

**THIS OPINION IS
NOT A PRECEDENT
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*Decision Mailed:
March 7, 2008
GDH/gdh*

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Vector Products, Inc.

Serial No. 78772354

George W. Lewis of Jacobson Holman PLLC for Vector Products, Inc.

Susan Kastriner Lawrence, Trademark Examining Attorney, Law
Office 116 (Michael W. Baird, Managing Attorney).

Before Seeherman, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Vector Products, Inc. has filed an application to
register on the Principal Register the mark "SMART BATTERY
CHARGER" and design, in the form shown below,

**Smart BATTERY
CHARGER**

for "battery chargers" in International Class 9.¹

¹ Ser. No. 78772354, filed on December 13, 2005, which is based on
allegation of a date of first use anywhere and in commerce of February
26, 2003.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark "SUPERSMART BATTERY CHARGER" and design, which is registered on the Supplemental Register, in the form illustrated below,

SuperSmart Battery Charger

for "battery chargers for use in marine, automotive, recreational vehicle, motorcycle, and tractor equipment" in International Class 9,² as to be likely to cause confusion, or to cause mistake, or to deceive. Registration has also been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's goods, the mark "SMART BATTERY CHARGER" and design is merely descriptive thereof.

Applicant has appealed and briefs have been filed. We affirm the refusals to register.

Turning first to the refusal under Section 2(e)(1) inasmuch as whether applicant's mark is merely descriptive or is instead suggestive has an obvious bearing on the strength of such mark for purposes of the refusal under Section 2(d), it is well settled that a mark is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark

² Reg. No. 1,746,603, issued on January 12, 1993, which sets forth a date of first use anywhere of October 1988 and a date of first use in commerce of December 1989; renewed. The term "battery charger" is disclaimed.

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 mark describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the mark describes a significant attribute or idea about them. Moreover, whether a mark is merely descriptive is determined not in the abstract but in relation to the goods 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 and the possible significance that the mark would have to the average purchaser of the goods 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 is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, in its initial brief, "submits that a [mere] descriptiveness rejection is inappropriate in the instant case since the mark consist [sic] of stylized letters and design elements."³ According to applicant:

³ Although applicant, citing In re Anchor Hocking Corp., 223 USPQ 85 (TTAB 1984) and Ex parte Ste. Pierre Smirnoff Fls, Inc., 102 USPQ 415 (Comm'r Pats. 1954), asserts in this regard that "[a] disclaimer of all the words of a mark is permitted where the combination of words and design elements in the mark result in something of sufficient

Assuming that the separate words are [merely] descriptive, a requirement for separate disclaimers might be appropriate, but not a rejection of the mark in its entirety. Registration is being sought for the mark in special form. Different style and size fonts are employed for the terms "smart" and "battery charger." Further, the term "smart" appears in juxtaposition with a design element and the word and design feature are not depicted in a manner that necessarily creates the single word impression "smart battery charger." In other words, it is not readily apparent that "smart" is being used as an adjective to modify "battery charger" in a single expression.

The Examining Attorney, on the other hand, maintains in her brief that "the proposed mark SMART BATTERY CHARGER for 'battery chargers' is ... [merely] descriptive of a feature of the goods" Specifically, she notes that the term "BATTERY CHARGER," as evidenced by the identification of applicant's goods, "is clearly ... generic when applied to applicant's goods." Noting further that the term "SMART" "is defined as something which is highly automated, contains or works with the help of a microprocessor or electronic control device (see attached dictionary definitions)"⁴ and that the Board "has held

substance or distinctiveness over and above the matter being disclaimed," it is noted that applicant has not disclaimed nor offered to disclaim any of the words comprising its mark.

⁴ While such definitions were submitted for the first time with her brief, inasmuch as the Board may properly take judicial notice of dictionary definitions, the implicit request that judicial notice be taken thereof is granted. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n.7 (TTAB 1981). In particular, as to the online dictionary definitions included therewith, the Examining Attorney correctly points out that:

the term 'smart' merely descriptive of automated devices," citing *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1318 (TTAB 2002) ["SMARTTOWER" found merely descriptive of commercial and industrial cooling towers and accessories therefor, sold as a unit] and *In re Cryomedical Sciences Inc.*, 32 USPQ2d 1377, 1379 (TTAB 1994) ["SMARTPROBE" held merely descriptive of disposable cryosurgical probes], the Examining Attorney maintains that "purchasers seeing applicant's mark used on the goods ... will certainly understand it to be identifying a feature of those goods, namely, that applicant's battery chargers are 'smart' or contain a microprocessor which controls or regulates the goods." Such is confirmed, the Examining Attorney insists, by the fact that "material attached to the Final Office Action shows that applicant's goods 'contain advanced microprocessor electronics' ... and are considered 'the most revolutionary line of fully automatic chargers in today's market.'"

