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

Paper No. 23
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Discus Dental Impressions, Inc.

Serial No. 75/634,821

J.H. Begler of Buchanan Ingersoll.

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

Before Simms, Hanak and Bucher, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Discus Dental Impressions, Inc. (applicant) seeks to register MATRIX in typed drawing form for "dental restoration materials comprising of shaded composite materials and preparation etching materials." The intent-to-use application was filed on February 3, 1999.

The Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's goods, is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act. When the refusal to register was made final, applicant appealed to this Board. Applicant and the

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Examining Attorney filed briefs. Applicant did not request a hearing.

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of applicant's goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). In determining whether a mark is merely descriptive of the goods for which registration is sought, two important propositions must be kept in mind. First, the mere descriptiveness of a mark is not determined in the abstract, but rather is determined in relation to the goods for which registration is sought. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). Second, in order to be held merely descriptive, a mark need not immediately convey information about all of the significant qualities or characteristics of the goods for which registration is sought. A term is merely descriptive if it immediately conveys information about "one of the qualities" of the goods for which registration is sought.

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Gyulay, 3 USPQ2d at 1010.

There is no dispute that the word "matrix" is a common word with various meanings in different fields, including the dental field. One definition of the word "matrix" is "a binding substance." The American Heritage Dictionary of the English Language (3d ed. 1992). See also Webster's Third New International Dictionary (1993) where the word "matrix" is defined as "a material used to bind together the materials in an agglomerated mass."

At page 3 of its brief, applicant states that "in its plainest terms, [applicant's] MATRIX product is a cavity filling available in many bleached shades to match the color of the patient's teeth." Continuing, applicant argues that "while as a cavity filling, [its] MATRIX product adheres to the tooth, it is not a bonding material in the traditional sense." (emphasis added).

Relying upon the declaration of its product manager (Edward Dolmat), applicant argues that in the dental field the word "matrix" has but two meanings. First, the word "matrix" refers to a metal or MYLAR band that is placed between the teeth to prevent interproximal contact.

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Second, the word "matrix" refers to wax or other impression material to create a form (or matrix) that supports dental materials. (Applicant's brief page 2; Dolmat declaration paragraph 3).

To begin with, we find that in the dental field, the word "matrix" has another meaning. Indeed, in the dental field, the very first meaning of the word "matrix" is "the formative portion of a tooth or a nail." Stedman's Medical Dictionary (27th ed. 2000). Given this specialized dental definition of the term "matrix" combined with the general definition of the term "matrix" as a "binding substance," we find that dental professionals, upon seeing applicant's mark MATRXXX used in connection with dental restoration materials, would understand that applicant's product is indeed a bonding material, albeit perhaps not in the traditional sense.

Support for our conclusion that applicant's mark MATRXXX is merely descriptive of one quality or characteristic of dental restoration materials -- namely, they are bonding materials which adhere to a tooth -- comes from the very product literature and product samples

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submitted by applicant. Applicant's brochure entitled Matrixx touts it as being "ideal for restoring enamel" and as also designed "as a replacement for dentin." Pictured below is one of applicant's MATRIXX products.

The dentist simply removes the cap at the left end of the MATRIXX restoratives, and then twists the screw-like device at the right end of the product. At this point, the device dispenses from the left end what applicant in its brochure describes as "flowable composites" which can be used to restore enamel, replace dentin or, as noted at page 3 of applicant's brief, fill a cavity.

In sum, upon seeing applicant's mark MATRIXX in connection with applicant's dental restoration product, dental professionals would not think of either (1) a metal or MYLAR band, or (2) a wax or other impression material which creates a form (a matrix). Instead, dental professionals would readily understand that when used in

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connection with dental restoration materials, the mark MATRIXX immediately conveys the idea that the product is a bonding material which has various uses in replacing missing or worn portions of a tooth.

Finally, it has not escaped our attention that applicant's mark is MATRIXX, whereas the proper spelling of this word is "matrix." It has long been held that misspelling a merely descriptive word does not create a trademark. McPartland v. Montgomery Ward, 164 F.2d 603, 76 USPQ 97, 99 (CCPA 1947); Elizabeth Arden v. Faberge, 304 F.2d 891, 134 USPQ 186, 187 (CCPA 1962). See also 2 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 11:31 at pages 11-60 to 11-62 (4th ed. 2001).

Decision: The refusal to register is affirmed.

