

**Exhibits** TTAB  
Trademark  
246/176

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: SP Systems, LLC )  
 )  
Trademark: FARM & HOME ) BEFORE THE  
 ) TRADEMARK TRIAL  
Serial No.: 75/932,869 ) AND APPEAL BOARD  
 ) ON APPEAL  
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03-11-2002

**APPLICANT'S APPEAL BRIEF**

BOX TTAB  
NO FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

  
03-11-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #79

Sir:

The Applicant, SP Systems, through its undersigned attorneys, has appealed the Examining Attorney's refusal to register the trademark "FARM & HOME" on the ground that it is merely descriptive within the meaning of §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

**FACTS**

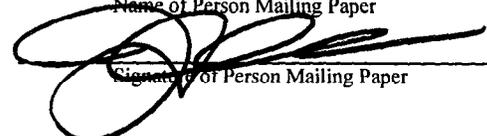
Applicant has applied for the mark "FARM & HOME" for "manually-operated compression sprayers for dispensing liquids." This application has been refused registration on the Principal

LA-229761.1

**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to the Commissioner for Trademarks, Washington, D.C. 20231.

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Julia Mewbourne  
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Register under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), because the proposed mark is deemed to merely describe the identified goods. (See Office Action dated August 9, 2000 and April 18, 2001, Exhibits A and B). Specifically, the Examiner deemed the mark descriptive on arguments that the goods are designed for farm and home use. (See April 18, 2001 Office Action, p. 2).

### ARGUMENTS

#### **I. APPLICANT'S MARK IS NOT MERELY DESCRIPTIVE IN RELATION TO THE IDENTIFIED GOODS**

Applicant respectfully requests that the §2(e)(1) refusal be reconsidered and withdrawn. The basis for Applicant's request is three-fold. First, the sprayers identified may be used in an infinite number of places. The selection of the unitary mark "FARM & HOME" is to create a memorable and distinctive commercial impression. Moreover, part of its unique commercial impression comes from the juxtaposition of words not normally associated together (and certainly not to describe sprayers for dispensing liquid). In short, the mark does not convey an immediate idea of an ingredient, quality, character, function, feature, purpose or use of the product. Second the consumer must make several leaps requiring imagination, thought and perception to reach a conclusion as to the nature of Applicant's goods. Finally, any doubt must be resolved in favor of the Applicant.

#### **A. THE MARK DOES NOT CONVEY AN IMMEDIATE IDEA OF AN INGREDIENT, QUALITY, CHARACTER, FUNCTION, FEATURE, PURPOSE OR USE OF THE PRODUCT**

"A term is merely descriptive within the meaning of Section 2(e)(1) if it conveys an immediate idea of an ingredient, quality, characteristic, function or feature of the product in connection with which it is used." In re Morton-Norwich Product, Inc., 209 USPQ 791 (TTAB 1981).

On the other hand, “[i]f information about the product or service given by the term used as a mark is indirect or vague, then this indicates that the term is being used in a ‘suggestive,’ not descriptive manner.” 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:19, p. 11-28 (4<sup>th</sup> ed. 1998).

The mark at issue here is “FARM & HOME” in connection with “manually-operated compression sprayers for dispensing liquids.” This mark is not merely descriptive because it fails to create an immediate connection describing a quality or characteristic of the goods. Instead, the mark conveys only vague and general qualities about the goods.

The product is a sprayer for dispensing liquids that may be used nearly anywhere. The Office Action suggests that the mark is merely descriptive because the goods are “designed for farm and home use.” (See April 18, 2001 Office Action, p.2). However, a sprayer is used in countless places other than a “farm” or a “home,” including office buildings, parks, gardens, etc. Moreover, the test for being merely descriptive cannot be that the product may be used in a certain location. If that were the test, the terms “farm” or “home” may never be used as marks since virtually every product made may be used inside and around a “farm” or “home.” The Trademark Office has long recognized this principle with other “FARM” and “HOME” marks. See e.g., “FARM & RANCH,” Reg. No. 2,003,037 (battery chargers); “FARM-ASSIST,” Reg. No. 1,455,064 (computer programs for use in the field of agriculture); “HOME & HEARTH,” Reg. No. 2,110,565 (windows, namely, window casements, window frames, window panes, shutters, and sills); and “PHONE HOME,” Reg. No. 2,522,759 (failure monitoring feature of computer server appliance which uses the internet to send an automatic message to report unit failure).