The Board may take judicial notice of online dictionary definitions if the dictionary is readily available and verifiable. TMEP §710.01(c). See also *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006), where the Board took judicial notice of the Encarta Dictionary because it was a widely known reference that was readily available in specifically denoted editions via the Internet and CD-ROM, holding that it was "the electronic equivalent of a print publication and applicant may easily verify the excerpt."

Although it is also settled that the Board may take judicial notice of standard reference works such as encyclopedias, see, e.g., *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419, 423 n.6 (CCPA 1962), we have not considered the printout with respect to the meaning of the term "SMART" from "tiscali reference" (which is available online at <http://www.tiscali.co.uk/reference/dictionaries/data/m0050925.html>) inasmuch as, *inter alia*, the underlying source thereof, which is stated to be "from the Hutchinson Encyclopaedia ... 2007," does not appear to be a widely known and readily verifiable publication.

The evidence offered in support of her position, as mentioned above, includes in particular dictionary definitions of the term "SMART" from the following sources: (i) The American Heritage Dictionary of the English Language (4th ed. 2000), which in relevant part defines such term as an adjective meaning "[o]f, relating to, or being a highly automated device, especially one that imitates human intelligence: *smart missiles*," (ii) the Encarta Dictionary, which in pertinent part lists the term as an adjective connoting, in the field of electronics, "fitted with a built-in microprocessor * *smart traffic signals*," and (iii) Dictionary.com, as "[b]ased on the Random House Unabridged Dictionary, © Random House, Inc. 2006," which in relevant part sets forth the term as an adjective signifying "[i]nformal. equipped with, using, or containing electronic control devices, as computer systems, microprocessors, or missiles: a *smart phone*; a *smart copier*." Other evidentiary materials, obtained from the Internet and made of record with the final refusal, include an article on "TRUECHARGE Battery Chargers" from the "e-Marine, Incorporated" website which states that such goods are "**Microprocessor Controlled for Accurate Charging**" (emphasis in original) in that (emphasis added):

Microcomputer software ... constantly monitors and regulates the voltage and current delivered to the battery. With TRUECHARGE **microprocessor control**, you get years of accurate charging without risk of battery damage or overcharging.

The article further states that "[m]ost chargers on the market today aren't true three step chargers"; explains "what can happen

to your expensive batteries when you don't use a multi-step **smart charger** on a regular basis" (emphasis added); and claims that (emphasis added):

TRUECHARGE battery chargers are the first family of chargers to incorporate features found in expensive **smart battery chargers** at a price comparable to many lower performance taper chargers. Advanced **microprocessor control** improves charger performance while actually making the charger easier to use.

Similarly, an article from the "Northern Arizona Wind & Sun Inc." website on, *inter alia*, the "TRUEcharge" line of "**SMART Multi-Stage Battery Chargers**" emphasizes that various models thereof are each "**Micro-processor controlled**" (emphasis added). For instance, as to the "TRUECHARGE 10TB" model, the article states that the "multi-stage charge is **microprocessor-controlled**, ripple free and faster charging than many ... [other] battery chargers," while both the "TRUECHARGE 20+" and "TRUECHARGE 40+" models are each described as: "**Microprocessor controlled**, it provides fully **automatic battery charging** for faster charging times than many 40 and 50 amp rated ... battery chargers" (emphasis added). Another article, from the "BatteryStuff.com" website, on "12v **Smart Battery Chargers**" notes that (emphasis added):

With the change of battery technology the computer chip has found its way into many of the higher quality battery chargers. With the use of **microprocessor** technology in battery chargers, you could say battery charging has become a science. Your battery will never overcharge and the trickle charge will always be maintained.

The article concludes by stating that (emphasis added): "The cost of a **Smart Charger** vs. the old standard type chargers will pay for itself many times over."

In the same vein, an article in the "Hitches4Less" website on applicant's "Vector Smart 12-Volt Battery Chargers" indicates that such goods "contain advanced **microprocessor** electronics that provide a regulated 12-volt DC output that monitors battery condition" as well as featuring "[s]park-resistance" in that "the **microprocessor** control eliminates or minimizes sparking during hook-up" (emphasis added). To the same effect, an article on applicant's goods in "Lane's PROFESSIONAL CAR PRODUCTS" website states that "Vector's high frequency, fully automatic **Smart Battery Chargers** are your strongest ally when you need a fast, safe, efficient charge" (emphasis added), and notes among other things that (emphasis added):

State-of-the-art **microprocessor** technology charges batteries up to two times faster than conventional linear chargers.

