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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Superior Energy Services, LLC

Serial No. 78515313

Gregory C. Smith of Garvey, Smith, Nehrbass & North, L.L.C. for Superior Energy Services, LLC.

Cynthia Sloan, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Hohein, Bucher, and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On November 11, 2004, Superior Energy Services, LLC (applicant) applied under the intent to use provisions of the Trademark Act to register the term SUPER PLUG SYSTEM (in standard character form) on the Principal Register for a "method of plugging well with fast drying cement" in Class 37. Serial No. 78515313.

The examining attorney[1] refused registration under Section 2(e)(1) on the ground that the term SUPER PLUG SYSTEM is merely descriptive of services involving a method of plugging a well with fast drying cement. 15 U.S.C. § 1052(2)(e)(1). Also, the examining attorney required applicant to amend the identification of services. When the examining attorney made the refusals to register final, applicant filed a notice of appeal.

Regarding the requirement that applicant amend the identification of services that are currently identified as a "method of plugging well with fast drying cement," the examining attorney points out "a method is not considered to be an actual performed service, but it would be ancillary to rendered services." Brief at unnumbered p. 10. The examining attorney instead suggested: "Cementing services for oil and gas well using a method that facilities the fast drying of cement." Applicant has not responded to the requirement for an amended identification of services. *See* TBMP § 1203.02(g) (2d ed. rev. 2004) ("If applicant, in its appeal brief, does not assert a claim made during prosecution, it may be deemed waived by the Board"). To the extent that this remains an issue, we add

[1] The current examining attorney was not the original examining attorney in the case.

that it "is within the discretion of the PTO to require that one's goods be identified with particularity." *In re Omega SA*, ___ F.3d ___, ___ USPQ2d ___, WL 2077813 (Fed. Cir. July 23, 2007) slip op. at 3, *quoting In re Water Gremlin Co.,* 635 F.2d 841, 845, 208 USPQ 89, 91 (CCPA 1980). We agree that a "method" is not necessarily a service because it is not clear whether the method is an independent, separately identifiable service or a process simply incorporated into another service. Therefore, we affirm the requirement that applicant amend the current identification of services.

Next, we consider the question of whether the term that applicant seeks to register as its mark is merely descriptive. A mark is merely descriptive if it immediately conveys "knowledge of a quality, feature, function, or characteristics of the goods or services." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). To be "merely descriptive," a term need only describe a single significant quality or property of the goods. *Gyulay*, 3 USPQ2d at 1009 (Fed. Cir. 1987); *Meehanite Metal Corp. v. International Nickel Co.*, 262 F.2d

806, 120 USPQ 293, 294 (CCPA 1959). Mere descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

In support of the merely descriptive refusal, the examining attorney made of record dictionary definitions of the terms "super," "plug," and "system." These definitions are:

> Super - 1. Very large, great or extreme.
> 2. Excellent; first-rate.
>
> Plug - An object such as a cork or wad of cloth, used to fill a hole tightly; a stopper. 2. A dense mass of materials that obstructs a passage.
>
> System - An organized and coordinated method; a procedure.

Final Office Action at 4.

The examining attorney also made of record various printouts from the internet. Several printouts included the text of state regulations on oil and gas wells. These printouts commonly refer to "plugging" and "plug" in association with oil or gas wells as follows:

> [A]bandon means to plug a well…"
> [S]uspend means to plug a well in accordance with 20 AAC 25.110 and to reserve the option later to re-enter…
> www.state.ak.us (Alaska Oil & Gas Conservation Commission).

> Temporarily Abandoned – The act of isolating the completed interval or intervals within a wellbore from the surface by means of a cement retainer, cast iron bridge plug, cement plug, tubing and packer with tubing plug, or any combination thereof.
> http://oil-gas.state.co.us
>
> Wells shall be plugged to insure that all formations …
> http://info.sos.state.tx.us
>
> Based on a workshop sponsored by PTTC's South Midcontinent Region and the Oklahoma Commission on Marginally Producing Wells…
> While not a pleasant option, well plugging is a reality, and operators should know how to cost effectively plug wells. Cost savings can be realized by wisely purchasing plugging services… Cement plugs are more applicable to shallower 3,000 to 4,000 ft. wells.
> www.pttc.org/solutions

Another reference discusses an "Innovation award for glass plug." The article goes on to refer to a "plug system." *See* *www.statoil.com* ("The first ONS SME Innovation Award has been won by Total Catcher Offshore (TCO) for a glass plug system developed for oil and gas wells with Statoil as the prime mover").

