

This Opinion is not a
Precedent of the TTAB

Mailed: June 18, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re j. debeaute
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Serial No. 85967716
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Thomas D. Foster of TDFoster – Intellectual Property Law,
for j. debeaute.

Margery A. Tierney, Trademark Examining Attorney, Law Office 111,
Robert L. Lorenzo, Managing Attorney.

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Before Ritchie, Adlin, and Hightower,
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Applicant j. debeaute seeks registration on the Principal Register of the mark MORINGA SKIN, in standard characters and with “MORINGA” disclaimed, for “lotions for face and body care containing moringa” (as amended) in International Class 3.¹ The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant’s mark is merely descriptive of Applicant’s goods.

¹ Application Serial No. 85967716 was filed on June 24, 2013, based on Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

After the Trademark Examining Attorney made the refusal final, Applicant appealed. We affirm the refusal to register.

A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *See In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Descriptiveness determinations are made in relation to an applicant's identified goods or services, the context in which the proposed mark is being used, and the possible significance the term would have to the average consumer because of the manner of its use or intended use. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. Descriptiveness is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007).

Applicant's goods are "lotions for face and body care containing moringa." The Examining Attorney submitted evidence demonstrating that "moringa" is a genus of plant with many uses.² Of particular relevance, Internet evidence of record indicates that moringa oil, derived from the seeds of the *Moringa oleifera* tree, is employed in the skin care industry, as follows:

- An article from the website MoringaSource.com states that: "Moringa oil is among the most desired oils in the formulation of skin care products and cosmetics, chosen for its many antioxidants and documented skin-rejuvenating properties." The article notes that Moringa oil can be found in hand lotions.³

² *See, e.g.*, October 8, 2013 Office Action at 19 ("Moringa" article from Wikipedia.com).

³ *Id.* at 2-3.

- The website MoringaFacts.net states that Moringa oil “has some healing properties for skin allergies, irritations, wounds, blemishes, and stretch marks. . . . In modern time it found its place in soaps, shampoos, perfumes, and other skin care products.”⁴
- An article titled “The Benefits of Anti-Aging Moringa Oil on the Skin” states in part that “Moringa oil is used in a variety of products including anti-aging creams, massage oils, hair care products, face creams, bath soaps and gels, perfumes and deodorants.”⁵

Applicant argues that MORINGA SKIN is suggestive because it is unclear whether the phrase refers to the skin of a person or of a moringa fruit: “It takes some thought to realize that applicant’s lotions contain moringa extracts and are used for the skin.”⁶ The question, however, “is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech. Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

Based on the evidence discussed herein, we find that a consumer of lotions for face and body care would immediately recognize MORINGA SKIN to convey information about them, that is, that they are skin-care goods containing moringa. Because the proposed mark as a whole immediately and directly informs purchasers of features of Applicants goods, it is merely descriptive under Section 2(e)(1).

Decision: The refusal to register is affirmed.

⁴ *Id.* at 17.

⁵ April 21, 2014 Final Office Action at 7 (from ezinearticles.com).

⁶ Applicant’s Brief at 4, 4 TTABVUE 5.