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**THIS DISPOSITION
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Paper No. 9
JQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Solar Protective Factory, Inc.

Serial No. 75/592,344

Leon I. Edelson for applicant.

Idi Aisha Clarke, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Chapman and Bottorff, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Solar Protective Factory,
Inc. to register the mark SPF for "chemical additive used
in the manufacture of textile products."¹

The Trademark Examining Attorney refused registration
under Section 2(e)(1) of the Trademark Act on the ground
that applicant's mark, when applied to applicant's goods,

¹ Application Serial No. 75/592,344, filed November 19, 1998,
based on an allegation of a bona fide intention to use the mark
in commerce.

is merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs.² An oral hearing was not requested.

The Examining Attorney maintains that the mark is merely descriptive of a chemical additive that has a measurable SPF or "sun protection factor," or of a chemical additive used to give a sun protection factor to fabric for clothing. The Examining Attorney submitted a dictionary listing of "SPF," and excerpts of articles retrieved from the NEXIS database.³

Applicant confirms that its chemical additive is used on fabric during the dyeing of the fabric, and that purchasers of the additive are manufacturers of the dyed fabric. Applicant goes on to assert that these purchasers are discriminating purchasers with exceptional training and education. Applicant further contends that the meaning of SPF with respect to unrelated products, namely, suntanning lotions and cremes, renders its mark just suggestive as applied to applicant's chemical additive. Applicant also

² The Examining Attorney, with her appeal brief, furnished excerpts from applicant's Website retrieved from the Internet. The submission is untimely, and this evidence has not been considered in making our decision. Trademark Rule 2.142(d).

³ Applicant has properly criticized those articles appearing in foreign publications, and we have not considered them. In re Urbano, 51 USPQ2d 1776, 1778 at n. 3 (TTAB 1999).

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points out that the letters SPF also refer to applicant's name, "Solar Protective Factory, Inc." Applicant claims that it is diligent in policing its mark and takes corrective action when deemed appropriate. In this connection, applicant furnished three letters it wrote to publishers concerning their descriptive misuse of applicant's mark. In support of its urging that the refusal be reversed, applicant submitted a dictionary listing of "SPF." Applicant also claims ownership of Registration No. 1,770,817, issued May 11, 1993 on the Principal Register (Section 8 affidavit filed), of the mark SPF for various items of clothing.

It is well settled that 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 or 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, 217-18 (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 significant attribute or feature about them. Moreover, whether a term is merely

descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The dictionary listings establish that "SPF" is an abbreviation of "sun protection factor," a classification of the U.S. Food and Drug Administration which measures the effectiveness of suntanning preparations in protecting the skin from the harmful effects of the sun's ultraviolet radiation. Further, the NEXIS evidence of record demonstrates that the commonly recognized and understood meaning of "SPF" as "sun protection factor" also has been adopted for use in the clothing industry. The following excerpts are representative:

While everyone can benefit from clothes and sunscreen of an SPF, or sun protection factor, of at least 15 on all exposed areas, some people need to be particularly cautious...Solar Protective Factory [applicant] of Sacramento, Calif. makes a sun-protection fabric called Solarweave, which is licensed to clothing manufacturers in this country and abroad...Solarweave is a tightly woven nylon with the feel of a soft cotton. The company's chief executive, Harvey E. Schakowsky, says a chemical treatment added during the dyeing increases the fabric's sun-blocking ability.

The Houston Chronicle, June 27, 1996

Clothing that is labeled or promoted as providing protection against the sun or

limiting exposure to UV rays is considered a medical device and is regulated by FDA. Sun Precautions, Inc., of Seattle, Wash., has received FDA clearance to market its Solumbra clothing for sun protection and is allowed to claim an SPF of 30 for its products.

U.S. Food and Drug Administration Website, February 22, 2000

Cover up. When you've had enough sun, protect yourself with clothing. Long-sleeved shirts or beach wraps are fine but offer an SPF of just 9. Look for special lightweight shirts, pants, jackets and hats made of a patented fabric with an SPF of 30. "This clothing is best for people who are at high risk of skin cancer or for those who need to be outdoors all the time," says Bank.

Vegetarian Times, June 1, 1999

For those who like to get out in the sun, but can't because of previous skin cancers, sun-protective clothing is now available. One brand is Solumbra. According to its pamphlet, a company called Sun Precautions in Everett, Wash. makes SPF 30-rated clothes for head-to-toe protection.

Vero Beach Press Journal, May 25, 1999

Or you might try clothing that protects against ultraviolet rays. Seattle-based Sun Precautions has created a line of clothing with a 30+ SPF.

St. Louis Post-Dispatch, May 22, 1999

This shirt protects against the sun's ultraviolet (UVA and UVB) rays that penetrate normal clothing. An extra bonus: the 30 SPF protection is woven into the material.

Natural Health, March 1999

Protect yourself from the dangerous rays of the sun with a complete line of 30+ SPF clothing.

Dermatology Times, February 1999

Now you can buy protective clothing that is specifically designed with high SPFs for the outdoors.

Women's Sports and Fitness, June 1998

But it doesn't really matter what kind of sun protection you're using--SPF clothing or high SPF sunscreen...

Newsday, May 26, 1994

Perhaps you've seen the catalogs offering garments made with special sunblocking fabric, being sold as a complement to sunscreen...These fabrics are made mainly of nylon, woven very tightly to stop light. Solarweave fibers [sold by applicant] also have a coating that is supposed to absorb ultra-violet light...Both special fabrics indeed yielded an SPF exceeding 30.

Consumer Reports, May 1998

We agree with the Examining Attorney's assessment of the mere descriptiveness of the mark SPF as applied to a chemical additive used in the manufacture of textile products. The abbreviation SPF immediately describes, without conjecture or speculation, a significant characteristic, function or purpose of applicant's product, namely, that the chemical additive is used to give a sun protection factor to clothing fabric. To the sophisticated and technically knowledgeable purchasers and users of applicant's chemical additive, that is, textile

manufacturers, who no doubt would be familiar with the trade's emerging use of the abbreviation "SPF" in connection with clothing designed to protect the wearer's skin against the harmful effects of the sun's radiation, no imagination would be necessary in order for such persons to perceive precisely the merely descriptive significance of the abbreviation as it relates to an important (if not *the* most important) characteristic of the chemical additive.

The fact that the letters may also act as an abbreviation of applicant's trade name hardly detracts from the mere descriptiveness of the letters "SPF" when used in connection with applicant's chemical additive. See: In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505 (CCPA 1980)[QUIK-PRINT is merely descriptive of "same day" printing and photocopying services]; and Nationwide Consumer Testing Institute, Inc. v. Consumer Testing Laboratories, Inc., 159 USPQ 304 (TTAB 1968)[CONSUMER TESTING LABORATORIES is merely descriptive of services of conducting various tests and analysis on fibers and fabrics].

Applicant's ownership of a registration of SPF on the Principal Register also does not compel a different result herein. While uniform treatment under the Trademark Act is an administrative goal, our task in this appeal is to

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determine, based on the record before us, whether applicant's mark is merely descriptive. As often noted by the Board, each case must be decided on its own merits. We are not privy to the record in the file of applicant's prior registration and, moreover, the determination of registrability of that particular mark by the Trademark Examining Groups cannot control the result in the case now before us. See: *In re Nett Designs Inc.*, ___F.3d___, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)[“Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court.”].

Decision: The refusal to register is affirmed.

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