In fact, "FARM & HOME," is arbitrary, not even suggestive, as an "arbitrary" mark is one that uses common words but neither suggests nor describes any ingredient, quality or characteristic of the underlying goods. See, Tisch Hotels, Inc. v. Americana Inn, Inc., 350 F.2d 609, 146 USPQ 566 (7<sup>th</sup> Cir. 1965). Accordingly, this combination is arbitrary with respect to a sprayer that may be used anywhere.

Moreover, combinations of merely descriptive components are registrable if the juxtaposition of the words are inventive or evokes a unique commercial impression, or if the term has a bizarre or incongruous meaning as applied to the goods or services. T.M.E.P. §1209.01(b)(4); In re TBG Inc., 229 USPQ 759 (T.T.A.B. 1986); In re Shutts, 217 USPQ 363 (T.T.A.B. 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool); Aluminum Fabricating Co. of Pittsburgh v. Season-All Window Corp., 119 USPQ 61, 63 (2d Cir. 1958) (SEASON-ALL not descriptive of storm windows). Similarly, the combination of "FARM & HOME" creates a unique commercial impression as "farm" and "home" have no meaning when used together. A consumer has no idea how "farm" and "home" are related or why those two words were juxtaposed together instead of, for example, "PARK & GARDEN" or any other word combination.

Additionally, as is commonly known, the terms "farm" and "home" have a number of different meanings. See American Heritage Dictionary definitions attached hereto as Exhibit C. When they are combined, the terms "farm" and "home" may connote that a farm may also be used as a home, that a home for the elderly is located on a farm, that the farm is also the headquarters for some operation, or a number of other possibilities. However, none of the definitions for "farm" or "home" are even closely descriptive of sprayers for dispensing liquids.

The Office Action further states that, “the examining attorney must consider whether a mark is merely descriptive in relation to the identified goods, not in the abstract.” (April 18, 2001 Office Action, p. 2). Sprayers for dispensing liquids is not described in any way by “FARM & HOME.” While the words “farm” and “home” are words used separately in everyday parlance, their combination, particularly in connection with Applicant’s goods, cannot be said to merely describe those goods since their products may be used virtually anywhere. See In re Bankers Finance Inv. Management Corp., 222 USPQ 914 (TTAB 1984) (held BANKERS FINANCE not merely descriptive for services of providing and obtaining funds for institutions through the purchase, sale and brokering of assets even though some of applicant’s services are rendered to banks). Thus, Applicant’s mark creates a unique commercial impression with respect to sprayers.

Furthermore, “the word ‘merely’ in the Act apparently means that if the mark clearly does not tell the potential customer only what the goods are, their function, characteristics, use or ingredients, then the mark is not ‘merely descriptive.’” 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:51, p. 11-107 to 11-108 (4<sup>th</sup> ed. 2001); see also In re Colonial Stores, Inc., 394 F.2d 549, 157 USPQ. 382 (CCPA 1968). “A mark that connotes two meanings –one possibly descriptive, and the other suggestive of some other association – can be called suggestive, as the mark is not ‘merely descriptive.’” 2 McCarthy § 11.19, p. 11-26; No Nonsense Fashions, Inc. v. Consolidated Foods Corp., 226 USQP 502, 503 (TTAB 1985); In re David Crystal, Inc., 145 USPQ 95 (TTAB 1965). With so many different interpretations of the mark that are available and none that clearly describe any component of the good, the mark cannot be said to be merely descriptive.

