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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Supre, Inc.

Serial No. 78/016,669

John P. Pinkerton of Hunton & Williams for Supre, Inc.

Irene D. Williams, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney)

Before Seeherman, Walters and Wendel, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Supre, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register HEMPZ as a trademark for "skin care preparations, namely, non-medicated indoor and outdoor tanning preparations and moisturizers."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 the mark is merely descriptive of the identified goods.

The appeal has been fully briefed,² but an oral hearing was not requested.

We reverse.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or services. It does not have to describe every one of these. It is enough if it describes a single, significant quality, feature, function, etc. **In re Venture Lending Associates**, 226 USPQ 285, 296 (TTAB 1985).

It is the Examining Attorney's position that HEMPZ is the phonetic equivalent of "hemp," and because "hemp or hemp's (the phonetic equivalent of the possessive or plural of hemp) shows an ingredient of the applicant's products," brief, p. 3, the mark is merely descriptive. In support of

¹ Application Serial No. 78/016,669, filed July 13, 2000, and asserting a bona fide intention to use the mark in commerce.

² With its appeal brief applicant has submitted as exhibits the same exhibits which it had previously submitted in its various responses, as well as a copy of one of the Office actions. The Examining Attorney also attached to her brief copies of the exhibits she had previously submitted. It is not necessary to submit duplicate copies of exhibits and papers. The entire application file is before the Board for the appeal, and duplicate copies of papers already in the file merely add to the bulk of the file.

this position, the Examining Attorney has made of record the following dictionary definition of "hemp":

1. cannabis.
2. The tough, coarse fiber of the cannabis plant, used to make cordage.
- 3.a. Any of various plants similar to cannabis, especially one yielding a similar fiber. b. The fiber of such a plant."³

The Examining Attorney has also submitted excerpts of articles taken from the NEXIS data base, including the following:

From henna body painting to hemp-based skin care, ingredients, colors and accoutrements are being drawn from a vast storehouse of cultural aesthetics and historical traditions.

"Soap & Cosmetics," May 1, 2000

Headline: Charkit Chemical Corp; introduces hemp seed oil ...closely matching the 4:1 ratio found in the skin's natural sebum. Hemp seed oil acts as a natural barrier against moisture loss....

...It also boosts the skin's nourishing environment, and increases the rate of cellular reproduction. Hemp seed oil has application in hair- and sun-care products, cosmetics, and shaving lotions.

"Global Cosmetic Industry," February 1, 2001

"Hemp oil is closest to our skin's natural essential fatty acids, so it absorbs faster,' she says."

³ The American Heritage Dictionary of the English Language, 3d ed. © 1992.

"Wisconsin State Journal," December 17,
2000

In addition to the foregoing, we note that applicant has submitted copies of three third-party registrations, and one application which is awaiting a statement of use, for marks containing the word HEMP, for various skin care and tanning preparations. Applicant's reason for submitting these documents is to urge that its mark is no less suggestive than these marks. However, each of these registrations and the application carry disclaimers of exclusive rights to use the word HEMP, thereby indicating that HEMP is merely descriptive.⁴

Applicant has also submitted pages taken from a website⁵ advertising WILD HAWAIIAN HEMP tanning cream, ROYAL JAMAICAN HEMP tanning lotion and SECRET RESERVE tanning preparation. The copy features hemp seed oil as one of the ingredients for these products ("What's more, thirsty skin reaps the tan-beautifying rewards of our exclusive extra virgin hemp seed oil and rejuvenating island flower extract that rushes hydration to your skin, perfecting your tan

⁴ The marks are HEMP PLUS, with HEMP disclaimed, Registration No. 2,173,938; ROYAL JAMAICAN HEMP, with JAMAICAN HEMP disclaimed, Registration No. 2,458,176; HEMP IT'S MAGIC & SPIRIT and design, with HEMP disclaimed, Registration No. 2,277,021; and WILD HAWAIIAN HEMP, with HAWAIIAN HEMP disclaimed, Application Serial No. 75/689,523.

⁵ www.4matahari.com.

with a healthy, vibrant glow" [WILD HAWAIIAN HEMP]; ("Extra virgin hemp seed oil ensures optimum moisture balance for a long-lasting luscious tan" [ROYAL JAMAICAN HEMP]); ("...a refreshing splash of extra virgin hemp seed oil quenches your skin with sublime hydration..." [SECRET RESERVE]).

