

**THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB**

Mailed: August 20, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Unite Eurotherapy, Inc.

Serial No. 78936716

Thomas D. Foster, Esq. for Unite Eurotherapy, Inc.

Evelyn W. Bradley, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Walters, Grendel and Taylor, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Unite Eurotherapy, Inc. has filed an application to register on the Principal Register the standard character mark 7SECONDS for "hair detangler," in International Class 3.¹

The examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15

¹ Serial No. 78936716, filed July 25, 2006, based on use of the mark in commerce, alleging first use and use in commerce as of May 31, 2003.

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U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its identified goods.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

Applicant argues that its mark is, at most, suggestive of a short wait, and that a prospective purchaser seeing the term on the product container would have no idea what 7SECONDS refers to. Applicant contends that the number seven has numerous religious, cultural, mathematical and psychological connotations and, thus, the mark 7SECONDS is subject to multiple connotations; and that, because of the merger of the numeral 7 and the word SECONDS into a single word with no spaces, viewers will not examine the mark for literalness and, accordingly, the mark creates a unique, non-descriptive mark. Applicant submitted numerous copies of third-party registrations for marks that include the term "seconds" preceded by a number for a wide variety of goods and services; and search result lists from the Google Internet search engine for various uses of the term "seconds" preceded by a number.

Applicant also submitted examples of its own use of its mark in promotional documents, showing the container for its product and written promotional copy. The bottle shows applicant's name UNITE EUROTHERAPY with UNITE appearing in

larger letters above EUROTHERAPY. Below and separated by a space on the bottle is the phrase:

7SECONDS™ Condition
LEAVE IN DETANGLER

A description beside the picture of the bottle states, in part: "Within 7 seconds your tangles will be gone and your hair will start to feel alive again."

The examining attorney contends that 7SECONDS is merely descriptive of a significant aspect of applicant's product, namely, that it detangles hair in 7 seconds." The examining attorney submitted excerpts from several Internet websites showing various third-party hair detanglers that reference the amount of time, in seconds, that the product should be left on the user's hair. For example, references to two different hair detanglers, BIOELEMENTS and CHS SLIP, state that these products should be left on the hair for 30 seconds.

The test for determining whether a mark is merely descriptive is whether it 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 Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *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 that a mark is

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).

We agree with the examining attorney that 7SECONDS is merely descriptive in connection with hair detangler.

We find applicant's arguments in favor of registration to be unconvincing and inaccurate. For example, as stated above, we must consider the mark in connection with the goods, thus, any potential purchaser of applicant's hair detangler is likely to understand that the term 7SECONDS refers to the amount of time necessary for detangling; as the term is in fact merely descriptive, it is axiomatic that competitors may need to use the phrase; the mere fact that the number "7" may have multiple connotations does not mean that, in the context of this mark for the identified goods, it has any connotation other than denoting the number of seconds it takes to achieve results. Further, while the

phrase 7SECONDS may be unitary, it neither is unique nor does it have any non-descriptive connotations when it is used on or in connection with the identified goods.

Applicant submitted over 400 pages of third-party registrations, website excerpts and search engine search result lists in support of its arguments in favor of registration. However, most of this evidence is irrelevant, as we must decide each case on its own facts and the evidence refers to different terms and a wide variety of goods and services, that is, where it is even possible to discern the goods and services. In fact, a sizable number of the third-party registrations submitted were expired or they were Supplemental Register registrations.

Therefore, we conclude that, when applied to applicant's services, the term 7SECONDS immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, namely that it will detangle hair in seven seconds. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term 7SECONDS as it pertains to applicant's goods. We note, further, that we have no doubt in reaching this conclusion.

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