

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Coinmach Corporation : BEFORE THE
 Trademark: SUPER LAUNDRY : TRADEMARK TRIAL
 Serial No: 75-468157 : AND
 Attorney: David A. Einhorn : APPEAL BOARD
 Address: 1251 Avenue of the Americas : ON APPEAL
 New York, NY 10020-1182

EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the Trademark Examining Attorney's final refusal to register SUPER LAUNDRY in typed form for "retail distributorship featuring laundry equipment" and "construction services, namely, planning, laying out and custom construction of laundry retail

stores; maintenance and repair of laundry equipment” on the ground of mere descriptiveness under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1).

L. FACTS

Applicant applied for registration on the Principal Register of SUPER LAUNDRY in typed form for “retail distributorship featuring laundry equipment” in International Class 35 and “construction services, namely, planning, laying out and custom construction of laundry retail stores; maintenance and repair of laundry equipment” in International Class 37. The Examining Attorney refused registration on the ground of mere descriptiveness under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1). This appeal follows the Examining Attorney’s final refusal on the grounds of mere descriptiveness under Section 2(e)(1) of the Trademark Act.

II. ARGUMENT

A. APPLICANT’S PROPOSED MARK IS MERELY DESCRIPTIVE OF APPLICANT’S SERVICES WITHIN THE MEANING OF SECTION 2(e)(1) OF THE TRADEMARK ACT, 15 U.S.C. SECTION 1052(e)(1)

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant services. *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The question of whether or not a mark is merely descriptive must be determined not in the abstract, but rather in relation to the services for which registration is sought. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985).

In the present application, applicant seeks registration of the proposed mark SUPER LAUNDRY in typed form for “retail distributorship featuring laundry equipment” in International Class 35 and “construction services, namely, planning, laying out and custom construction of laundry retail stores; maintenance and repair of laundry equipment” in International Class 37. In its *Brief for Appellant* dated May 15, 2001 (hereinafter “*Brief*”), Applicant asserts, “The phrase SUPER LAUNDRY has no meaning in the English language.” However, the record contains no evidence or arguments of why the mere juxtaposition of the two terms would so obscure their individual meanings as to render the resultant phrase meaningless. According to *The American Heritage Dictionary of the English Language* (3rd ed. 1992), the term SUPER is defined as “very large, great, or extreme” and “excellent; first-rate”, and the term LAUNDRY is defined as “a commercial establishment for laundering clothes or linens.” Thus, the resultant phrase SUPER LAUNDRY merely describes a large laundry and/or a laundry that offers excellent service, equipment or facilities. The Examining Attorney further notes that the Nexis® articles attached to the Examining Attorney’s Final Office Action dated October 18, 2000, clearly show that SUPER LAUNDRY is commonly used as a unitary phrase to denote “king size” laundries and those that offer first-rate equipment and facilities. For instance, article 24 states as follows:

From garbage to videos, H. Wayne Huizenga built a multibillion-dollar empire by taking over industries once dominated by mom-and-pop operators and building them into household names.

After watching the master in action, two groups of former Blockbuster Entertainment and Republic Industries executives see another opportunity to put his philosophy into action – coin laundries. They hope to pepper the country with super laundries called Laundromax and SpinCycle.

“Our goal is to revolutionize the laundry business,” said Alan Haig, president of the Fort Lauderdale-based Laundromax and a former business development executive for Blockbuster and Republic Industries. “*We hope to do*

the same thing for the laundry business as Blockbuster did for the video business.”

It's the latest chapter in a *superstore craze* in this country that has seen a proliferation of “*category killers*” in everything from office supplies to home furnishings. Time-starved consumers gravitate toward brand names because they're *guaranteed a certain level of service* and variety of merchandise.

....

The average store will be 4,500-square-feet, *about twice the size of the neighborhood coin laundry*....

Elaine Walker, Florida Executives Plan to Revolutionize Coin Laundry Business, The Miami Herald, February 5, 1998 (emphasis added).

This article, along with the others, clearly demonstrates that the phrase SUPER LAUNDRY merely describes a large laundry and/or a laundry that offers excellent service, equipment or facilities. Since applicant is in the business of constructing laundries and operating a retail distributorship of laundry equipment, SUPER LAUNDRY is clearly descriptive of Applicant's services since a “super laundry” is what Applicant constructs and to which it supplies laundry equipment.

