

**This Opinion is Not a
Precedent of the TTAB**

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United States Patent and Trademark Office
Trademark Trial and Appeal Board

In re CirCaid Medical Products

Serial No. 85401718

James P. Broder of Roeder & Broder for CirCaid Medical Products.

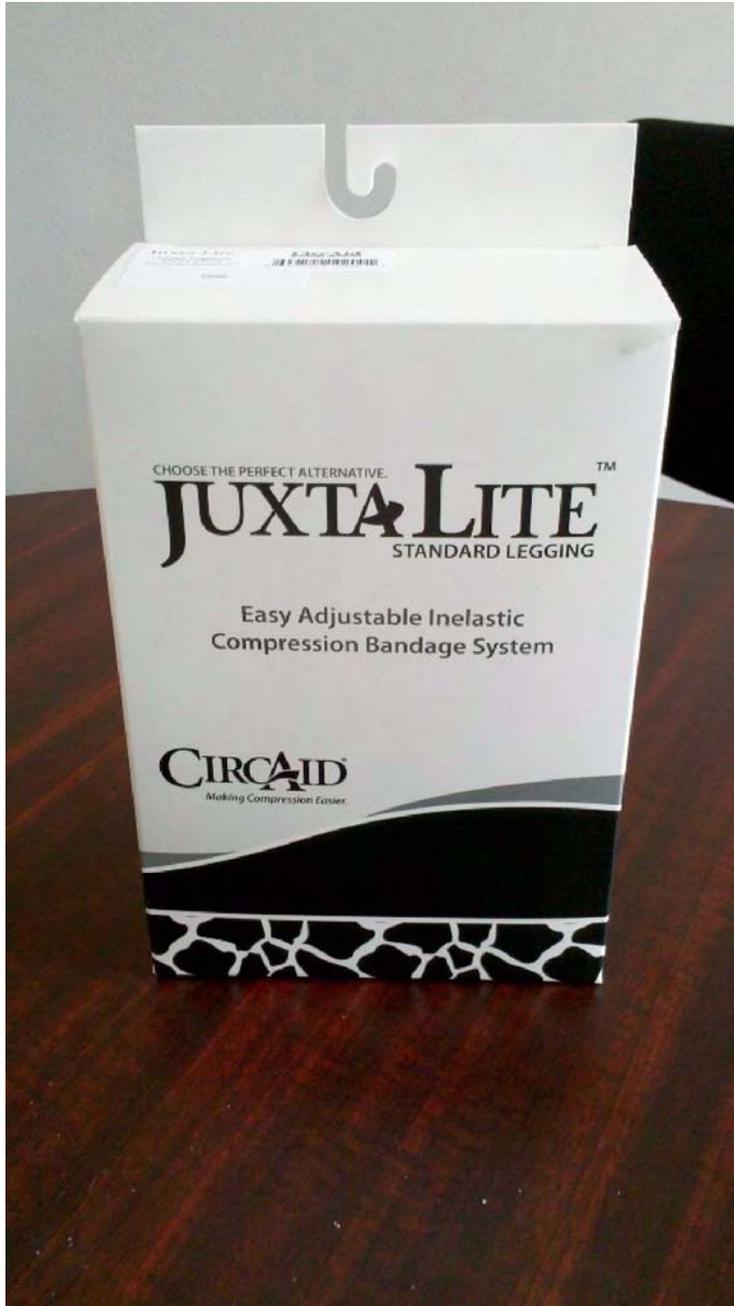
Dominic R. Fathy, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Kuhlke, Lykos and Adlin, Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

On August 18, 2011, CirCaid Medical Products (“applicant”) filed an application to register the mark JUXTA in standard character format for “therapeutic compression support bands, bandages and leggings for medical and veterinary use” in International Class 10.¹ Applicant submitted the following specimen consisting of a photograph of product packaging:

¹ Application Serial No. 85401718, filed pursuant to Section 1(a).



Applicant appeals the Trademark Examining Attorney's final refusal to register applicant's mark on the Principal Register on the grounds that the mark in the drawing is not a substantially exact representation of the mark

as used on the specimen under Trademark Rule 2.51(a). For the reasons explained below, we affirm the refusal to register.

