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January 11, 2005  
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Bespak PLC**

Serial No. 76430621

**Adesh Bhargava and Donald N. Huff** of Dykema Gossett PLLC for **Bespak PLC**.

**Brian D. Brown**, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before **Hohein, Holtzman and Rogers**, Administrative Trademark Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

**Bespak PLC** has filed an application to register the term "UNIDOSE" for "drug delivery systems, composed primarily of dry powder inhalers sold empty, dry powder inhaler valves and activators for nasal drug delivery; liquid inhalers sold empty, liquid inhaler valves and activators all for nasal drug delivery and parts and fittings for all of the aforesaid goods."<sup>1</sup>

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

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<sup>1</sup> Ser. No. 76430621, filed on July 11, 2002, which is based on an allegation of a bona fide intention to use the term "UNIDOSE" in commerce.

ground that, when used in connection with applicant's goods, the term "UNIDOSE" is merely descriptive thereof.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from

consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant contends in its main brief that, "even though the prefix 'uni' may denote 'one' or 'single,' such is only the case when the prefix is [sic] combined with specific words." According to applicant, "[t]he UNIDOSE mark ... does not give any specific meaning to a consumer since it is not an existing English word, and as such, must be seen as a neologism." Applicant urges, furthermore, that its mark is not merely descriptive "since the utilization of imagination, thought or perception ... is clearly required in order to determine the attributes of the 'drug delivery systems' goods the UNIDOSE mark indicates" and that "any doubt as to the question of whether the UNIDOSE mark is merely descriptive should be resolved in Appellant's favor in accordance with the Board's policy," citing In re Morton-Norwich Products, Inc., 209 USPQ 791 (TTAB 1981) and In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

Applicant, in particular, contends that mental processing, cogitation or reflection is required because "the words 'uni' and 'dose' ... have several different connotations which would lead a consumer viewing the UNIDOSE mark to question whether UNIDOSE refers to a product that administers only one dose (i.e., a disposable product), to a product that can only administer one size of dose (in other words the dose administered cannot be changed), or even further, whether UNIDOSE refers to a product that perhaps is made to administer only one dose at a time." Applicant also asserts that, "since the UNIDOSE mark

identifies drug delivery systems including inhaler valves, actuators, liquid inhalers[, ] etc., sold empty, the primary consumer of the [goods sold under the] present mark would not be the end consumer[, ] who utilizes an inhaler with the product therein thus expecting a specific dosage of product to be dispensed, but is instead a drug manufacturer who would place privately labeled product in the empty delivery system container" (underlining in original). Applicant insists, therefore, that "a manufacturer who would place product in the empty inhalers would clearly have to utilize imagination, thought or perception ... in order to determine that the UNIDOSE mark identifies drug delivery systems including inhaler valves, actuators, liquid inhalers[, ] etc., sold empty" (underlining in original).

Finally, based upon a listing, which appears for the first time in its main brief, of certain marks which are the subjects of various third-party registrations<sup>2</sup> and the assertion that "the U.S. Patent & Trademark Office has granted numerous registrations [which include either] the term 'dose' [or the term

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<sup>2</sup> While such evidence is untimely under Trademark Rule 2.142(d), the Examining Attorney has not only offered no objection thereto on such ground, but has discussed the registrations in his brief. Accordingly, we have treated the third-party registrations as being of record herein. See In re Nuclear Research Corp., 16 USPQ2d 1316, 1317 n. 2 (TTAB 1990). It is further pointed out, however, that the probative value of such listing is extremely limited inasmuch as there is no indication as to whether the third-party registrations issued on either the Principal Register, with or without resort to the provisions of Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), or the Supplemental Register, and the Board does not take judicial notice of third-party registrations. See, e.g., In re Duofold Inc., 184 USPQ 638, 640 (TTAB 1974). Consequently, the proper way for applicant to have made such registrations of record, for whatever probative value they may have, would instead have been to submit, prior to the filing of its notice of appeal, either copies thereof or printouts of the registrations from the electronic search records of the United States Patent and Trademark Office. Id.

