" as "1. A clear, colorless, odorless, and tasteless liquid, H<sub>2</sub>O, essential for most plant and animal life and the most widely used of all solvents."

In addition, the Examining Attorney relies on various excerpts, of which the following are representative, from his search of the "NEXIS" database as shedding light on the meaning of the term "hard water" and the cleaning problems which it creates (**emphasis added**):

"If you are having problems **cleaning** the tiles, it is probably **hard-water** deposits. These are as hard as rock." -- Dayton Daily News, March 2, 2000;

"A commercial **hard-water cleaner** may be necessary for heavy mineral buildup." -- Houston Chronicle, September 24, 1999;<sup>2</sup>

"If your area has **hard water**, you can **clean** off deposits with white vinegar." -- Dayton Daily News, May 27, 1999;

"Sovey is selling Pro-Clean **Hard Water** Mineral Remover, a detergent that removes icky mineral buildup off shower doors and other surfaces slick as a whistle." -- Lewiston Morning Tribune, April 3, 1999;

"The Bathroom: .... Use an acid-type **cleaner** to remover **hard-water** deposits and soap scum.

....

The Bedroom: .... Use a store-bought glass **cleaner**, because **hard water** used with homemade **cleaner** can cause streaking." -- Virginian-Pilot (Norfolk, Virginia), January 24, 1999;

"The **cleaner**, according to the manufacturer, also works on **hard water** stains, soap, scum and dirt." -- Atlanta Journal & Constitution, January 7, 1999;

"Nonabrasive **hard-water cleaners** contain potent acids to quickly dissolve the crust made by water minerals. The 'brownish' is rust from iron in **hard water**." -- Dayton Daily News, August 2, 1998; and

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<sup>2</sup> This same story also appeared on the same date in excerpts from the Times-Picayune, Arizona Republic, Press Journal (Vero Beach, Florida), Sun Sentinel, (Fort Lauderdale, Florida), Stuart News/Port St. Lucie News (Stuart, Florida), Commercial Appeal (Memphis, Tennessee) State Journal-Register (Springfield, Illinois), and Deseret News (Salt Lake City, Utah).

"A free brochure about **hard-water** problems, plus coupons good toward the purchase of **hard-water cleaners**, can be requested from Hard Problems, Easy Solutions ...." -- St. Petersburg Times, May 30, 1998.

Also relevant, and made of record by another Examining Attorney who was initially assigned to this case, is the following excerpt from the "NEXIS" database (**emphasis added**):

"Katz is a spokesman for Jet-Dry, Calgon, and other **hard water cleaning solutions**, which makes her an expert of sorts on water spots" -- Chicago Daily Herald, November 23, 1997.

The Examining Attorney, in light of the above, contends that (footnotes omitted; **emphasis in original**):

The applicant's goods are cleaning preparations for all surfaces. **HARD WATER** stains are a common occurrence in many households. **HARD WATER** stains are caused by water containing dissolved salts. These salts build up causing a hard, rock[-]like, stain that is difficult to remove. The applicant's cleaning preparations will clean **HARD WATER** stains. The mark is therefore [merely] descriptive of a feature and use of the goods.

As to applicant's assertions that the term "HARD WATER," when used in connection with its all-surface cleaning preparation, lacks specificity, the Examining Attorney maintains that the examples offered by applicant do "not obviate the refusal" because (**emphasis in original**):

If the preparations are formulated to clean more efficiently in **HARD WATER**, then the mark is [merely] descriptive of a feature of

the goods. If **HARD WATER** is a primary ingredient of the preparations, then the mark is also merely descriptive. Each of the applicant's hypothetical thought processes leads to the mark being [merely] descriptive of the goods.

We agree with the Examining Attorney that, when considered in relation to the goods, rather than in the abstract as applicant's arguments essentially urge, the term "HARD WATER" is merely descriptive of applicant's goods. In particular, it is our view that, when applied to a "cleaning preparation for all surfaces," the term "HARD WATER" would be regarded by purchasers and potential customers as immediately describing, without any conjecture or speculation, a significant purpose, feature or use of applicant's goods, namely, that they are used as a hard water cleaning preparation, i.e., an all-surface cleaner which is designed to remove hard water stains or mineral deposits. There is simply nothing in the term "HARD WATER" which, when used in connection with applicant's goods, requires the exercise of imagination, cogitation or mental processing or necessitates the gathering of further information in order for the merely descriptive significance thereof to be immediately perceived. Clearly, to customers and users of applicant's goods, such term readily conveys that a principal purpose, feature or use of applicant's product is that of a hard water cleaning preparation, specifically, one which cleans or

eliminates stains or mineral deposits caused by hard water. Nothing in the term "HARD WATER" is bizarre, incongruous, indefinite or ambiguous when considered in the context of applicant's goods and, in fact, such goods plainly are a type or kind of product which, as shown by some of the "NEXIS" excerpts, are variously known as hard water cleaning solutions or hard-water cleaners.

Accordingly, because the term "HARD WATER" forthwith conveys a significant purpose, feature or use of applicant's "cleaning preparation for all surfaces," it is merely descriptive of such goods within the meaning of the statute.

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