Hearing: January 20, 1999

Paper No. 12
HRW

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 26, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Super Coffeemix Manufacturing Ltd.

Serial No. 75/045,893

Gary D. Krugman of Sughrue, Mion, Zinn, Macpeak & Seas, PLLC for Super Coffeemix Manufacturing Ltd.

Carolyn C. Gray, Trademark Examining Attorney, Law Office 101 (Chris Wells, Acting Managing Attorney)

Before Hairston, Walters and Wendel, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Super Coffeemix Manufacturing Ltd. has filed an application to register the mark COFFEEMIX for "coffee preparations, namely, instant coffee sachets; coffee based beverages; and coffee."[1]

---

[1] Serial No. 75/045,893, filed January 19, 1996, based on a bona fide intention to use the mark in commerce with the United States under Section 1(b) and asserting a claim of priority under Section 44 (d) based on Application Serial No. TMA No. 7050/95, filed August 1, 1995 in Singapore. On January 27, 1997 an amendment to allege use in commerce was filed, setting forth a

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs and both participated in an oral hearing.

The Examining Attorney argues that the term COFFEEMIX immediately and without conjecture describes the nature of applicant's goods. She points to the specific statement on the specimens of record (the packaging for the coffee sachets) that the product is a "3 in 1 instant coffee mix" and also notes the description of the goods as consisting of "sugar, creamer, instant coffee [which] mixes instantly with hot water." Relying upon the ordinary dictionary definitions of "coffee" and "mix" introduced in her brief, the Examining Attorney argues that there is nothing incongruent or which requires the exercise of any mental processing to perceive the descriptive significance of COFFEEMIX when used with applicant's coffee preparations.

Applicant argues that the Examining Attorney has failed to make of record any of the types of evidence commonly used to demonstrate descriptiveness, but instead has relied solely upon applicant's packaging; that applicant's mark COFFEEMIX is only suggestive of the

---

first use date of July 23, 1987 and a first use in commerce with the United States of January 30, 1993.

instruction “mix coffee with water,” giving indirect information about the product, and that it is only after reading the full packaging that it is learned “what is to be mixed with what”; and that here, similar to the situation in In re Reynolds Metals Co., 480 F.2d 902, 178 USPQ 296 (CCPA 1973)[BROWN-IN-BAG], the mark will not prevent competitors from fair use of the terms “coffee” and “mix.”

A word or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, purpose, function or feature of the goods or services with which it is being used. Whether or not a particular term or phrase is merely descriptive is not determined in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the mark is being used, and the significance the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters the goods or services bearing the mark. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Nibco Inc., 195 USPQ 180 (TTAB 1977) and the cases cited therein.

Contrary to applicant’s arguments, we cannot agree that the term COFFEEMIX requires a multi-stage reasoning

process to associate the term with a primary characteristic or feature of applicant's goods. In the specimens themselves, the product is described as a "3 in 1 instant coffee mix," or in other words, a mixture of three ingredients to form a product from which coffee can be made. In the dictionary definitions for "mix" introduced by the Examining Attorney,[2] we find the description of "mix" as "a mixture, esp., of ingredients packaged and sold commercially <muffin mix>."[3] Applicant's goods consist of a mixture of three ingredients packaged and sold from which purchasers prepare coffee. We see no need for any exercise of a multi-step thought process for purchasers to make an association between the term COFFEEMIX and the nature or purpose of the mixture being sold by applicant. Whether or not the term is also descriptive, rather than only suggestive, of the fact that the product must be mixed with water is immaterial. We are inclined to believe, however, that most purchasers, upon encountering a dry mixture for making coffee bearing the mark COFFEEMIX would readily make this association as well.

---

[2] Although not earlier made of record by the Examining Attorney, the Board may take judicial notice of dictionary definitions. See Marcal Paper Mills, Inc. v. American Can Co., 212 USPQ 852 (TTAB 1981).

[3] *Webster's II New Riverside University Dictionary* (1984).

We fail to see the parallel which applicant attempts to draw between the present circumstances and those in In re Reynolds, *supra*. There the Court held that the phrase BROWN-IN-BAG was only suggestive of the fact that one of the several purposes of the applicant's plastic bags was to brown meat. Moreover, by applicant's use of the unitary mark BROWN-IN-BAG competitors would not be deprived of using the individual words to describe similar products. Here COFFEEMIX immediately and specifically conveys the information that applicant's product is a coffee mix or a mixture of ingredients to make coffee. We doubt whether applicant would consider use by competitors of "coffee mix" in a descriptive manner for similar products a fair use if applicant's mark were registered.

Accordingly, we find the mark COFFEEMIX merely descriptive of applicant's coffee preparations.

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

P. T. Hairston

C. E. Walters

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board