Paper No. 10
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U.S. DEPARTMENT OF COMMERCE

PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Simoniz USA, Inc.

Serial No. 75/348,130

John C. Linderman and Daniel M. Barbieri of McCormick Paulding & Huber LLP for Simoniz USA, Inc.

Chad T. O'Hara, Trademark Examining Attorney, Law Office 113 (Meryl L. Hershkowitz, Managing Attorney).

Before Walters, Bucher and Rogers, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Simoniz USA, Inc., a Connecticut corporation, has filed an application for registration of the mark "WASH CLOCK" for a "computerized soap dispenser for identifying individuals and recording the times when the individuals wash themselves," in International Class 9.[1]

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[1] Serial No. 75/348,130, filed on August 27, 1997, based upon an allegation of a *bona fide* intention to use the mark in commerce. Applicant submitted a disclaimer of the word "Clock."

The Trademark Examining Attorney issued a final refusal to register based upon Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that if applicant's proposed mark "WASH CLOCK" were used on this soap dispenser, it would be merely descriptive of applicant's device.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We reverse the refusal to register.

The Trademark Examining Attorney and applicant agree that the word "Clock" identifies a feature of the goods. They disagree, however, whether the word "Wash" identifies a purpose or function of the goods, and whether, when the two words are combined, the term "Wash Clock" creates something new or different.

Arguing from dictionary definitions and other federal trademark registrations,[2] the Trademark Examining Attorney takes the position that the word "Wash" identifies a purpose of the goods, and says that:

> "Whether the applicant's dispenser actually performs the washing is irrelevant because it dispenses the soap used for washing and also records the time when the washing occurs. The purpose or function of the applicant's goods revolves around the act of individuals washing

[2] We do not find the third-party registrations placed into the record by the Trademark Examining Attorney to be persuasive in reaching our decision about the role of the word "wash" within this composite mark. In many of those registrations, the word "Wash" appeared in composite marks as the final word in the form of a noun, used on car washing equipment, cleaning preparations or machinery, or in connection with car washing services.

> themselves. Therefore, the term WASH is descriptive of the purpose or function of the applicant's goods." (Trademark Examining Attorney's appeal brief, p. 5).

By contrast, applicant strongly contends that the word "Wash" does not describe a feature or function of applicant's goods. Presumably this device would monitor whether employees such as food service or health care workers wash their hands, as appropriate. While these devices will likely employ features of advanced washroom technology not found on conventional soap dispensers, applicant argues that the only three functions of this intended device are to identify the individual, to record the interaction, and to dispense soap.

Applicant points out that within the identification of goods, the word "wash" is contained within an adverbial clause, defining exactly when the device functions. The word does not appear in the mark, or in the identification of goods, as an adverb or a verb (e.g., to wash one's hands), nor does it show up as a noun (e.g., the act or process of washing, a cleaning product or preparation, or an establishment like a "car wash"). Furthermore, as applicant points out, washing is not a function of this device. Hence, applicant argues that within the context of this mark, when the word "Wash" is used as an adjective describing the word "Clock," it creates a sense of incongruity between the two words "Wash" and "Clock."

The Trademark Examining Attorney rejects this contention:

> "…[T]he terms comprising the applicant's mark are ordinary English words which are in common usage as evidenced by the dictionary definitions. The combination of the two descriptive terms, WASH CLOCK, when considered in relation to the goods, leaves nothing for speculation or conjecture. The mark does not create a new or different commercial impression…
> … There simply is nothing in the mark WASH CLOCK which, when used in connection with applicant's goods, requires the exercise of imagination or mental processing in order for the merely descriptive significance to be immediately perceived by prospective customers. Clearly, the applicant's mark readily conveys that the main feature or function of the applicant's computerized soap dispenser is to dispense soap for washing and to record the time, via an internal clock, when individuals wash themselves." (Trademark Examining Attorney's brief, p. 7).

We note that merchants and manufacturers may combine common, ordinary words in a novel or unique way, thereby obtaining for the combined term a degree of protection denied to words when used separately. Accordingly, we are faced with the question of whether, in adopting this specific formulation, applicant has created an incongruous meaning for the combined words as applied to the identified device. We agree with applicant, that the term "WASH CLOCK, as a whole, suggests something to do with time and a washing operation." (Applicant's reply brief, p. 5). But the essence of this suggestion may well not be clear, immediately perceptible or even be the same for each prospective consumer of applicant's devices.

Arguably, this composite reflects the sometimes-subtle intricacies of usage of the English language in a commercial setting. When the combined term "WASH CLOCK" is applied to these soap-dispensing devices, we harbor real doubts about whether this term is merely descriptive. In case of such doubt, we must resolve that doubt by placing the mark on the suggestive side of the ledger. *See In re Shutts*, 217 USPQ 363 (TTAB 1983) ["SNO-RAKE," although combining each term's dictionary definition results in a description of the product, the terms did not readily and immediately evoke an impression and understanding of applicant's implement as a snow removal device]; and, *Philip Morris Incorporated v. R.J. Reynolds Tobacco Company*, 207 USPQ 451 (TTAB 1980) ["SOFT SMOKE" (with the word "SMOKE" disclaimed) suggests some characteristics of applicant's smoking tobacco but it is not merely descriptive].

Decision: We reverse the refusal of the Trademark Examining Attorney to register this matter under Section 2(e)(1) of the Act.

C. E. Walters

D. E. Bucher

G. F. Rogers

Administrative Trademark Judges, Trademark Trial and Appeal Board