Mailed: July 23, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re PJCL Hughes Family Trust, LLC

Serial No. 86109353

Matthew H. Swyers of The Trademark Company,
for PJCL Hughes Family Trust, LLC

Julie Watson, Trademark Examining Attorney, Law Office 109,
Dan Vavonese, Managing Attorney.

Before Zervas, Kuczma and Hightower,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

PJCL Hughes Family Trust, LLC ("Applicant") seeks registration on the Principal Register of the proposed mark REVERSE IONIZER (in standard characters) for "water treatment equipment, namely, an electromagnetic water activator for influencing the energetic quality of water by amending the information contained in the clusters of water molecules" in International Class 11.[1]

[1] Application Serial No. 86109353 was filed on November 4, 2013, based upon Applicant's claim of first use anywhere since at least as early as November 7, 2011 and use in commerce since at least as early as November 14, 2011.

The Trademark Examining Attorney has refused registration of Applicant's proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because Applicant's goods "are reverse ionizers that treat water by performing reverse ionization of the water."

When the refusal was made final, Applicant requested reconsideration, which the Examining Attorney denied. Applicant then appealed. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). It is well-established that the determination of mere descriptiveness must be made not in the abstract, but in relation to the goods or services for which registration is sought. *In re Abcor,* 200 USPQ at 218.

In support of her refusal, the Examining Attorney relies on the following evidence:

A. *Definitions*:

ionizer - "a person or thing that ionizes, esp an electrical device used within a room to refresh its atmosphere by restoring negative ions"[2]

ionize - "to convert whole or partly into ions"[3]

water ionizer - "an appliance that ionizes water"[4]

ionization - "[t]he formation of or separation into ions by heat, electrical discharge, radiation, or chemical reaction"[5]

B. *Third party websites* (to establish that "reverse ionization" is applied in water treatment):

Cleaning windows using water[-]fed pole technology is efficient, cost effective and safe. By first using water from a wall spigot we remove the impurities using a *reverse ionization* process which leaves the water free of minerals and impurities.[6]

Kansas City starts out with the same tap water its consumers get out of their spigots, although *reverse ionization* and ozonation (the kind of steps used by Long Beach and many commercial bottlers) keep the water clean longer.[7]

C. *Applicant's webpage*:

RI eliminates most mineral impurities and biological contaminates by employing a static electromagnetic field capable of treating ionic (mineral) impurities, a low frequency varying electromagnetic field for handling biological contaminants, and a high frequency (radio frequency) varying electromagnetic field to break up and dissolve scale formations and other high solids per million issues in water.

---

[2] www.collinsdictionary.com.

[3] www.merriam-webster.com.

[4] www.wikipedia.org.

[5] www.ahdictionary.com.

[6] www.gfsservco.com.

[7] Scott Hoober, *Bottled water costs more, so it must be better, right?,* accessed at www.krwa.net.

We are persuaded by this evidence, and the other evidence in the record, that customers, when viewing the proposed mark, would immediately understand that it refers to a characteristic of the goods, *i.e.*, that Applicant's electromagnetic activators are ionizers that perform reverse ionization in connection with water purification. *See In re Gyulay*, 3 USPQ2d at 1010. The evidence establishes that "reverse ionization" is a known technique used in water purification and "ionizer" is defined in relevant part as a "thing that ionizes." As mentioned, Applicant's website indicates that Applicant's electromagnetic activators treat ionic impurities in water. No imagination or thought is needed to conclude that the proposed mark identifies a characteristic of the goods, i.e., that the goods (electromagnetic activators) use reverse ionization in connection with water purification.

Applicant contends that "the 'mental link' between the mark REVERSE IONIZER and Applicant's goods as recited in the application is neither immediate nor instantaneous"; and "even if that imagination is utilized, we are still left wondering what type of goods REVERSE IONIZER provides and what its functions are."[8] However, the determination of whether a mark is merely descriptive is made in relation to an applicant's goods, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). That is, "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is

[8] Applicant's Brief at 11, 8 TTABVUE 12.

whether someone who knows what the goods or services are will understand the mark to convey information about them." *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). In the context of Applicant's goods, and in view of the evidence of record, it is apparent to us that no imagination or thought is needed to arrive at the meaning of the proposed mark.

Applicant also contends that (i) competitors do not need to use the same terms, as other terms exist including "RETREAT EXCHANGER, CANCEL STIMULATOR, NULLIFY ATOMIC REACTOR, (e.g., ABOLISH BREEDER, ANTITHESIS TARGETER, etc.)";[9] (ii) "Ionizer[s] can be used with several different types of products not associated with water treatment, such as air ionizers and ionizers for hair";[10] and (ii) competitors do not use the same or similar terms, citing *No Nonsense Fashions, Inc. v. Consolidated Food Corp.*, 226 USPQ 502 (TTAB 1985).

First, the terms that Applicant proposes for its goods do not appear apt for water treatment devices, especially NULLIFY ATOMIC REACTOR. An atomic reactor has an entirely different function and purpose than an electromagnetic water activator. "Reverse ionizer" for a device that utilizes reverse ionization is a descriptive term a competitor would prefer to use rather than, e.g., NULLIFY ATOMIC REACTOR. Second, the fact that an "ionizer can be used with several different types of products not associated with water treatment," is irrelevant. The proper inquiry under Section 2(e)(1) is whether the proposed mark is merely descriptive of the particular

[9] Applicant's Brief at 13, 8 TTABVUE 14. Applicant cites to Exhibits A – B to its request for reconsideration. The request for reconsideration does not show relevant exhibits marked as Exhibits A – B.

[10] *Id*.

goods or services set forth in the application. Third, despite the lack of evidence of third-party use in the record of "reverse ionizer," the term still may be merely descriptive. The fact that an applicant may be the first or only user of a merely descriptive designation does not necessarily render a word or term distinctive. *See In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1826 (TTAB 2012); *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001).

Finally, Applicant submitted into the record fewer than ten third-party registrations to support its argument that "the terms 'REVERSE' and 'IONIZER' in relation to goods or goods like those of the Applicant has consistently been treated as suggestive of the respective goods … ."[11] In determining the issue of descriptiveness, however, prior registrations are of little value because each case must be determined on its own facts. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court."). We are constrained to decide this appeal on the record before us.

In view of the foregoing, we find that Applicant's proposed mark is merely descriptive of a characteristic of the goods set forth in its application, "water treatment equipment, namely, an electromagnetic water activator for influencing

[11] Request for reconsideration at unnumbered p. 9. None of the eight registrations submitted by Applicant is for marks containing both "Reverse" and "Ionizer." Moreover, five of the registrations are also not relevant as they are for marks registered as single word marks.

the energetic quality of water by amending the information contained in the clusters of water molecules."

Decision: The refusal to register Applicant's proposed mark REVERSE IONIZER is affirmed.