Obviously, the term "well" in applicant's services is broad enough to include oil and gas wells. The definitions and other references demonstrate that oil wells are routinely "plugged" and the term "plug" is commonly associated with this process. The term "plug system" is at least descriptive of services that involve an organized and coordinated method of plugging or putting a plug into an

oil well. *See, e.g.*, www.statoil.com ("a glass plug system").

The next question becomes whether the term "Super" is likewise merely descriptive for applicant's services. The term "Super" has been the subject of numerous cases before the board as well as the CCPA. *Compare Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972) (SUPER BLEND held merely descriptive of motor oils for "an allegedly superior blend of oils"); *In re General Tire & Rubber Co.*, 194 USPQ 491, 494 (TTAB 1977) ("'SUPER,' in this context [SUPER STEEL RADIAL for tires] reinforces the descriptive connotation of the whole expression"); *In re Consolidated Cigar Co.*, 35 USPQ2d 1290, 1295 (TTAB 1995) ("[T]he expression 'SUPER BUY' immediately describes an essential characteristic or feature, namely, the superior worth or high value of the products"); *In re United States Steel Corp.*, 225 USPQ 750 (TTAB 1985) (SUPEROPE descriptive for wire rope); *In re Carter-Wallace, Inc.*, 222 USPQ 729 (TTAB 1984) (SUPER GEL is an apt descriptive name for lathering gel for shaving); *In re Samuel Moore & Co.*, 195 USPQ 237 (TTAB 1977) (SUPERHOSE! merely descriptive for hydraulic hose made of synthetic resin); and *In re Diamond National Corp.*, 133 USPQ 344 (TTAB 1962) (SUPER CUSHION merely descriptive for egg

cartons) *with In re Ralston Purina Co.*, 191 USPQ 237 (TTAB 1976) (RALSTON SUPER SLUSH not merely descriptive for a slush type drink) and *In re Occidental Petroleum Corp.*, 167 USPQ 128 (TTAB 1970) (SUPER IRON not merely descriptive for a soil supplement).

More recently, the board discussed the case law on the term "Super" and set out the following approach:

> A general proposition which may be distilled from the foregoing cases is that if the word "super" is combined with a word which names the goods or services, or a principal component, grade or size thereof, then the composite term is considered merely descriptive of the goods or services, but if such is not strictly true, then the composite mark is regarded as suggestive of the products or services. Here, joining the laudatory word "super" with the generic fabric name "silk" to form the term "SUPER SILK" results in a composite which plainly has a meaning identical to the meaning which ordinary usage would ascribe to such words in combination.

In re Phillips-Van Heusen Corp., 63 USPQ2d 1047, 1052 (TTAB 2002).

When we apply the *Phillips-Van Heusen* approach, the term "plug system" would certainly name a method of sealing or plugging oil wells. When the term "super" is combined with this term that names the services or at least the principal component of the services, we conclude that the term SUPER PLUG SYSTEM, in its entirety, would immediately describe a feature of applicant's plug system, i.e., its allegedly superior performance.

Applicant argues that "without the type of service that the mark is describing, it would be difficult for a purchaser to conclude that the mark is in fact describing this particular system of plugging wells with cement." Brief at 1. However, as indicated earlier, we do not consider the mark alone. Instead, we must consider the mark in the context in which it will be used. Here, we must consider what a purchaser of a service involving a method of plugging wells with fast drying cement would understand the term SUPER PLUG SYSTEM. These consumers would immediately understand that this term describes a superior system for plugging wells. As such, applicant's term is merely descriptive for the identified services.

Decision: The examining attorney's refusals to register the term SUPER PLUG SYSTEM on the ground that it is merely descriptive of the identified services and that the identification of services is unacceptable are affirmed.