

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re RXDISPENSE, INC.

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Serial No. 76/157,628

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John E. Nemazi of Brooks & Kushman.

Linda M. Estrada, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney).

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Before Hanak, Bottorff and Drost, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

RXDISPENSE, INC. (applicant) seeks to register in  
typed drawing form RXDISPENSE for the following goods and  
services:

Equipment for dispensing pills to consumers, namely,  
electronic pharmaceutical pill dispenser and  
electronic control devices therefore, pill dispensing  
cassettes and automated counters, automated retrieval  
devices all for operating such dispensers and for  
collecting and electronically transmitting patient  
vital sign and pill consumption data; electronic  
control devices for filling pill trays at a pharmacy,  
all in International Class 9;

Dispensers for pills sold empty, in International  
Class 20;

Advertising services, namely, creation and  
dissemination of electronic advertisements of others

in the field of health care targeted to patients,  
in International Class 35;

Health care services, namely dispensing of pills  
to consumers at the time of consumption and  
collection of pill consumption data and vital sign  
data for electronic transmission to a remote medical  
care provider, in International Class 42.

The intent-to-use application was filed on November 1,  
2000.

Citing Section 2(e)(1) of the Trademark Act, the  
Examining Attorney has refused registration on the basis  
that applicant's mark is merely descriptive of applicant's  
goods and services. When the refusal to register was made  
final, applicant appealed to this Board. Applicant and the  
Examining Attorney filed briefs. Applicant did not request  
a hearing.

As has been stated repeatedly, "a term is merely  
descriptive if it forthwith conveys an immediate idea of  
ingredients, qualities or characteristics of the goods [or  
services]." In re Abcor Development Corp., 588 F.2d 811,  
200 USPQ 215, 218 (CCPA 1978); Abercrombie & Fitch Co. v.  
Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2<sup>nd</sup> Cir.  
1976). Moreover, it is critical to keep in mind that the  
mere descriptiveness of a term is not decided in the  
abstract, but rather is decided in relationship to the

goods or services for which registration is sought. Abcor Development, 200 USPQ at 218.

To begin with, we note that both at page 6 of its response dated September 20, 2001 and at page 6 of its brief, applicant states that "the fact that the separate terms RXDISPENSE and DISPENSE may be common terms separately is not dispositive." However, at page 6 of its brief, applicant also states that "there is no evidence to show that an industry 'needs' to use RXDISPENSE in advertising competing products [and services]." There appears to be no dispute that RXDISPENSE is not a word. Hence, we will assume that what applicant really meant to say was that the fact that the separate terms RX and DISPENSE may be common terms is not dispositive as to whether the combination is merely descriptive of applicant's goods and services.

During the examination process, the Examining Attorney made of record a definition of RX taken from the Dictionary of Medical Acronyms & Abbreviations (2d ed. 1993). The first definition for RX is as follows: "drug; medication." The Examining Attorney also made of record a definition of the word "dispense" which is to "distribute." The American Heritage Dictionary of the English Language (3<sup>rd</sup> ed. 1992).

To be quite blunt, when applied to "equipment for dispensing pills to consumers" or to "dispensers for pills sold empty," it is clear that applicant's mark RXDISPENSE immediately describes the fundamental characteristics of applicant's two types of goods. In this regard, we take judicial notice of the fact that the primary definition of the word "pill" is "a small tablet or capsule of medicine." Random House Webster's Dictionary (2001). In short, both RX and "pill" are synonymous in that they indicate medication. A consumer seeing applicant's mark RXDISPENSE used in connection with equipment for dispensing pills to consumers or dispensers for pills sold empty would readily understand that RXDISPENSE forthwith conveys an immediate knowledge of such goods, namely that they dispense pills or medication (Class 9) or that they can dispense pills or medication (Class 20).

Likewise, with regard to applicant's services, it is clear that when applied to health care services, namely, dispensing of pills to consumers (Class 42), the mark RXDISPENSE likewise identifies a significant component of applicant's services. Finally, with regard to applicant's Class 35 advertising services, we note that these services are "in the field of health care," and hence when RXDISPENSE is used in connection with these particular

advertising services, it will be understood that they would include the advertising of equipment for dispensing pills or health care services involving the dispensing of pills.

Finally, at page 7 of its brief applicant argues that its mark RXDISPENSE "certainly does not mandate that the subject matter of the goods and services" be as listed in applicant's application. We are not entirely clear as to what applicant means by this statement. If applicant is saying that if one were to view RXDISPENSE in a vacuum, that individual would not understand the nature of applicant's goods and services, this is not the correct test for determining whether a term is merely descriptive. As noted earlier in this opinion, the descriptiveness of a term is not decided in the abstract, but rather is decided in relationship to the goods or services for which registration is sought. Abcor Development, 200 USPQ at 218. On the other hand, if applicant is arguing that RXDISPENSE could be descriptive of other goods and services, we do not disagree, but merely note that this is irrelevant.

Decision: The refusal to register is affirmed.