

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: September 27, 2006
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Powell Fabrication & Manufacturing, Inc.

Serial No. 78415636

George L. Boller for Powell Fabrication & Manufacturing,
Inc.

Asmat Khan, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Seeherman, Hohein and Hairston, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Powell Fabrication & Manufacturing, Inc. has filed an
application to register the mark UNICHLOR in standard
character form on the Principal Register for services
ultimately identified as follows:

Providing economic information in the field of
construction and operation of chlor-alkali plants
and processes for the manufacture of chlorine,
caustic, and hydrogen and subsequently sodium
hypochlorite, ferric chloride, calcium
hypochlorite, hydrochloric acid, and other
chlorine derivatives; providing product

information in the field of equipment for chlor-alkali plants in class 35;

Providing construction information for chlor-alkali plants in class 37; and

Providing technical information in the field of design and operation of chlor-alkali plants and processes for the manufacture of chlorine, caustic, and hydrogen and subsequently sodium hypochlorite, ferric chloride, calcium hypochlorite, hydrochloric acid, and other chlorine derivatives in class 42.¹

Registration of applicant's mark has been finally refused as to the services in classes 37 and 42 on the ground that the specimen of record is unacceptable because it fails to show use of the mark in connection with such services.

Applicant has appealed and briefs have been filed.

At the outset, we note that applicant states in its appeal brief that it does not wish to pursue the appeal with respect to the class 37 services. (Brief at 2). We deem this an abandonment of the class 37 services. Thus, the sole issue on appeal is whether the specimen of record is acceptable for the class 42 services.²

¹ Serial No. 78415635, filed May 10, 2004, claiming a date of first use and date of first use in commerce of April 20, 2004.

² The refusal of registration did not pertain to the class 35 services, so registration of the mark for these services was never at issue in this appeal.

Applicant's specimen of record consists of printouts from applicant's Internet website. Applicant relies on certain wording on the specimen in support of its position that the specimen evidences use of the mark UNICHLOR in connection with the class 42 services. Reproduced below is the text from a portion of applicant's specimen with the relevant wording underlined:

POWELL

The World's Leading Chlorine Containment and Sodium Hypochlorite Processing Technology

Powell Products / Chlor-Alkali / Unichlor™ Technology

UniChlor™ Technology - Profitable Alternative to Purchasing Chlor-Alkali Chemicals

Small chlorine plants that produce hypochlorite and other commodity chemicals downstream of the chlorine/caustic generation process are an attractive alternative to making bleach from chlorine and caustic purchased on the open market. These plants, which use salt and electricity to make chlorine, caustic soda, and hydrogen on-site, can be used primarily for the production of sodium hypochlorite, ferric chloride, calcium hypochlorite, hypochloric acid, and other chlorine derivatives, or to produce feed stacks for a variety of other chemicals. Alternatively, the plants can be used to supply a distribution system for hypochloric acid and caustic. Since hydrogen is a by-product of these plants, the chlorine can be burned with the hydrogen to produce hydrochloric acid and the caustic can be evaporated.

This advanced production technology for Chlor-Alkali commodity chemicals is being marketed in the US as Unichlor™ Technology as a result of an agreement between Powell Fabrication &

Manufacturing, Inc. and Uhdenora of Italy.
Together, the two companies provide the complete chain of chlorine production facilities for plants of up to 150 to 200 tons per day of NaOH using Uhde BM-2.7 single element bipolar membrane electrolyzer technology and Powell's complete continuous process systems and components.

Applicant argues that "the specimen's express mention of partnered companies providing the complete chain of chlorine production facilities for plants of up to 150-200 tons per day of NaOH, and of the plants using 'single element bipolar membrane electrolyzer technology and Powell's complete continuous process systems and components'" shows a direct relationship between the mark UNICHLOR and the services of providing technical information. (Brief at 3). Further, applicant argues that the UNICHLOR mark "is properly associated in the specimen with the specific technical information mentioned." (Brief at 3).

The examining attorney maintains that purchasers and prospective purchasers will not perceive the involved mark as identifying the source of providing technical information in the field of design and operation of chlor-alkali plants and related manufacturing processes from applicant's specimen. According to the examining attorney, "[s]tating what technology and processing system a plant

uses and using the proposed mark in a trademark capacity as to a particular technology is not the same as providing technical information for others." (Brief at unnumbered 3).

To be an acceptable specimen of use of the mark in the sale or advertising of the identified services, there must be a direct association between the mark sought to be registered and the services identified in the application, and there must be sufficient reference to the services to create this association. In re Monograms America Inc., 51 USPQ2d 1317 (TTAB 1999). It is not enough that the term alleged to constitute the mark be used in the sale or advertising; there must be a direct association between the term and the services. In re Johnson Controls Inc., 33 USPQ2d 1318 (TTAB 1994); and Peopleware Systems, Inc. v. Peopleware, Inc., 226 USPQ 320 (TTAB 1985). The mark must be used in such a manner that it would be readily perceived as identifying the source of such services. In re Advertising & Marketing Development, Inc., 821 F.2d 614, 2 USPQ2d 2010 (Fed. Cir. 1987); In re Adair, 45 USPQ2d 1211 (TTAB 1997); and In re Metrotech, 33 USPQ2d 1049 (Com'r Pats. 1993).

In this case, we agree with the examining attorney that the specimen, and in particular the portion of the specimen relied upon by applicant, does not show use of the

mark UNICHLOR as a service mark for "providing technical information in the field of design and operation of chlor-alkali plants and processes for the manufacture of chlorine, caustic, and hydrogen and subsequently sodium hypochlorite, ferric chloride, calcium hypochlorite, hydrochloric acid, and other chlorine derivatives." A purchaser or prospective purchaser would view the mark UNICHLOR as a mark for applicant's own on-site process for manufacturing chlorine and caustic products, identifying its source and distinguishing it from the processes of other companies. In providing this process to customers, there is no doubt that applicant also provides technical information about the process to such customers. However, there would be no reason for purchasers and prospective purchasers to believe that applicant is rendering the separate service of "providing technical information in the field of design and operation of chlor-alkali plants and processes for the manufacture of chlorine, caustic, and hydrogen and subsequently sodium hypochlorite, ferric chloride, calcium hypochlorite, hydrochloric acid, and other chlorine derivatives." Insofar as applicant's use of the UNICHLOR mark with the "TM" designation is concerned, we note that it precedes a description of applicant's own technology for producing chlorine and caustic products. In

Ser No. 78415636

sum, as viewed by purchasers and prospective purchasers reading this information at applicant's web site, they would understand that applicant is offering an on-site process for manufacturing chlorine and caustic products.

Decision: The refusal to register applicant's mark for the class 42 services is affirmed; the class 37 services are deemed abandoned. The application will go forward with respect to the class 35 services.