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RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Glissen Chemical Company, Inc.

Serial No. 75/929,155

Myron Amer for Glissen Chemical Company, Inc.

Brooke A. Beyer, Jr., Trademark Examining Attorney, Law
Office 105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Seeherman and Hanak, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On February 25, 2000, applicant filed the above-identified application to register the term "WINDOW WASH" on the Principal Register for "a detergent for industrial use in washing, and cleaning surfaces, namely, windows, glass table tops, glass store fronts, and glass door panels," in Class 1. The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the term as a trademark in commerce on these goods.

The original Examining Attorney¹ refused registration under Section 2(e)(1) of the Lanham Act on the ground that the term applicant seeks to register is merely descriptive of the goods set forth in the application. Enclosed in support of the refusal to register was a copy of a dictionary definition of "wash" as a noun meaning "a preparation or product used in washing or coating." Also submitted in support of the refusal to register were copies of a number of third-party registrations for marks used with cleaners or detergents wherein the word "wash" is disclaimed. The Examining Attorney reasoned that the term "WINDOW WASH" is merely descriptive of the goods specified in the application because it "merely conveys the meaning of a preparation or product used in washing windows, i.e., a window wash."

Applicant responded by filing an amendment to allege use of the mark in connection with the recited goods since October 12, 2000, and amended the application to seek registration on the Supplemental Register.

The Examining Attorney then refused registration on

¹ Jean H. Im was responsible for the first three Office Actions, but the application was subsequently assigned to Mr. Beyer for submission of the appeal brief.

the Supplemental Register on the ground that the term sought to be registered is generic in connection with the goods specified in the application.² In support of the refusal to register, she submitted excerpts from a number of articles retrieved from the Nexis automated database of publications. Typical examples include the following:

"One concept, a powdered concentrated auto window wash called Film-off, has been minimally successful in the United States and a big-seller in Taiwan." The Columbian, (Vancouver, WA), Jan 5, 1999.

"'I never knew him to take that car on the street when it was dirty,' said Shirley, who retrieved a bottle of window wash that was among the other debris at the crash site." The Baltimore Sun, October 16, 2000.

"Verstandig suggested as environmentally correct the following mixture for a window wash: one quarter to one-half vegetable-base liquid soap..." The Times Union, (Albany, NY) September 15, 1995.

"Bobby Butler provides the window wash. Harlan Stevenson of Pontiac cooks and shows off the barbeque ribs at C&J Soul Food and Stay Clean Car Wash in Pontiac." The Detroit News, June 29, 2000.

Also submitted were articles retrieved from an Internet search which show the term used as the name of a product used to wash windows. For example, one story about recyclable products notes that some products, e.g., motor oil, gasoline and "auto window wash," are not recyclable.

² Although the statutory basis for this refusal was originally misstated as Section 2(e)(1) of the Act, the proper section, Section 23, was subsequently identified by the second Examining Attorney.

Another story includes "Automobile window wash" in a list of what appear to be household cleaning products.

Applicant argued that the refusal to register was not well taken because the term sought to be registered is not generic, but rather is capable of identifying applicant's goods and distinguishing them from similar goods produced by others. Applicant amended the identification-of-goods clause to delete reference to "windows" per se, reciting the goods as follows: "detergent for industrial use in cleaning surfaces, namely, glass table tops, glass storefront windows, and glass door panels," in Class 3.

The Examining Attorney was not persuaded to withdraw the refusal to register, however, and with the third Office Action, the refusal to register on the Supplemental Register was made final. Attached as additional support for the refusal were two pages she retrieved from another Internet search. One page promotes Kemco Oil & Chemicals products, which include antifreeze, oils of various types, de-icer and "Window Wash Concentrate." The second page is from an on-line hardware store, and it lists "E-Z Spray Window Wash," which is used "for exterior glass surfaces" and "can be used with a hose-end sprayer" to reach higher windows.

Applicant filed a timely Notice of Appeal, followed by an appeal brief. The new Examining Attorney filed a brief on appeal and applicant filed a reply brief, but applicant did not request an oral hearing before the Board.

Attached to applicant's brief were copies of nine trademark registrations which applicant claimed it owns. Although this evidence would not normally be considered by the Board because it was not timely submitted under Trademark Rule 2.142(d), the Examining Attorney treated it as if it were of record by directing arguments in his brief to the arguments applicant had made in its brief regarding these registrations, so we have considered these materials as if they had been properly made of record. As the Examining Attorney points out, however, in that the marks in these registrations are all different from the term applicant seeks to register with the instant application, and none appears to be generic for the goods recited therein, these registrations have no probative value in supporting applicant's arguments as to the registrability of "WINDOW WASH" on the Supplemental Register for a detergent for industrial use in cleaning, inter alia, glass storefront windows.

The Court of Appeals for the Federal Circuit set forth the test to determine whether a designation is generic in

H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). This test has two parts: (1) What is the class of goods or services at issue? (2) Does the relevant purchasing public understand the designation sought to be registered primarily to refer to that class of goods or services? If members of the relevant purchasing public primarily use or understand the term to refer to the genus of goods, the mark is not registrable, even on the Supplemental Register, because under Section 23 of the Lanham Act, in order to be registrable on the Supplemental Register, a term must be capable of identifying applicant's goods and distinguishing them from similar products emanating from other sources.

When these principles are applied to facts established by the record in the instant application, we find that the refusal to register "WINDOW WASH" on the Supplemental Register for applicant's goods is well taken. The evidence submitted by the Examining Attorney establishes that prospective purchasers of detergent for industrial use in cleaning glass storefront windows understand the term "WINDOW WASH" to refer to this category or class of cleaning products.

To begin with, the dictionary definition of record establishes that the word "WASH" is a noun that is used in

reference to "a preparation or product used in washing..." As the excerpted published articles and information obtained by the Examining Attorney from the Internet search clearly show, the combination of "WINDOW" and "WASH," "WINDOW WASH," is used to identify a category or genus of products, namely window cleaning preparations.

Applicant argues that the term it seeks to register is "certainly not a term that is commonly utilized with a detergent for 'industrial' cleaning chores..." The fact that applicant has limited its identification of goods to industrial use does not make "WINDOW WASH" any less generic for a window washing detergent than it is generic for window washing detergent used by ordinary homeowners, for example. As the Examining Attorney points out, a "window" is a window, no matter whether it is in the front of a store or in a house or car, and a "wash" is a wash, regardless of what it is used to clean. The evidence of record clearly shows that "window wash" is used as the generic name for window washes for automotive and household use. This same generic significance is attributable to the term in other applications like cleaning glass storefront windows.

In summary, the evidence submitted by the Examining Attorney establishes that the term applicant seeks to

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register is understood as the name of the category or class of cleaning products in connection with which applicant uses it. Accordingly, this term is generic for these goods. As such, it does not possess the capability of identifying the source of applicant's goods and distinguishing them from similar products provided by others. Under these circumstances, registration on the Supplemental Register is not proper.

DECISION: The refusal to register under Section 23 of the Act is affirmed.