These materials indicate that hemp, or hemp seed oil, has moisturizing properties and is a recognized and desirable ingredient in sun tanning products.

Applicant also acknowledges that "the mark HEMPZ certainly contains a form of the term 'hemp,' and the product certainly contains a hemp seed extract." Request for reconsideration, filed July 30 2001, p. 8.

If the mark at issue were HEMP, we would find it to be merely descriptive. We are not persuaded by applicant's argument that "hemp" has associations with other products, such as marijuana and rope.⁶ It is well-established that the question of whether a term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters

⁶ Applicant has submitted a number of newspaper articles referring to such associations.

goods bearing the mark in the marketplace. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986). See also, **In re Abcor Development Corp.**, 688 F.2d 811, 200 USPQ 215 (CCPA 1978). When seen in the context of applicant's goods, for which hemp or hemp seed oil is a recognized ingredient, it is this meaning that the word conveys to consumers, rather than its associations with marijuana or rope.

Nor are we persuaded by applicant's argument that hemp is not a significant ingredient in applicant's goods because it is the eleventh in terms of ingredient percentages, with purified water being the primary component. The term "significant" does not mean "primary" or "main." The advertising copy, as well as the NEXIS articles, show that hemp seed oil or hemp is a desirable ingredient in products such as applicant's, and that companies selling such products feature this ingredient in their advertising. This, and not the mere overall percentage of the ingredient in the product, makes it significant.

Although we would find HEMP to be merely descriptive for applicant's products, the mark at issue is not HEMP, but HEMPZ. Applicant asserts that neither the coined word HEMPZ, nor its phonetic equivalent "hempz," exists in the

English language. Because the word "hemp" is used to connote both the singular and plural form, applicant argues that HEMPZ is not the phonetic equivalent of the merely descriptive word "hemp."

The Examining Attorney contends that HEMPZ is the phonetic equivalent of the plural or possessive form of "hemp." However, there is no evidence, including the dictionary definition submitted by the Examining Attorney, to show that the plural of "hemp" is "hemp's." Nor are we persuaded by the Examining Attorney's argument that HEMPZ is the equivalent of the possessive "hemp's." The Examining Attorney states that "Hemp's may refer to non-registered parts of the mark (e.g., Hemp's Skin Care Preparations, Hemp's Sun Tanning Lotion.)" Brief, p. 4. The Examining Attorney relies on cases in which marks were held to be primarily merely surnames despite the addition of an "s" or "'s" to show the names in their plural or possessive forms. However, the issue before us in this appeal is whether HEMPZ is merely descriptive, not whether it is a surname. The analysis is therefore different from surname cases, in which names are commonly used in their plural or possessive forms to identify the makers of goods, as a result of which the surname significance of the name is still clear. Considered in relation to the goods, hemp

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is clearly a noun describing an ingredient of the goods. The examining attorney has provided no basis for construing HEMPZ as the possessive form of hemp, nor for applying a surname refusal analysis to the issue of descriptiveness.

There is no question that phonetic equivalents of merely descriptive terms have been found to be merely descriptive as well. See, for example, **In re Mayer Beaton Corp.**, 223 USPQ 1347 (TTAB 1984) (BIKINEEZ phonetic equivalent of "bikinis" and merely descriptive of pantyhose containing bikini panties); **In re Hycon Mfg. Co.**, 169 USPQ 622 (TTAB 1971) (HYCONTRAST phonetic equivalent of "high contrast" and merely descriptive of characteristic of goods). However, on this record we cannot find that the phonetic equivalent of HEMPZ, the term "hemp," is merely descriptive of the identified goods. While HEMPZ certainly suggests the word "hemp," and would lead consumers to conclude that the products contain hemp, we find that the presence of the letter Z changes the appearance, pronunciation and commercial impression of the first four letters H-E-M-P sufficiently that the mark HEMPZ would not be viewed as HEMP per se.

It has often been said that there is but a thin line of distinction between a suggestive and a merely descriptive term, and it is often difficult to determine

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when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness. **In re Recovery, Inc.**, 196 USPQ 831 (TTAB 1977). In this case, and keeping in mind the well-established principle that any doubt on the issue of descriptiveness must be resolved in favor of the applicant, we find that HEMPZ is highly suggestive, but not merely descriptive, of applicant's skin care preparations, namely, non-medicated indoor and outdoor tanning preparations and moisturizers.

Decision: The refusal of registration is reversed.