

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

September 20, 2002
Paper No. 8
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **DTL Inc.**

Serial No. 76/**193,919**

Lucy B. Arant and Evan M. Kent of Russ, August, Kabat & Kent for
DTL Inc.

Lourdes D. Ayala, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before **Simms, Hohein** and **Rogers**, Administrative Trademark
Judges.

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

DTL Inc. has filed an application to register the term
"ALGAGEL" for "skin gels and lotions."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
term "ALGAGEL" is merely descriptive of them.

¹ Ser. No. 76/193,919, filed on January 11, 2001, which is based on an
allegation of a bona fide intention to use such term in commerce.

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 information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter 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 or is intended to be 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 such 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, in its brief, correctly notes that "[i]t is perfectly acceptable to separate a compound mark [into its parts] and discuss the implications of each part thereof with respect to the question of descriptiveness, provided that the ultimate determination is made on the basis of the mark in its entirety." In the present case, applicant asserts that "while the word 'gel' may describe the form of the product, ... the term 'alga' is at most suggestive with regard to the goods and the combination [of such terms] when viewed as a whole is more suggestive than descriptive." Specifically, applicant contends that "the average consumer is unfamiliar with the word 'alga'"; that such term "is defined as 'any of various chiefly aquatic, eukaryotic photosynthetic organisms, ranging in size from single-celled forms to giant kelp'"; that "the typical purchasers of its products are hardly sophisticated enough to be familiar with this esoteric term"; and that "even if they were they would not be likely to conclude that Applicant's product contains one of these 'chiefly aquatic, eukaryotic photosynthetic organisms.'"

Applicant accordingly argues that "ALGAGEL simply has no immediate meaning to those knowledgeable in the field of skin

[gels and] lotions and does not have a recognized meaning to those in the relevant field." Because "the term 'alga' is not widely known and, in fact, [is] not likely to be perceived as a word at all," applicant insists that, "[w]hen placed in conjunction with the word 'gel', its status as a single word is still more blurred." Applicant concludes, therefore, that "[t]he total commercial impression conveyed to the prospective purchaser is that of a 'suggestive' rather than a '[merely] descriptive' mark."

The Examining Attorney, citing The American Heritage Dictionary of the English Language (1992) for both the above definition of the term "alga" referred to by applicant and a definition of the term "gel," argues on the other hand that (footnotes omitted):

The mark "ALGAGEL" is a combination of descriptive words which describes an ingredient of the product, namely, alga or as previously defined, "any of various chiefly aquatic, eukaryotic photosynthetic organisms, ranging in size from single-celled forms to the giant kelp" and that it is a gel or ["]colloid in which the disperse phase has combined with the dispersion medium to produce a semisolid material, such as a jelly.["] An average consumer who sees this mark or comes across the applicant's goods will know that the applicant's product is a gel which contains alga.

Moreover, to show that alga is commonly used as an ingredient in beauty products and that the average consumer of applicant's

goods would thus be familiar with such use, the Examining Attorney submitted several Internet excerpts which show that various beauty creams, gels and lotions are advertised as containing alga or, as demonstrated by several dictionary definitions which also are of record, the equivalents thereof, namely, seaweed and algae.²

Specifically, one such ad refers to "ALGAMINCE" as a "[b]ody cream with Seaweed"; "MINCIGEL" as a body "[m]odeling gel" which contains, inter alia, "algae"; "GEL ALGA" as a "[c]oncentrated micronized algae gel to prepare the skin before some facial and body treatments"; "FRI-ALGA" as "[a]n algae-based fortifying and slimming lotion"; "TER-ALGA" as an "[a]lgae based slimming lotion"; and "BIO ALGA" as a "[b]ody modeling, non oily lotion, whose efficacy is based on the properties of

