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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Liebel-Flarsheim Company

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Serial No. 75/094,858

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Donald F. Frei of Wood, Herron & Evans, L.L.P. for Liebel-Flarsheim Company.

Jennifer Stiver Chicoski, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

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Before Hohein, Chapman and Bottorff, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Liebel-Flarsheim Company to register the mark ECHO CM for "powered injectors for injecting contrast media into the body of a human or animal to facilitate imaging body organs and systems by radiography, ultrasound, magnetic resonance, computer tomography, and the like; medical tubing for administration and draining of fluids; catheters; containers, namely,

syringes; medical apparatus, namely contrast media power injection operator consoles, console and injector power head mounts, and accessories, namely extension and interconnect cables, remote switches, ECG interfaces and pre-amplifiers; syringe pressure jackets and heaters, and bottle holders; all for use in connection with such contrast media power injectors."<sup>1</sup>

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the term ECHO CM when applied to the goods of the applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. Applicant requested an oral hearing, but subsequently withdrew said request.

The Examining Attorney contends that "echo" is defined in Dorland's Illustrated Medical Dictionary (1994) as "repetition of a sound as a result of reverberation of sound waves; also the reflection of ultra-sonic, radio, and radar waves,"<sup>2</sup> and that "CM" is the recognized acronym for "contrast media." The Examining Attorney also submitted

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<sup>1</sup> Application Serial No. 75/094,858, filed April 26, 1996, alleging a bona fide intention to use the mark in commerce.

<sup>2</sup> The Examining Attorney also submitted, from the same dictionary, the definition of the term "echography," which is defined as "ultrasonography; the use of ultrasound as a diagnostic aid."

the Current Med Talk, A Dictionary of Medical Terms, Slang & Jargon (1995) definition of "contrast medium" as follows:

"Radiology A substance with a density differing from that of the organ or structure being imaged, which allows delineation of abnormalities of contour; contrast media that are more radiopaque (usually containing barium or iodine) than the organ or structure being analyzed may be designated as positive contrast media, while those that are less radiopaque, eg air, are known as negative contrast media."

The Examining Attorney concludes that the term ECHO CM immediately conveys specific descriptive meanings within the context of the field of diagnostic imaging; that applicant's goods (as identified) are used to inject "contrast media into the body" "to facilitate imaging body organs and systems by radiography, ultrasound, magnetic resonance, computed tomography and the like"; and that applicant's applied-for mark is merely descriptive of a feature or characteristic of the involved goods.

In further support of her position, the Examining Attorney submitted (i) copies of several excerpts from a Nexis search showing the letters "CM" are the recognized initials for "contrast media"; (ii) copies of a few excerpts from a Nexis search demonstrating use of the term "echo contrast media" as used in diagnostic imaging; and (iii) copies of a few website pages showing that "echo

contrast media" and "echo contrast agents" are terms in common use to describe medical imaging.

Examples from the Examiner's Nexis evidence showing use of "CM" are shown below:

Contrast media (CM) affect normal cardiac electrophysiology when injected into the coronary arteries. High-osmolality CM cause more pronounced electrophysiological effects than do low-osmolality CM. ... "National Library of Medicine MEDLINE Database," 1995; and

...To obtain higher sensitivity in diagnoses of focal lesions in the liver, contrast media (CM) are used. Non-specific extracellular CM are not optimal as they rapidly diffuse into both normal tissue and tumorous tissue. ... "National Library of Medicine MEDLINE Database," 1995.

Examples from the Examiner's Nexis evidence showing use of "echo contrast media" are shown below (emphasis added):

Phantom studies using *echo contrast media* to improve the Doppler color monographic imaging of the superficial femoral artery in the adductor canal... "National Library of Medicine MEDLINE Database," May 1991; and

Our results demonstrate that digital subtraction echocardiography is a simple an (sic) safe procedure to define endocardial contours if *echo contrast media* lead to uniform and homogeneous opacification of the left and right cardiac cavities. "National Library of Medicine MEDLINE Database," June 1986.

