

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

JULY 10, 1997

Paper No. 13
EJS

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Spraying Systems Company**

Serial No. 74/**515,552**

Dennis R. Schlemmer for **Spraying Systems Company**

Won T. Oh, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney)

Before Sams, Simms and Seeherman, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Spraying Systems Company has applied to register TURBO
TEEJET as a trademark for "machine parts, namely spray
nozzles for power operated agricultural sprayers."¹ The
Examining Attorney made a final requirement that applicant
disclaim exclusive rights to the word TURBO, and applicant
has appealed. The case has been fully briefed; an oral
hearing was not requested.

¹ Application Serial No. 74/515,552, filed April 21, 1994,
based on an asserted bona fide intention to use the mark in
commerce.

Section 6(a) of the Trademark Act, 15 U.S.C. 1056(a), provides that the Commissioner may require an applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 2(e)(1) of the Act, 15 U.S.C. 1052(e)(1), prohibits the registration of a mark which is merely descriptive of the applicant's goods.

The Examining Attorney asserts that TURBO is merely descriptive of applicant's goods. In support of this position, he has made of record excerpts from a number of articles taken from the NEXIS database in which the words "spray," "nozzle" and "turbo" appear. We have carefully reviewed these articles and find none that refers to spray nozzles for agricultural use. On the contrary, they refer to high-powered pressure washers, cars, jet engines, the setting of cement, and so on. In his brief, the Examining Attorney takes the position that the articles "show that TURBO does have some significance to spray nozzles in general," and that the Examining Attorney need only show that TURBO is descriptive of the genre of applicant's goods, namely spray nozzles, rather than applicant's particular goods, spray nozzles for agricultural sprayers. Brief, p. 3. Thus, it is the Examining Attorney's position that, regardless of the fields of use, the term TURBO is descriptive if applied to any type of spray nozzle.

This is a misreading of the law. It is well-established that the question of descriptiveness is to be determined in relation to the goods on which, or the services in connection with which, a mark is used. **In re Abcor Development Corp.**, 200 USPQ 215 (CCPA 1978). The Examining Attorney has presented no evidence from which we can determine that spray nozzles for agricultural sprayers are related to spray nozzles for pressure washers and the other items referred to in the NEXIS excerpts, such that we can conclude that TURBO would be descriptive of the identified spray nozzles for power operated agricultural sprayers.

The Examining Attorney has also asked the Board to take judicial notice of the following dictionary definition for "turbine" ("turbo-" being defined as a combining form representing turbine in a compound word):

any of various machines having a rotor, usually with vanes or blades, driven by the pressure, momentum, or reactive thrust of a moving fluid, as steam, water, hot gases, or air, either occurring in the form of free jets or as a fluid passing through and entirely filling a housing around the rotor.

The Examining Attorney contends that applicant's spray nozzles are machine parts that apparently use pressure to facilitate the effectiveness of the sprayer or to increase the surface area sprayed, and therefore that TURBO is descriptive for applicant's power-operated spray nozzles

within the broad definition as set forth in the dictionary. Brief, p. 3.

Applicant, on the other hand, has stated affirmatively that its product has nothing to do with a turbine engine, and that TURBO has no significance in the relevant trade or industry as applied to its goods.² Nor do we read the definition of "turbine" as broadly as the Examining Attorney does. A turbine, according to the dictionary definition, is not any machine driven by pressure, but a machine driven by a rotor. There is no evidence whatsoever to show that spray nozzles for power sprayers for agricultural use are driven by rotors. Nor can we find any indication in applicant's promotional literature for its TURBO TEEJET nozzles that TURBO would have descriptive significance with respect to any feature of applicant's goods.

While TURBO may be descriptive of certain types of nozzles, there is no evidence of record which shows that TURBO is descriptive of applicant's particular spray nozzles for agricultural sprayers or for spray nozzles for agricultural sprayers in general.

In view of the lack of evidence that TURBO is descriptive of the goods identified in applicant's application-- machine parts, namely spray nozzles for power operated agricultural sprayers--we need not discuss the

Ser No. 74/515,552

additional arguments and evidence submitted by applicant in support of its position that TURBO is not merely descriptive of its goods.

Decision: The refusal of registration is reversed, and the application will be forwarded to publication without a disclaimer of TURBO.

J. D. Sams

R. L. Simms

E. J. Seeherman
Administrative Trademark Judges
Trademark Trial and Appeal Board

² Applicant has pointed out that a registration for its companion mark, TURBO FLOODJET, for the same goods issued in 1993 without a disclaimer of TURBO.