**B. A CONSUMER MUST MAKE SEVERAL LEAPS REQUIRING IMAGINATION, THOUGHT, AND PERCEPTION TO REACH A CONCLUSION AS TO THE NATURE OF APPLICANT'S GOODS**

A term is suggestive if some imagination, thought or perception is required to determine the nature of the goods. See In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ 1009; Union Carbide Corp. v. Ever-Ready, Inc., 531 F.2d 366, 379, 188 USPQ 623, 635 (7<sup>th</sup> Cir. 1976) cert denied, 429 U.S. 830, 50 L. Ed.2d 94, 97 S.Ct. 91, 191 USPQ 416 (1976) (holding that “if the mark...stands for an idea which requires some operation of the imagination to connect it with the goods, it is suggestive.”); In re Shutts, 217 USPQ 363, 364-65 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool); Nature's Bounty, Inc. v. Basic Organics, 432 F. Supp. 546, 196 USPQ 622, (E.D.N.Y. 1977); T.M.E.P. § 1209.01(a) (“[s]uggestive marks are those which require imagination, thought or perception to reach a conclusion as to the nature of the goods or services”).

Similarly, for a consumer to reach a conclusion as to the nature of Applicant's goods identified by the proposed mark “FARM & HOME,” the consumer must, upon seeing the proposed mark, take several mental leaps requiring imagination, thought and perception. If the consumer were unfamiliar with the Applicant's mark, the consumer would have to assess how the terms “farm” and “home” are related. Then the consumer must contemplate the many different definitions and connotations that are associated with “farm” and “home.” Finally, the consumer must make the connection between the mark and sprayers that can be used virtually anywhere. This would be extremely unlikely when the mark does not contain any references to Applicant's goods.

Undoubtedly, to understand the nature of the Applicant's goods and to go from a product associated with a “farm” and “home” to sprayers for dispensing liquid, the consumer must undertake a number of complex thought processes and mental leaps. Hence, it is unlikely that anyone would

be able to make that jump “without some measure of imagination and mental pause.” In re Shutts, 217 USPQ at 364-65. Accordingly, the thought, imagination, and speculation required to dissect the mark, reorganize the components of the mark, and contemplate the many meanings of the dissected components individually and in relation with one another as well as the Applicant’s goods clearly indicates that the proposed mark “FARM & HOME” on its face is not merely descriptive, but rather is at most suggestive. See In re J.P. Stevens & Co., Inc. 160 USPQ at 692; Union Carbide Corp., 531 F.2d at 379, 188 USPQ at 635; Minnesota Mining and Manufacturing Co. v. Johnson and Johnson, 454 F.2d 1179, 172 USPQ 491 (CCPA 1972) (SKINVISIBLE held not merely descriptive of adhesive medical and surgical tape through which the skin is visible).

**C. ANY DOUBT AS TO WHETHER THE MARK IS DESCRIPTIVE MUST BE RESOLVED IN FAVOR OF THE APPLICANT**

It is a well established principle that any doubt as to whether a mark is “merely descriptive” or suggestive must be resolved in favor of the Applicant. See, e.g., In re Morten-Norwich Products, Inc., 209 USPQ 791 (TTAB 1981) (noting that “it is the Board’s practice to resolve the doubt in the applicant’s favor and publish the mark for opposition.”); In re Bliss & Laughlin Indus., Inc., 198 USPQ 127, 128 (TTAB 1978) (any doubts to this issue should be resolved in favor of the Applicant). The above remarks, at a minimum, have established the mark “FARM & HOME” is not merely descriptive. Accordingly, the mark should be registered.

**CONCLUSION**

Therefore, for the reasons set forth above, the Applicant respectfully requests the application for the mark “FARM & HOME” be approved and passed to publication.

The Commissioner is hereby authorized to charge any additional fees, which may be required, or credit any overpayment to Lyon & Lyon's Deposit Account No. 12-2475.

Respectfully submitted,

LYON & LYON LLP

Dated: March 11, 2002

By:   
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