The examining attorney argues that the specimen displays the mark as the unitary term JUXTA-LITE or JUXTALITE while the drawing shows the mark as JUXTA. As evidence that use of the term JUXTA-LITE on the specimen is unitary, the examining attorney contends that the wording appears in the same font and size. The examining attorney also points to the positioning of the trademark symbol (TM) after the term “-LITE.”²

Applicant, relying on the cases of *In re Sansui Electric Co. Ltd.*, 194 USPQ 202 (TTAB 1977) and *In re Raychem Corp.*, 12 USPQ2d 1399 (TTAB 1989), and excerpts from the Trademark Manual of Examining Procedure (“TMEP”), argues that the wording “JUXTA” as it appears on the specimen creates a separate and distinct commercial impression from the hyphenated term “-LITE” shown next to applicant’s mark on the specimen. More specifically, applicant asserts that the term LITE “is and has been used in commerce by various manufacturers to identify a particular version of a given product line.” Applicant’s Brief, p.11. Applicant also submitted other examples of use from its own website which show its applied-for mark JUXTA displayed next

² We note the examining attorney’s contention that to accept applicant’s specimen would by analogy amount to registration of a phantom mark. We do not find such an analogy appropriate here. In any event, applicant has clarified for the record that it is not seeking to register a phantom mark.

to alternative composite mark forms such as –FIT and –CURES to differentiate distinct product lines.

The “drawing depicts the mark sought to be registered.” Trademark Rule 2.52, 37 CFR § 2.52. “In an application under section 1(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.” Trademark Rule 2.51(a), 37 CFR § 2.51(a). “An applicant may seek to register any portion of a composite mark if that portion presents a separate and distinct commercial impression.” *In re Lorillard Licensing Co.*, 99 USPQ2d 1312 (TTAB 2011), *citing In re 1175854 Ontario Ltd.*, 81 USPQ2d 1446 (TTAB 2006). In other words, “the mark as actually used must not be so entwined (physically or conceptually) with other material that it is not separable from it in the mind of the consumer.” *In re Yale Sportswear Corp.*, 88 USPQ2d 1121 (TTAB 2008), *quoting In re Chem. Dynamics Inc.*, 839 F.2d 1569, 5 USPQ2d 1828, 1830 (Fed. Cir. 1988).

Here we find that the drawing of the mark is not a substantially exact representation of the mark as it appears on the specimen of use because as actually used, prospective consumers will not perceive the term “JUXTA” as separable from the term “LITE.” As the examining attorney points out, both terms appear in the same style font. In addition, although the applicant points to uses of the term JUXTA with other matter, the record evidence does not include any uses of the term JUXTA by itself.

The facts presented in *Raychem* and *Sansui Electric, supra*, are distinguishable from the facts presented here. In *Raychem*, the Board reversed the examining attorney's refusal to register the mark "TINEL-LOCK" on the grounds that the mark as shown on the drawing did not agree with the display of the mark on the specimens as "TRO6A1-TINEL-LOCK-RING." *In re Raychem*, 12 USPQ2d at 1400. The evidence in the record showed that the alpha-numeric designation "TRO6A1" was a stock number, and that the term "RING" was a generic designation for the goods. *Id.* Similarly, in *Sansui Electric*, the Board reversed the examining attorney's refusal to register two marks on the grounds that the applied-for marks, "QSE" and "QSD," created a commercial impression "separate and apart from the series of model numbers in association with which they are used." *In re Sansui Electric Co. Ltd.*, 194 USPQ at 203. As the Board reasoned, it would be readily apparent to prospective purchasers that "the various changing numbers serve simply as model designations to identify and distinguish, one from another, the successive generations of applicant's equipment." *Id.*

In the case before us, however, the specimens do not display the mark as used with a model or stock number. Although applicant asserts that other manufacturers use the term "LITE," applicant has submitted no evidence thereof. Nor has applicant submitted evidence that the term "lite" is a descriptive or generic indicator for the identified goods. Hence, contrary to applicant's assertion, we find that the "LITE" portion of applicant's mark as it

appears on the specimen does not present “a separate and distinct commercial impression” but rather is “entwined” with the “JUXTA” element. In other words, based on the record before us, we find that consumers will not perceive the term “LITE” as merely indicating variations of the “JUXTA” product line.

Section 807.12(d) of the TMEP, which applicant relies upon, does state that “an applicant has some latitude in selecting the mark it wants to register. The mere fact that two or more elements form a composite mark does not necessarily mean that those elements are inseparable for registration purposes.” These statements, however, are tempered by the requirement derived from the rules and case law that an element of a composite mark may be registered if, as used on the specimens, it presents “a separate and distinct commercial impression apart from any other matter with which the mark is or will be used.” *Id.* For the reasons explained above, we do not find that the term “JUXTA” as used on the specimens creates a separate commercial impression. We therefore find that applicant's drawing of the mark is not a substantially exact representation of the mark as used in commerce. *See* Trademark Rule 2.51(b).

Decision: The refusal to register is affirmed.