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Mailed:
June 30, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Johnsonville Sausage, LLC

Serial No. 78429616

Brian G. Gilpin of Godfrey & Kahn, S.C. for Johnsonville Sausage, LLC.

Susan Stiglitz, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

Before Seeherman, Zervas and Cataldo, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Johnsonville Sausage, LLC has appealed from the final refusal of the Trademark Examining Attorney to register SUPER-CHILLED in standard character form for "sausage."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

¹ Application Serial No. 78429616, filed June 3, 2004, pursuant to Section 1(b) of the Trademark Act (intention to use the mark in commerce).

that applicant's mark is merely descriptive of its identified goods.

Applicant and the Examining Attorney filed briefs on appeal. Applicant did not request an oral hearing.

We affirm the refusal.

A term is deemed to be merely descriptive of goods or services, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an 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).

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. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, "[t]he question is not whether someone presented with only the mark could guess what the goods or services

are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." In re Tower Tech Inc., 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also In re Patent & Trademark Services Inc., 49 USPQ2d 1537 (TTAB 1998); In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corporation, 226 USPQ 365 (TTAB 1985).

It is the Examining Attorney's position that applicant's mark is merely descriptive because it refers to the manner in which applicant's sausages are stored and shipped. In support of this position, the Examining Attorney made of record various Internet webpages and excerpts of articles taken from the NEXIS database, some of the most relevant of which are shown below (emphasis added):

Hams are cooked in a computer-controlled hot water tank. Water cooking maintains an exact and even temperature—never overcooking or undercooking. The cooked product is removed from the mold and quickly **super-chilled**.

"Progressive Grocer," September 1996

Though the box claims that the sleeve will chill a bottle in five minutes, it took 15 minutes for a bottle of my Chardonnay to get cool, not super-chilled.

"Chicago Sun Times," August 5, 1993

...On processing lines, beef carcasses are steam-pasteurized at 180 degrees F to achieve a 40-log pathogen reduction and immediately **superchilled** in water. "Food Engineering: The Magazine for Operations and Manufacturing Management," www.foodengineeringmag.com

Then, as poultry production became big business, processing plants took over some of the local butcher's work, turning out dressed **super-chilled** (ice pack) whole birds in great volume. "Arkansas Democrat-Gazette," January 2, 1985

Headline: Fresh ideas in climate control; efficient consumer response initiatives will change the way you handle temperature sensitive products We are adapting our systems to this new trend in **super-chilled** products. "Transportation & Distribution," October 1997

During the brewing process, Molson Ice is **super-chilled** to below freezing temperatures, leading to the formation of ice crystals. "Modern Brewery Age," September 27, 1993

Commercial packaged chicken isn't "frozen," it's "**superchilled**." That's the silly trade term. It's "superchilled" to a rocklike texture and bears a remarkable resemblance to "frozen" chicken. The poultry and fish cases at Costco are generally kept at 33F to 35F. The "**superchilled**" granitic chicken is put into the cases as delivered. The poultry packers discovered that **superchilling** their products killed some bacteria, seriously slowed others and extended the shelf life in stores.

www.talkaboutcooking.com

"Fresh" chicken is often (always?)
"superchilled" before shipping, which
isn't quite the same as freezing.
www.cooking-forum.net March 13, 2004

The Examining Attorney also points to Jenn-Air's "A User's Guide for Food Storage and Food Safety," submitted by applicant, which, under the heading "Poultry and Fish," states:

The optimal place for storing fresh meat, fish and poultry is in a storage drawer with ClimateZone™ technology set on the "meats" setting. This setting provides a consistent, superchilled 31°F compartment which keeps these items fresh for longer.

In addition, the Examining Attorney relies on the second verb definition of "chill": "to cool food or drink in a refrigerator, or be left to cool there,"² and on the third definition of "super": "exhibiting the characteristics of its type to an extreme or excessive degree <super secrecy>."³ These dictionary definitions were properly made of record.

² Encarta World English Dictionary, online edition.

³ Merriam-Webster's Collegiate Dictionary, online edition. The Examining Attorney also submitted a definition of "super" as meaning "of high grade or quality." Because, in the context of this mark, we believe that "super" would be viewed as modifying "chilled," rather than as directly describing the goods, we do not consider this definition to be applicable.

Applicant, too, has submitted a number of dictionary definitions for the words "super" and "chill," including slang definitions taken from dictionary.com. These definitions show, inter alia, that "chill" can mean "hang out" or "relax" or "raw" or "discourage," or be an adjective showing approval," and that "super" can mean a "supernumerary" or "superintendent" or "very large or powerful." However, as noted above, that a term may have other meanings in different contexts is not controlling. As applied to applicant's goods, sausages, potential purchasers would not believe that "super" refers to "superintendent," or that "chill" would have the slang meaning "very cool." Rather, as combined in the mark, SUPER would be perceived as modifying "CHILLED," and consumers would ascribe to the word SUPER its meaning of "to an excessive degree" and to "CHILLED" the meaning of "made something cold" or "has become cold" (the past tense of the definitions of "chill" as a verb).⁴ Thus, the meaning of the mark as a whole would be something that has

⁴ In this connection, we take judicial notice of the definitions of "chill" as meaning "to become cold" and "to lower in temperature" in The American Heritage Dictionary of the English Language, © 1970. The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

been excessively cooled, or cooled to a lower temperature than normal.

The numerous excerpts showing usage of the term "super-chilled" in the food industry show that this is the meaning the mark would have when applied to sausages. Although the Examining Attorney has not submitted evidence showing that sausages have been described as "super-chilled," the excerpts show use of this term to describe chicken, ham and food products in general. Consumers seeing SUPER-CHILLED in connection with sausages would not need to exercise any degree of imagination or undertake any thought process to understand that the sausages have been cooled to a lower-than-normal temperature, the meaning of SUPER-CHILLED.

We note applicant's argument that "consumers hearing the term SUPER-CHILLED, even if armed with the knowledge that the mark relates to some type of food product, would not immediately think of sausages." Brief, p. 4. This argument fails to consider the well-established principle, set forth above, that mere descriptiveness is determined in relation to the goods or services for which registration is sought. Thus, it is not a question of whether someone presented with only the mark could guess what the goods or services are, even if they are given the "hint" that the

general category is foodstuffs. For the same reason, we find unpersuasive applicant's argument that "a typical consumer would likely not be able to arrive at Applicant's Goods from seeing or hearing Applicant's mark without having prior knowledge of the nature of Applicant's Goods." Id.

Applicant also asserts that registration of SUPER-CHILLED "would in no way deprive Applicant's competitors of the right to inform consumers that their goods are related to sausage." Brief, p. 7. Again, a term is merely descriptive, and therefore unregistrable, if it directly informs consumers of a quality, characteristic, or other feature of the goods. That competitors may use other terms to tell consumers that their goods are sausages, or even to describe a characteristic of their goods, is not the point. Applicant may not deprive competitors of using a term that directly informs consumers of a significant characteristic of their goods.

Decision: The refusal of registration is affirmed.