

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION 2276373

BY THE PROCTER AND GAMBLE COMPANY

FOR REGISTRATION OF A TRADE MARK IN CLASS 3

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DECISION AND GROUNDS OF DECISION

Background Summary

1. On 27 July 2001, the Procter and Gamble Company of One Procter and Gamble Plaza, Cincinnati, Ohio 45021, United States of America, applied to register the following trade mark:

CREASE CONTROL

in respect of the following specification of goods:

Class 3

Washing and bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; preparations for the care, treatment and beautification of fabrics; soaps.

2. Objection was taken to the mark under Sections 3(1)(b) and (c) of the Act because the mark consists exclusively of the words "crease control" being a sign which may serve in the trade to designate e.g. preparations which limit the occurrence of lines or marks.

3. At a hearing at which the applicants were represented by Ms J Harlow of D Young & Co, their trade mark attorneys, I maintained the objections under Sections 3(1)(b) and (c) and the application was subsequently refused on 1 November 2002 in accordance with Section 37(4).

4. Following the refusal of the application I am now asked under Section 76 of the Act and Rule 62(2) of the Trade Mark Rules 2000 to state in writing the grounds of my decision and the materials used in arriving at it.

5. No evidence that the mark has acquired a distinctive character as a result of use has been put before me and therefore I have only to consider whether the mark is inherently distinctive.

The law

6. The relevant part of Section 3 of the Act is as follows:

"3.-(1) The following shall not be registered -

- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,"

The case for registration

7. In support of the application submissions were made by the applicants representative in correspondence and at the hearing that the objection was not well founded. The representative argued that the mark does not

directly describe the goods or their essential characteristics and the term "crease control" is not common parlance in respect of any of the class 3 goods specified in the application.

Reasons for refusal

8. The mark consists of the two words "crease" and "control". Both these words are ordinary dictionary words. Collins English Dictionary (Third edition updated 1994) provides several meanings of these words the most relevant being:-

CREASE - a line or mark produced by folding, pressing or wrinkling

CONTROL - to check, limit, curb or regulate

9. In my view, the words in combination when used on the goods covered by the specification filed with this application do no more than indicate the intended purpose and an essential characteristic of the goods. They inform the prospective purchaser that the goods in question will limit (control) the marks produced by wrinkling (creases) when used as a washing preparation.

10. In this decision I have taken into account the guidance provided by the European Court of Justice in the "BABY-DRY" Case C-383/99P on the scope and purpose of Article 7(1)(c) of the Community Trade Mark Regulations (equivalent of Section 3(1)(of the Trade Marks Act).

11. Paragraphs 37, 39 and 40 of the judgement are reproduced below:-

"37. It is clear from those two provisions taken together that the purpose of the prohibition of registration of purely descriptive signs or indications as trade marks is, as both Procter and Gamble and the OHIM acknowledge, to prevent registration as trade marks signs or indications which, because they are no different from the usual way of designating the relevant goods or services or their characteristics, could not fulfil the function of identifying the undertaking that markets them and are thus devoid of the distinctive character needed for that function."

"39. The signs and indications referred to in Article 7(1)(c) of Regulation 40/94 are thus only those which may serve in normal usage from a consumer's point of view to designate, either directly or by reference to one of their essential characteristics, goods or services such as those in respect of which registration is sought. Furthermore, a mark composed of signs or indications satisfying that definition should not be refused registration unless it comprises no other signs or indications and, in addition, the purely descriptive signs or indications of which it is composed are not presented or configured in a manner that distinguishes the resultant whole from the usual way of designating the goods or services concerned or their essential characteristics."

"40. As regards trade marks composed of words, such as the mark at issue here, descriptiveness must be determined not only in relation to each word taken separately but also in relation to the whole which they form. Any perceptible difference between the combination of words submitted for registration and the terms used in the common parlance of the relevant class of consumers to designate the goods or services of their essential characteristics is apt to confer distinctive character on the word combination enabling it to be registered as a trade mark."

12. These paragraphs indicate that only marks which are no different from the usual way of designating the relevant goods or services or their characteristics are now debarred from registration by Section 3(1)(c).

13. I find that the relevant public would see the term CREASE CONTROL, on first impression, as a normal means of designating the intended purpose of the goods covered by the application. It is not necessary for the mark to consist of terms already in common usage before the mark is excluded under Section 3(1)(c) of the

Act. The words "may serve" indicate that a degree of foreseeability is a part of the necessary enquiry. This may be contrasted with objections based upon Section 3(1)(d). Consequently, I do not think it fatal to the objection under Section 3(1)(c) that the Registrar has produced no evidence that CREASE CONTROL is already in common parlance in relation to the goods at issue.

14. Therefore, I consider the mark applied for consists exclusively of a sign which may serve in trade to designate the kind and intended purpose of the goods and therefore, excluded from registration by Section 3(1)(c) of the Act. For the same reasons I consider the mark to be devoid of any distinctive character and therefore not acceptable for registration under Section 3(1)(b) of the Act.

15. In this decision I have considered all the documents filed by the applicant and all the arguments submitted to me in relation to this application and, for the reasons given, it is refused under the terms of Section 37(4) of the Act because it fails to qualify under Sections 3(1)(b) and (c) of the Act.

Dated this 10th day of December 2002.

Ian Peggie
For the Registrar
The Comptroller General