....

Built-in safety features reduce the danger of reverse hook-ups, sparking and short-circuiting. By regulating the voltage levels and charging current to a maximum safe predetermined level, the internal **microprocessor** protects the battery, the vehicle's electrical system, and on-board electronics.

Vector **Smart Battery Chargers**, the most revolutionary line of fully **automatic chargers** in today's market, are simply smarter, safer and faster.

With respect to third-party battery chargers, an article in the "ElectriTek AVT" website refers to "two types of **Smart Battery Chargers**" and explains the differences between the two, while an article in the "Cell-Con" website on "**SMART BATTERY CHARGERS**" mentions that "Cell-Con **smart chargers** are equipped to rapidly charge a single rechargeable battery pack ..." (emphasis added).

In addition, although not mentioned by the Examining Attorney in her brief, we observe that with the initial Office Action she made of record printouts from a website of applicant's which features its "line of car battery chargers" as offered under the term "Smart," with the trademark symbol "™" appearing on an arcuate line underneath such term in the same manner as the mark which it presently seeks to register. As shown thereby, applicant touts its battery chargers as having "NEW SUPERIOR - 'SMART' 3-STAGE HIGH EFFICIENCY BATTERY CHARGING TECHNOLOGY" with a "Built-in **Microprocessor Control** [That] Ensures Fast, Safe 100% Battery Charge" (emphasis added). In particular, such goods are claimed to be "SAFER" because of (emphasis added):

Reverse hook-up, short circuit and over-charging protection! Cannot overcharge any type of vehicle 12 Volt battery. **Internal microprocessor digital controls** protect vehicle's electrical system and sophisticated onboard electronics by regulating charge levels at a maximum safe predetermined level.

Applicant's goods are also claimed to be "SMARTER" in that "[t]hree stage charging ensures full 100% charge!" and the product "[d]elivers 100% of its rated output, automatically sensing and distributing the appropriate, maximum amount of power throughout every step of the charging process." Likewise, a

printout of record from the "NORTHERN TOOL + EQUIPMENT" website advertising applicant's "Smart Battery Charger with Jump Start" lists among other product specifications the following features (emphasis added):

- 3-stage high-frequency switch mode automatic rapid charging
- Short circuit and reverse polarity protection (no spark)

....

- **Microprocessor control**

As to applicant's contention that "it is not readily apparent that 'smart' is being used as an adjective to modify 'battery charger' in a single expression," the Examining Attorney asserts that "even if the term 'smart' were determined to be separated and detached from the wording 'battery charger,' the word would not lose its descriptive significance." With respect to applicant's argument that its mark incorporates sufficient stylization and design elements so as not to be considered merely descriptive in its entirety, the Examining Attorney points out and argues that:

[E]ven where descriptive wording is stylized and/or the mark contains design elements, a mark is not registrable on the Principal Register "unless the stylization of the words or the accompanying design features of the asserted mark create an impression on purchasers separate and apart from the impression made by the words themselves, or unless it can be shown by evidence that the particular display which applicant uses has acquired distinctiveness." *In re American Academy of Facial Plastic and Reconstructive Surgeons*, 64 USPQ2d 1748[, 1753] (TTAB 2002)

....

Here, applicant's mark is only slightly stylized and contains a minor design element, an underline under the term SMART. Purchasers viewing the mark will not recognize the stylization or design element as identifying the source of the goods. That is, this degree of stylization and minor design element are simply not sufficiently striking, unique or distinctive so as to create a commercial impression separate and apart from the unregistrable components of the mark, and thus are not sufficient to render the mark registrable. *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224[, 1227] (TTAB 1987); ... *In re Geo. A. Hormel & Company*, 227 USPQ 813[, 814] (TTAB 1985); *In re Cosmetic Factory, Inc.*, 220 USPQ 1103[, 1103-04] (TTAB 1983) The underlining neither changes the meaning of the term "smart," nor does it create its own commercial impression ... as an indicator of source. Instead, the minimally stylized underscore merely services [sic] to emphasize the word which describes a desirable quality of the goods. *In re American Academy of Facial Plastic and Reconstructive Surgeons*, ... [supra at 1756].