Applicant urges reversal on the basis that it currently markets contrast delivery systems under other marks, but, as shown by its promotional brochures, applicant does not use the word "echo" or the letters "CM" in its brochures; that applicant's competitors do not use this terminology to sell goods of a similar type; that there are other terms to refer to applicant's goods, such as "power injectors," "CT injectors," or "angiographic injectors"; and that, when viewed as a whole, the applied-for mark, at most, is suggestive of the function, feature, purpose or use of Applicant's power injectors, namely to inject contrast media into the body." (Reply brief, p. 2).

In its April 14, 1997 response to the first Office action, applicant stated the following:

Applicant acknowledges that "CM" is used by some people as an acronym for "Contrast Media". Applicant further acknowledges that its apparatus for which registration is sought are injectors for contrast media. Applicant also notes that certain of the articles cited by the Examiner use the term "Echo Contrast Media". However, applicant submits that such terminology is very, very rarely used in the contrast media power injector field and/or the medical imaging field. Applicant also acknowledges that the term "Echo" is used in the imaging field to describe an ultrasonic imaging phenomenon or technique.

Finally, in its reply brief, applicant stated the following (emphasis added):

If ECHO CM is equivalent to "echo contrast media," as the Examiner contends, this still does not support the conclusion that Applicant's media injectors, because they can be used to inject contrast media into the body, are described by the term ECHO CM. Stated differently, *merely because Applicant's goods can be used to inject echo contrast media*, the term ECHO CM does not describe an ingredient of Applicant's injectors, nor does it describe a quality of Applicant's injectors, nor does it describe a characteristic of Applicant's injectors.

A term is merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it immediately conveys information concerning an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term or phrase describe all of the properties or functions of the goods or services in order for it to be considered merely descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute of the goods or services.

The question of whether a particular term or phrase is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term or

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phrase is being used on or in connection with those goods or services, and the possible significance that the term or phrase is likely to have to the average purchaser of the goods or services because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). See also, 2 J. McCarthy, McCarthy on Trademarks and Unfair Competition, §§11:66-11:71 (4th ed. 1999)

As stated by our primary reviewing court in *In re Gould Paper Corporation*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (holding SCREENWIPE generic for wipes that clean computer and television screens), the Patent and Trademark Office may satisfy its evidentiary burden by means of dictionary definitions showing that the "separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound". See also, *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988); *aff'd in op. not for pub.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989). Here the Examining Attorney has met the burden of establishing a prima facie case of mere descriptiveness.

In the present case, based on the evidence described above, we find that the term ECHO CM, when applied to applicant's power injectors for injecting contrast media into the body, is merely descriptive of the type of injectors, i.e., echo contrast media injectors, in that it immediately informs prospective purchasers, without conjecture or speculation, of a significant purpose, function or use of applicant's goods. That is, we find that the term ECHO CM, when used in connection with the involved goods, immediately conveys to the medical or administrative/medical personnel who would be the prospective users and/or purchasers of these goods, the idea of contrast media used to create echo imaging. See *In re Cryomedical Sciences Inc.*, 32 USPQ2d 1377 (TTAB 1994) (SMARTPROBE merely descriptive of disposable cryosurgical probes); and *In re Medical Disposables Co.*, 25 USPQ2d 1801 (TTAB 1992) (requirement for a disclaimer of the merely descriptive terms "medical disposables" for various disposable wash cloths, garments, bed sheet liners, and the like affirmed).

Moreover, the term ECHO CM does not involve any incongruous or unusual word combinations, and no imagination is needed to understand the meaning of ECHO CM



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in reference to applicant's injectors of contrast media used to facilitate medical imaging.

Further, even if applicant is the first (and/or only) entity to use the term ECHO CM in relation to power injectors for injecting contrast media, such is not dispositive where, as here, the term unquestionably projects a merely descriptive connotation. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994), and cases cited therein.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

G. D. Hohein

B. A. Chapman

C. M. Bottorff  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board