B. PROPOSED MARK IS DESCRIPTIVE UNDER CURRENT CASE LAW

Applicant asserts in its *Brief* that “courts have indicated that a term that is merely self-laudatory such as . . . ‘super,’ seeking to convey the impression that a product is excellent or of especially high quality, is generally deemed to be suggestive.” *Brief* at 5. The Examining Attorney respectfully disagrees. Laudatory terms, i.e., those which attribute quality or excellence to goods or services, are equivalent to other descriptive terms under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §1209.03(k). That is, laudatory terms are nondistinctive and unregistrable without proof of acquired distinctiveness. *In re Nett Designs*

Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (THE ULTIMATE BIKE RACK); *In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001) (BEST and PREMIER); *In re Dos Padres Inc.*, 49 USPQ2d 1860 (TTAB 1998) (QUESO QUESADILLA SUPREME); *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995) (SUPER BUY); *General Foods Corp. v. Ralston Purina Co.*, 220 USPQ 990 (TTAB 1984) (ORIGINAL BLEND); *In re Wileswood, Inc.*, 201 USPQ 400 (TTAB 1978) (AMERICA'S FAVORITE POPCORN).

The Trademark Trial and Appeal Board has recently held 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". *In re Phillips-Van Heusen Corp.*, No. 75-664835, 2002 TTAB LEXIS 45, at 16 (TTAB Mar. 28, 2002). In reviewing the term LAUNDRY, it is merely a generic designation for Applicant's "retail distributorship featuring laundry equipment" and "construction services, namely, planning, laying out and custom construction of laundry retail stores; maintenance and repair of laundry equipment". See *In re Log Cabin Homes Ltd.*, 52 USPQ2d 1206 (LOG CABIN HOMES is generic term when used in connection with architectural design of buildings and retail outlets featuring kits for constructing buildings). Alternatively, if the term LAUNDRY is not found to be generic for Applicant's services, it is, at the very least, a word which names a principal component of those services. Thus, the combination of the laudatory term SUPER with the term LAUNDRY results in a merely descriptive mark since the impression conveyed is that of attributing superior quality to the Applicant's services. See also *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 172 USPQ 361 (CCPA 1972) ("SUPER BLEND" held merely descriptive of "motor oils" as designating "an allegedly superior blend of oils"); *In re Consolidated Cigar Co.*, 35 USPQ2d 1290, 1293-94 (TTAB 1995) ("SUPER BUY" found laudatory and hence

merely descriptive of "cigars, pipe tobacco, chewing tobacco and snuff" inasmuch as term "ascribes a quality of superior value to the goods"). This is readily apparent in applicant's own specimens which state that consumers "can count on Super for quality and attention to detail right down the line. We sell only the best, most dependable, laundry equipment available." As shown above, consideration of the mark in relation to the recited services leads to the conclusion that the mark is merely descriptive of Applicant's services.

C. APPLICANT HAS ONLY MADE FIVE THIRD-PARTY REGISTRATIONS OF RECORD ONE OF WHICH HAS BEEN CANCELLED

In its Request for Reconsideration, Applicant refers to third-party registrations which it claims to be of record via attachments under Exhibits A through C. However, the Examining Attorney informed Applicant in his denial of Applicant's Request for Reconsideration that Applicant has provided copies of only five third-party registrations, i.e., Registration Nos. 1,814,093 (attached to Applicant's Response filed July 13, 1999, as Exhibit B), 1,497,976 (attached to Applicant's Response filed July 13, 1999, as Exhibit C), 1,352,355 (attached to Applicant's Response filed July 13, 1999, as Exhibit D), 1,374,219 (attached to Applicant's Response filed July 13, 1999, as Exhibit E), and 1,159,574 (attached to Applicant's Response filed July 13, 1999, as Exhibit F). Since Applicant has failed to properly make of record any other third-party registrations, the Examining Attorney need not consider any arguments relating thereto.

Thus, in reviewing the five third-party registrations of record, the Examining Attorney notes that Registration No. 1,814,093 is no longer relevant since it has been cancelled as of January 7, 2001. As to the remaining registrations, three of the four have disclaimed the term

SUPER thereby supporting the Examining Attorney's position that SUPER LAUNDRY is merely descriptive of Applicant's services.

III. CONCLUSION

For the foregoing reasons, the refusal to register the mark under Section 2(e)(1) of the Trademark Act should be affirmed.

Respectfully submitted,



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Trademark Attorney

Tomas Vlcek
Managing Attorney
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