Upon consideration of the arguments and evidence presented, we agree with the Examining Attorney that, when considered in its entirety, the mark "SMART BATTERY CHARGER" and design is merely descriptive of applicant's "battery chargers." To state the obvious, the term "BATTERY CHARGER," as evidenced by the identification of applicant's goods, is a generic designation for applicant's goods in that it merely describes what such goods are commonly known and referred to as in the trade therefor. As to the Internet excerpts, including the dictionary definitions, pertaining to the word "SMART," it is clear that such term merely describes any device which is highly automated in that it is controlled by a microprocessor or is microprocessor-based. Furthermore, such excerpts plainly show that applicant's battery

chargers and certain of those of third parties are smart in the sense that they are microprocessor controlled. The evidence additionally demonstrates that when the separate terms are combined into the designation "SMART BATTERY CHARGER," such designation immediately and particularly conveys, without the need for speculation or conjecture, precisely what applicant's goods are or do, namely, that they are microprocessor controlled battery charging devices. Viewed in the context of applicant's goods, there is nothing in the term "SMART BATTERY CHARGER" which, to customers for and users of such goods, is incongruous, ambiguous or even 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.

Moreover, as to applicant's argument that the special form of its mark, consisting of the different style and size fonts which are employed for the terms "SMART" and "BATTERY CHARGER" along with the appearance of the term "SMART" "in juxtaposition with a design element" such that "the word and design feature are not depicted in a manner that necessarily creates the single word impression 'smart battery charger,'" we agree with the Examining Attorney that, even in the special form shown, it is still readily apparent that the term "SMART" is being used in applicant's mark as an adjective to modify the term "BATTERY CHARGER" so as to form a single merely descriptive expression. The display in applicant's mark of the generic words

"BATTERY CHARGER" in the same font size and commonplace style and with the words shown one above the other creates a unified term which in turn is modified by the adjective "SMART," which except for the emphasis attributed thereto by the underscoring of such word with an arcuate design, appears in an ordinary font of the same size letters other than for an initial capitalized "S." Such manner of presentation is so mundane and nondistinctive, and thus so lacking in anything striking or unique, that it fails to create a commercial impression separate and apart from the merely descriptive significance of the words themselves. The display formed by applicant's mark simply serves to underscore that applicant's goods are not just any category or kind of battery chargers but rather are smart battery chargers which feature microprocessor-based controls for safer and more efficient battery recharging. Accordingly, and aside from the fact that applicant has not disclaimed the words "SMART BATTERY CHARGER," the slight stylization and minor design elements of applicant's mark do not lend registrability to a mark which, on the whole, remains merely descriptive of applicant's goods.

Turning now to consideration of the issue of likelihood of confusion, our determination thereof under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on such issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). See also In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098,

192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity or dissimilarity in the goods at issue and the similarity or dissimilarity of the respective marks in their entireties.⁵ See also In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). Here, inasmuch as applicant's "battery chargers" are legally identical to and encompass registrant's "battery chargers for use in marine, automotive, recreational vehicle, motorcycle, and tractor equipment,"⁶ and therefore would be marketed and sold to the same classes of consumers through the same channels of trade, the primary focus of our inquiry is on the similarities and dissimilarities in the respective marks, when considered in their entireties.

Applicant urges in its initial brief that marks which are merely descriptive "may be entitled to a narrower scope of protection than an entirely arbitrary or coined word." In particular, applicant argues that in this case:

The fact that the [mark] SUPERSMART BATTERY CHARGER is registered on the Supplemental Register with a disclaimer of the terms "battery charger" means that the mark in [its] entirety was held to be [merely] descriptive. Registration on the Supplemental Register establishes *prima facie*

⁵ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." 192 USPQ at 29.

⁶ We note, as the Examining Attorney does in her brief, that applicant in its initial brief makes no argument that there are any cognizable differences in the respective goods. Moreover, in its reply brief, applicant specifically "acknowledges that the goods of the Applicant and the registrant, at a minimum, overlap based on the identification of the applicant and [that in the] registration."

that the registered mark was merely descriptive at the time of registration. *In re Hunke & Jochheim*, 185 USPQ 188, 189 (TTAB 1975). As a [merely] descriptive mark, it is weak as applied to the registrant's goods and as such should be accorded a limited scope of protection.

Inasmuch as "the registrant chose for its product an inherently weak mark," applicant further maintains that:

As the Court of Appeals has held[,] "where a party chooses a trademark which is inherently weak, he will not enjoy the wide latitude of protection afforded the owner of strong trademarks. Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights." *Sure-Fit Products Co. v. Saltzon Drapery Co.*, 254 F.2d 158, 117 U.S.P.Q. 295 (C.C.P.A. 1958)[.] If the common elements of conflicting marks are weak then the likelihood of confusion is diminished. *Colgate -Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 U.S.P.Q. 529 (C.C.P.A. 1970); *Knapp-Monarch Co. v. Poloron Products, Inc.*, 134 U.S.P.Q. 412 (T.T.A.B. 1962).