² For instance, Webster's Revised Unabridged Dictionary (1996) lists "alga" as "[a] kind of seaweed; pl. the class of cellular cryptogamic plants which includes the black, red, and green seaweeds, as kelp, dulse, sea lettuce, also marine and fresh water conferv[ae], etc.," while WordNet sets forth such term as "primitive chlorophyll-containing mainly aquatic eukaryotic organisms lacking true stems and roots and leaves [syn: algae]." We judicially notice, in addition, that The Random House Dictionary of the English Language (1987) defines "seaweed" as "**1.** any plant or plants growing in the ocean. **2.** a marine alga," while The American Heritage Dictionary of the English Language (2000) lists such term as "**1.** Any of numerous marine algae, such as kelp, rockweed, or gulfweed. **2.** Any of various marine plants." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n. 7 (TTAB 1981).

laminaria seaweed." Another advertisement touts a skin cream which "contains natural alga essence which can instantly be absorbed by the skin," while another ad for "cleansing skin care products" promotes a "BEAUTY TONING LOTION" containing "[s]piruline, an alga grown in the lakes of Chad and Mexico, [which] is valued for its regenerating and revitalizing qualities." In addition, an advertisement for "Phyto Gel Exfoliant (Exfoliating Shower Gel)" states that "[t]his phyto-marine foaming shower gel exfoliates using organic diatom alga & jojoba natural pearls" and indicates that such product "contains ... green chlorella seaweed to remineralize" the skin.

We concur with the Examining Attorney that, when considered in its entirety, the term "ALGAGEL" is merely descriptive of applicant's "skin gels and lotions." Although we agree with applicant's argument that the average or ordinary consumer of its goods is not likely to give the term "alga" its scientific or technical meaning of "any of various chiefly aquatic, eukaryotic photosynthetic organisms, ranging in size from single-celled forms to the giant kelp," the evidence made of record by the Examining Attorney is sufficient to show that such consumers would be familiar with "alga" as the name of an active or significant ingredient of skin creams, gels and lotions and would accord the term its everyday or common meaning of a kind of marine algae which is generally known as "seaweed."

Consumers of applicant's goods would therefore immediately understand, without speculation or conjecture, that applicant's "ALGAGEL" skin gels and lotions are gels or gel-like lotions which contain alga, that is, seaweed.

As to applicant's further argument that when the term "alga" is "placed in conjunction with the word 'gel', its status as a single word is still more blurred" and, hence, the combined term "ALGAGEL" would not be perceived as merely descriptive, we note that individually descriptive words may indeed be combined to form a valid, registrable mark which, as a whole, is not merely descriptive. However, as stated by the Board in, for example, *In re Medical Disposables Co.*, 25 USPQ2d 1801, 1804 (TTAB 1992), in order for such to be the case:

[T]he mere act of combining does not in itself render the resulting composite a registrable trademark. Rather, it must be shown that in combination the descriptiveness of the individual words has been diminished, [such] that the combination creates a term so incongruous or unusual as to possess no definitive meaning or significance other than that of an identifying mark for the goods. See *In re Calspan Technology Products, Inc.*, 197 USPQ 647 (TTAB 1977).

In this case, because applicant's goods are skin gels and lotions, not only would the merely descriptive significance of the generic term "gel" in the term "ALGAGEL" be readily apparent to consumers of such products, but as a consequence

thereof the term "alga" and its merely descriptive meaning would also be readily perceived, just as if applicant were seeking to register the two-word designation "ALGA GEL" as its mark.

Combining the descriptive words "alga" and "gel" into the term "ALGAGEL" does not create a composite which is so incongruous or unusual, or which otherwise possesses a new meaning different from its constituent terms, as to possess no definitive meaning or significance other than that of an identifying mark for applicant's goods. Instead, there is simply nothing in the term "ALGAGEL" 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 apparent. Plainly, to customers for applicant's goods, such term conveys forthwith that applicant's skin gels and lotions are gels containing alga, i.e., seaweed. The term "ALGAGEL" is accordingly merely descriptive of applicant's goods within the meaning of the statute.

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