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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

*Miscellaneous
Expart*



In re Application of:
Coinmach Corporation
Serial No.: 74/468,157
Filed: October 7, 1998
Trademark: **SUPER LAUNDRY**

Law Office: 115

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01-09-2002

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SUPPLEMENTAL BRIEF FOR APPELLANT

INTRODUCTION

On May 15, 2001 Coinmach Corporation ("Applicant") filed a brief appealing the Examiner's refusal to register the above-identified mark dated October 18, 2000. On December 7, 2001 the Trademark Trial and Appeal Board issued an order allowing Applicant to file a supplemental brief in view of the Examiner's Denial of Request for Reconsideration dated December 3, 2001. Accordingly, this brief is submitted in triplicate.

ARGUMENT

This supplemental brief is being submitted to address an inaccuracy on the part of the Examiner in his denial of Applicant's Request for Reconsideration. In support of its position that the term SUPER is not merely descriptive, Applicant's Appeal Brief and Request for Reconsideration demonstrated the existence of fifteen (15) non-§2(f) based third-party

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registrations consisting merely of the word SUPER in conjunction with descriptive words such as shirts, hair, toys, flea market, nutrient and vacations.

In his most recent denial, the Examiner advises that the “citation of those registrations are unpersuasive” because “applicant has provided copies of only five registrations of which three have disclaimed the word SUPER due to the descriptive nature of the term.” See Examiner’s Denial of Request for Reconsideration, at 1. This is simply inaccurate. As stated above and in Applicant’s Appeal Brief, Applicant submitted certified copies of fifteen (15) non-§2(f) based registrations containing the term SUPER and they are part of the record for this appeal. See Response to Office Action at Exhibits B – F and Request for Reconsideration at Exhibits A – C. They are summarized as follows:

REG. NUMBER	TRADEMARK	GOODS/SERVICES	DAT REG.
R2364880	SUPER ATM	Automated banking services with automated teller machines	7/04/00
R1881101	SUPER THERMACELL	Cartridge containing liquid fuel for use with non-electric appliances; namely, cordless curling irons and brushes	2/28/95
R1905988	SUPER VACATIONS	Travel agency services; namely, making reservations and bookings for temporary lodging	7/18/95
R2023851	SUPER SHIRT	Laundered shirt collar and sleeve stays	12/17/96

R2390780	SUPER SCAN	Labels, namely protective label holders for bar codes	10/3/00
R1814093	SUPER TRAVEL, INC.	Travel agency services; namely making reservation and bookings for transportation	12/28/93
R1158184	SUPER SWEATS	Sweatsuits	6/23/81
R2074230	SUPER PUPIL	Ophthalmoscopy lens	6/24/97
R2042301	SUPER NUTRIENT	Dietary supplements	3/4/97
R1069418	SUPER CLOTHES	Men's clothing, namely, suits and sport coats	7/12/97
R107693	SUPER SPLITTER	Power driven log splitter	12/20/77
R1474539	SUPER TOYS	Toy and game rental services	1/26/98
R1650412	THE SUPER FLEA MARKET	Flea market services	7/09/91
R1711029	SUPER HAIR	Detangling protein hair treatment	9/01/92
R1868801	SUPER SCRUB	Tub, tile and all purpose household cleanser	12/20/94

Even more troubling than the simple inaccuracy, is the Examiner's subsequent finding that "a majority of the five registrations [the three containing a disclaimer]¹ cited by the

¹ Applicant's Response to Office Action dated July 13, 1999 included third-party registrations containing disclaimers of the term "SUPER." Applicant acknowledged this to the Examiner in its Request for Reconsideration and Applicant is no longer relying on these third-party registrations in support of its position that the term SUPER as used herein is not descriptive.

applicant supports the examining attorney's position that the mark is merely descriptive." See Examiner's Denial of Request for Reconsideration, at 2. The Examiner's inaccuracy has led to a flawed finding based on only a small, and misleading, portion of the evidence in the record.

Finally, it is respectfully submitted that the Examiner is estopped from disputing the relevance of third-party registrations to this application since he himself has relied (though incorrectly) upon such registrations to support his position.

CONCLUSION

Based on the foregoing, and the Brief for Appellant filed on May 15, 2001, Applicant's mark, SUPER LAUNDRY, as used in connection with the various goods and services specified in its application is not merely descriptive. Therefore, it is respectfully submitted that the mark SUPER LAUNDRY, as applied to the goods and services described in Applicant's application, is entitled to registration. Furthermore, it is respectfully requested that the Examiner's refusal to publish the mark for opposition be reversed.



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