'uni' paired with] ... other potentially suggestive words,"<sup>3</sup> applicant argues that combining such terms to form the term "UNIDOSE" likewise is at most suggestive rather than merely descriptive of its goods.

The Examining Attorney, on the other hand, maintains in his brief that "applicant has combined two descriptive terms whose resulting combination does not create a unitary mark with a separate, nondescriptive meaning." Specifically, citing the definitions of record from The American Heritage Dictionary of the English Language (3d ed. 1992), which list "uni-" as a prefix meaning "[s]ingle; one: *unicycle*" and "dose" as a noun connoting, in the field of medicine, "a. A specified quantity of a therapeutic agent, such as a drug or medicine, prescribed to be taken at one time or at stated intervals. b. The amount of radiation administered as therapy to a given site," the Examining

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<sup>3</sup> The examples referred to by applicant, as set forth in its main brief, are for the marks "PERFECT DOSE ... for ... 'automatic tablet, pill and capsule dispensers sold empty,' QUIK-DOSE ... for ... 'filling machines for industrial use excluding those for medical and/or pharmaceutical use,' LIQUIDOSE ... for ... 'chemicals for use in the manufacture of industrial and household cleaning products,' EASY-DOSE ... for ... 'syringes, namely, syringes for use in the veterinary industry,' SECURE DOSE ... for ... 'non-metal closures for use with medicine containers,' MICRODOSE ... for ... 'containers, namely, resilient plastic ampules for dispensing small quantities of medicinals and dental materials,' MINI DOSE ... for ... 'trial-sized cosmetics, namely[,] facial makeup, facial cleansers, eye makeup removers, lipsticks, concealers, [and] facial moisturizers,' ... ACCUDOSE ... for ... tablets which are designed to be divided into various dosage amounts[,]'" "UNI-CLIP ... for ... 'medical apparatus and instruments, namely, compression staples,' UNI-TAB ... for ... 'disinfectants and deodorants contained in dispensers for urinals,' UNI-BAR ... for ... 'hand tools, namely, crowbars, prybars and manual jacks,' UNITOOL ... for ... 'hydraulic cutting shears and hydraulic spreaders for use as rescue equipment,' UNI-WIPES ... for ... 'premoistened glass cleaner wipes, hand and face wipes, baby wipes, toilet seat wipes, and moisturizer wipes,' and UNI-SOCKET ... for ... 'hand tools, namely[,] adjustable socket wrenches.'"

Attorney contends that "the components in the mark still maintain their descriptive meaning in relation to the [applicant's] goods because[,] by definition, 'uni' is a common prefix that denotes 'single' and 'dose' refers to the quantity of medicine or drug that is 'to be taken at one time or at stated intervals.'"

In addition, the Examining Attorney argues that "it ... appears that drug delivery systems are characterized as 'single or multi-dose' in scope or nature," noting that "web pages [which are of record] from applicant's website provide the following:"

"Bespak has the capabilities to develop **single and multi-dose** devices for the delivery of liquid drug formulations ...";  
and

"UniDose DP™ offers more than 96 per cent efficiency of the metered **dose** in a **single** actuation."

(Emphasis added.) Such pages, we also observe, similarly contain the statement that "UniDose™ is an innovative dry powder nasal device capable of delivering an accurate **single dose** of a wide range of therapies" (emphasis added). Likewise, as the Examining Attorney further points out, an excerpt of record from the December 18, 2003 edition of the electronic version of Business Weekly sets forth, among a listing of various stories relating to applicant, the following statement (emphasis added): "Bespak has launched UniDose DP, an innovative dry powder nasal device capable of delivering a **single dose** of a wide range of therapeutic agents." In view thereof, the Examining Attorney contends that "the proposed mark is merely descriptive of the goods" in that the term "UNIDOSE" immediately describes any kind

of single dosage drug delivery systems. In particular, the Examining Attorney insists that the fact that applicant's goods would be sold empty to drug manufacturers rather than to patients "is of little relevance" because "[t]he fact remains that the goods are capable of delivering medicines or pharmaceutical preparations in a single dose."