The Examining Attorney, however, insists that because "[t]he entirety of applicant's mark is identical to a portion of registrant's mark," "the marks are confusingly similar in appearance, sound, connotation and overall commercial impression." With respect to applicant's assertion that registrant's mark is weak and hence is to be afforded only a limited scope of protection, the Examining Attorney, citing *Hollister Inc. v. Ident A Pet, Inc.*, 193 USPQ 439, 442 (TTAB 1976), notes that a weak mark is "still entitled to protection against registration by a subsequent user of the same or similar mark for the same or closely related goods or services." In particular, she points out that:

As stated by the Court of Customs and Patent Appeals, "Confusion is confusion. The likelihood thereof is to be avoided, as much between 'weak' marks as between 'strong' marks, or as between a 'weak' mark and a 'strong' mark." *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974). Thus, registrant's mark must be afforded the protection it deserves--regardless of whether it is on the Principal Register or Supplemental Register.

As decided by the court in *In re Clorox Co.*, 578 F.2d 305, 198 USPQ 337, 340 (CCPA 1978), "a mark registered on the Supplemental Register can be used as a basis for refusing registration to another mark under §2(d) of the [Trademark] Act." Moreover, as to the argument implicitly raised by applicant herein that that a merely descriptive mark which is registered on the Supplemental Register may be found likely to cause confusion only with respect to a mark which is the same as or virtually identical to the registered mark, the court in *Clorox*, in affirming the Board's finding of a likelihood of confusion between the mark "ERASE" for a laundry soil and stain remover and the mark "STAIN ERASER" as registered on the Supplemental Register for a stain remover, added that:

Appellant next posits a requirement that citation of marks on the Supplemental Register under §2(d) be limited to marks identical to that sought to be registered. No reason exists, however, for the application of different standards to registrations cited under §2(d). The level of descriptiveness of a cited mark may influence the conclusion that confusion is likely or unlikely, see *Sure-Fit Products Co. v. Saltzon Drapery Co.*, 45 CCPA 856, 859, 254 F.2d 158, 160, 117 USPQ 295, 297 (1958), but that fact does not preclude citation under §2(d) of marks on the Supplemental Register.

Likewise, in this case, we concur with the Examining Attorney that, even though the cited "SUPERSMART BATTERY CHARGER" and design mark for battery chargers for use in marine, automotive, recreational vehicle, motorcycle, and tractor equipment may be considered merely descriptive and thus is inherently weak as evidenced by its registration on the Supplemental Register, contemporaneous use by applicant of its merely descriptive "SMART BATTERY CHARGER" and design mark in connection with legally identical goods, namely, battery chargers, is likely to cause confusion as to source or sponsorship. When considered in their entireties, the respective marks are indeed substantially identical in sound, appearance, connotation and commercial impression inasmuch as they differ only by the laudatory word "SUPER" in registrant's mark, which in essence serves solely to accentuate the degree of "smartness" present in registrant's goods. Such word, moreover, as depicted in registrant's "SUPERSMART BATTERY CHARGER" and design mark, appears in the initially capitalized format "SuperSmart," which is identical to the manner of presentation of the word "SMART" as "Smart" in applicant's "SMART BATTERY CHARGER" and design mark. Consumers, therefore, could reasonably believe that applicant's "Smart BATTERY CHARGER" and registrant's "SuperSmart Battery Charger" are part of a line, originating from a common source, of battery chargers having various levels of "smartness" or that registrant's "SuperSmart Battery Charger" is an upgraded or enhanced version of applicant's "Smart BATTERY CHARGER." In either event, confusion as to the source or sponsorship of the

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respective goods is likely to occur, notwithstanding the descriptiveness inherently associated with the marks at issue.

Accordingly, we conclude that consumers who are familiar or otherwise acquainted with the registrant's "SUPERSMART BATTERY CHARGER" and design mark for "battery chargers for use in marine, automotive, recreational vehicle, motorcycle, and tractor equipment" would be likely to believe, upon encountering applicant's substantially identical "SMART BATTERY CHARGER" and design mark for "battery chargers," that such legally identical products emanate from, or are sponsored by or affiliated with, the same source.

Decision: The refusals under Sections 2(e)(1) and 2(d) are affirmed.