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**THIS DISPOSITION  
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Paper No. 9  
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re Johnson & Johnson  
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Serial No. 75/769,920  
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Norman D. St. Landau and Adam L. Barea of Drinker, Biddle  
& Reath for Johnson & Johnson.

April Lueders Rademacher, Trademark Examining Attorney,  
Law Office 102 (Thomas Shaw, Managing Attorney).  
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Before Quinn, Walters and Bucher, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Johnson & Johnson has filed a trademark application  
to register the mark ODOR BLOCK for "soothing non-  
medicated foot gel preparation."<sup>1</sup>

The Trademark Examining Attorney has issued a final  
refusal to register, under Section 2(e)(1) of the  
Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that  
applicant's mark is merely descriptive of its goods.

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<sup>1</sup> Serial No. 75/769,920, in International Class 3, filed August 9, 1999,  
based on an allegation of a bona fide intention to use the mark in  
commerce.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that the mark ODOR BLOCK is merely descriptive because it is intended to be used in connection with foot care preparations purporting to treat foot odor; and that both the individual terms, "odor" and "block," and the compound mark, ODOR BLOCK, merely describe the goods. In support of her position, the Examining Attorney submitted dictionary definitions<sup>2</sup> of "odor" as "the property or quality of a thing that affects, stimulates, or is perceived by the sense of smell" and "block" as "1. The act of obstructing; 2. Something that obstructs, an obstacle." The Examining Attorney submitted excerpts from several Internet Web sites with advertisements for applicant's ODOR BLOCK product, which is described in one advertisement as a product "to kill and prevent foot odor while keeping your feet smooth, cool and refreshed." Applicant contends that its mark is "a unique composite mark coined by applicant"; and that "[t]here exists no dictionary definition of record for the composite mark 'ODOR BLOCK,' nor is there any evidence of record suggesting that the

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<sup>2</sup> *American Heritage Dictionary of the English Language*, 3<sup>rd</sup> ed., 1992.

mark had any existence in the vernacular." Applicant concedes "the descriptive nature of the term 'odor' [and] 'block' individually [but disputes] the merely descriptive nature of the term 'block' as used in applicant's composite mark." [Applicant's brief, p. 11.] Applicant argues that "block" in its mark could mean several different things, for example, that the product eliminates, reduces, or covers up foot odor, or that it "utilizes a block-shaped insert which lessens foot odor." Applicant concludes that its mark is, at most, suggestive of the characteristics of its goods; and that registration will not inhibit competitors from proclaiming that their products prevent foot odor.

In support of its position, applicant submitted copies of third-party registrations including the terms "odor" and/or "block," or their phonetic equivalents. Two of the registrations include disclaimers of ODOR, one in ODOR BLOK for carpet and upholstery cleaner and air deodorant, and the other in BLOX-ODOR for deodorant in crystal form; fourteen of the registrations are for two-word marks beginning with the disclaimed term ODOR followed by a variety of different terms for various deodorizing products; and three of the registrations include the term "block" or "blok" without a disclaimer

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[FADEBLOK for auto cleaning preparation; STAINBLOCK for carpet cleaning preparation; and BUG BLOCK for sunscreen and insect repellent].

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 the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

The advertisements for applicant's product along with the dictionary definitions of the individual terms

clearly establish that, when applied to applicant's goods, the term ODOR BLOCK immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, namely that the product prevents or eliminates foot odor. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective customers and actual purchasers of applicant's goods readily to perceive the merely descriptive significance of the term ODOR BLOCK as it pertains to applicant's goods.

There is nothing in the record to suggest that the combination of the two merely descriptive terms, "odor" and "block," into the compound mark ODOR BLOCK creates any incongruity or double entendre giving it a connotation other than the meaning of the two individual terms. Applicant's argument that the term suggests several different meanings is not persuasive. Several of applicant's suggested meanings accurately describe the goods; and those that do not are not relevant, as we must consider the mark in relation to the goods. For a compound term to be found merely descriptive, it is not necessary that it either exists in the dictionary or that

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third parties have used it in a descriptive or generic manner.

*Decision:* The refusal under Section 2(e)(1) of the Act is affirmed.