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "UNIDOSE" is merely descriptive of applicant's goods, namely, "drug delivery systems, composed primarily of dry powder inhalers sold empty, dry powder inhaler valves and activators for nasal drug delivery; liquid inhalers sold empty, liquid inhaler valves and activators all for nasal drug delivery and parts and fittings" therefor. Contrary to applicant's assertions in its reply brief that "the Examining Attorney's express statements noted above actually support Appellant's position that the UNIDOSE mark is not merely descriptive of the goods" and that "the Examining Attorney's citations of the various descriptions on Appellant's web page used for explaining the function of a 'Unidose' DP in fact prove that the term 'Unidose' does not convey ... an immediate idea of the ... qualities or characteristics" of its goods, we find that the evidence of record demonstrates that such term immediately conveys, without speculation or conjecture, that a significant purpose, function, characteristic or use of applicant's goods is to provide delivery of a single dosage of a drug. Irrespective of whether applicant's goods, for instance, deliver a single drug

dose just once before being disposed of, administer single drug dosages repeatedly, and/or provide only one size of drug dosage, the term "UNIDOSE" merely describes any drug delivery system having such a feature or attribute. Nothing in the term "UNIDOSE" is incongruous, ambiguous or suggestive, nor is there anything which would require the exercise of imagination, cogitation or mental processing, or necessitate the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to customers of applicant's product. Instead, to both ordinary consumers and drug manufacturers, the term "UNIDOSE" conveys forthwith that applicant's goods, whether containing when purchased the drug to be administered or sold empty, will deliver a single dose of a particular drug.

As the Examining Attorney also correctly points out in his brief, the fact that on this record the term "UNIDOSE" is not found in a dictionary, and thus appears to be a "neologism," is not controlling on the issue of registrability. See, e.g., In re Gould Paper Corp., 824 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987); and In re Orleans Wines, Ltd., 196 USPQ 516, 517 (TTAB 1977). Additionally, as the Examining Attorney properly notes, it is well settled that the fact that applicant may be or intends to be the first and/or sole user of a merely descriptive term does not entitle it to registration thereof where, as here, the evidence of record demonstrates that the term projects only a merely descriptive significance in the context of applicant's goods. See, e.g., In re National Shooting Sports Foundation,

Inc., 219 USPQ 1018, 1020 (TTAB 1983); and In re Mark A. Gould, M.D., 173 USPQ 243, 245 (TTAB 1972).

Lastly, as the Examining Attorney accurately observes, "[e]ven if one were to accord any weight to the registrations cited by the applicant, ... many of those marks identify goods that are totally unrelated to ... devices for delivering drugs to humans in a single dose," and "many of the remaining marks contain nondescriptive wording or are presented in a unitary way such that a disclaimer or refusal to register [on the basis of mere descriptiveness] would not be required." We find, in short, that none of the third-party registrations of record is sufficiently analogous to be persuasive of a finding that the term "UNIDOSE," when used in connection with applicant's goods, is at most suggestive rather than merely descriptive, nor do they singly or collectively serve to create any doubt with respect thereto. Moreover, as our principal reviewing court noted in In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board or this court." See also, In re Broyhill Furniture Industries Inc., 60 USPQ2d 1511, 1514 (TTAB 2001); and In re Pennzoil Products Co., 20 USPQ2d 1753, 1758 (TTAB 1991). The evidence of record herein clearly demonstrates that the term "UNIDOSE" forthwith conveys the meaning of "single dose," which is identical to the meaning engendered by the combination of its constituent components "uni-" and "dose." Because, as explained previously,

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such term immediately describes a significant purpose, function, characteristic or use of applicant's goods, which is to provide delivery of a single dosage of a drug, it is merely descriptive thereof within the meaning of the statute.

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