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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Blenheim Group USA, Inc.

Serial No. 74/565,448

Robert L. Raskopf, Alan Blum and Christopher J. Glancy of White & Chase for Blenheim Group USA, Inc.

Charles L. Jenkins, Jr., Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Simms, Seeherman and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Blenheim Group USA, Inc. to register PC EXPO for "arranging and conducting of trade shows, exhibitions and conferences in the field of computer hardware and software."[1] The original application

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[1] Application Serial No. 74/565,448 filed August 25, 1994; alleging dates of first use of January 6, 1983. Applicant claimed ownership of two registrations--Registration No. 1,283,597 for PCEXPO and design for conducting trade expositions and conferences relative to computer hardware, software and related services and Registration No. 1,392,580 for PC EXPO and

was filed pursuant to the provisions of Section 2(f) of the Trademark Act, 15 U.S.C. 1052(f), asserting that PC EXPO has become distinctive of applicant's services as a result of substantially exclusive and continuous use thereof for at least ten years preceding the filing of the application. The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Act, 15 U.S.C. 1052(e)(1), on the ground that PC EXPO is generic and, thus, incapable of distinguishing applicant's services from like services of others.

When the refusal was made final, applicant appealed. Both applicant and the Examining Attorney submitted briefs, and an oral hearing was held.

As a preliminary matter, we note that the application, as originally filed, included a disclaimer of the term "EXPO." Applicant, however, subsequently withdrew the disclaimer. While the Examining Attorney did not acknowledge the withdrawal of the disclaimer, he made no mention of the disclaimer in any subseqent Office action or in his brief on the case. If the Examining Attorney did not accept the withdrawal of the disclaimer, it was incumbent upon him to so advise the applicant. Having

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design for conducting trade expositions and conferences in the field of computer hardware and software. In the latter

failed to do so, we consider the disclaimer to have been withdrawn. Thus, we disagree with the dissent that applicant has disclaimed rights to the term "EXPO."

The issues on appeal are whether PC EXPO is generic for applicant's services and, alternatively, if such designation is not considered generic, whether it has acquired distinctiveness as a service mark. There is no dispute that PC EXPO would otherwise be merely descriptive of applicant's services as the application was filed under Section 2(f) of the Act.

The Examining Attorney maintains that "PC" is a widely recognized initialism for "personal computer," which is a generic term for the goods featured at applicant's trade shows; and that "EXPO" is an abbreviation for exposition, which is a generic name for exhibitions or shows such as applicant's. Thus, the Examining Attorney argues that the resulting combination, PC EXPO, "is merely the generic name for [applicant's] personal computer exposition services, rather than an indicator of source for these services." (Brief, p. 3).

In support of the refusal to register, the Examining Attorney has submitted excerpts from the Acronyms, Initialisms & Abbreviations Dictionary (1995) which

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registration, applicant disclaimed "PC EXPO."

indicate that "PC" is an initialism for "personal computer" and "EXPO" is an abbreviation of "exposition." Further, the Examining Attorney made of record an excerpt from the Random House Unabridged Dictionary (2d.) wherein "exposition" is defined as "a large-scale public exhibition or show, as of art or manufactured products; *an exposition of 19th century paintings; an automobile exposition*." Also, the Examining Attorney submitted eight excerpts from the NEXIS data base of stories in which the terms "Personal Computer Exposition" (three excerpts) and "PC Exposition" (five excerpts) appear.[2] The following excerpts are illustrative (emphasis added):

> Even though the software business is in a downturn, it is still an attractive field. Some of the reasons emerged at the recent Comdex ***personal computer exposition*** in Atlanta. Machine Design, June 6, 1985; and
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> I recently had the opportunity to attend a regional IBM ***PC exposition*** that was designed to cater exclusively to the Fortune 1000 corporate consumer. PC Week, August 21, 1984.

[2] One of the excerpts is from a foreign publication and another is from a wire service. Inasmuch as it is uncertain whether these stories were ever published in the United States and, therefore, were exposed to the purchasing public in this country, they are of limited value in deciding the issue in this appeal. See, e.g.: In re Bel Pease Sales Co., 1 USPQ2d 1233, 1235 (TTAB 1986).

Applicant, in urging reversal of the refusal to register, argues that the Examining Attorney has mischaracterized the nature of applicant's services; i.e., applicant does not exhibit personal computers, but rather arranges and conducts trade shows that cover all manner of computer-related hardware, software and information technology. Further, applicant argues that the Examining Attorney has failed to meet the burden of clear and convincing evidence of genericness; that the mere combination of PC and EXPO does not convey the exact nature of applicant's services; and that the evidence of secondary meaning submitted by applicant is more than adequate to show that PC EXPO has become distinctive of applicant's services.

Applicant's evidence includes the declaration of its vice-president, Frank Terranella, wherein he sets forth some of the particulars surrounding applicant's use of PC EXPO. According to Mr. Terranella, for the period 1990-1995 applicant spent nearly $5 million in advertising its PC EXPO trade shows and during the same period applicant's revenues totaled nearly $45 million. Accompanying Mr. Terranella's declaration are copies of over fifty press articles written about applicant's trade shows; six declarations (one from a publisher who covers applicant's

trade shows and five from participants) wherein the declarants state that the PC EXPO name is well-known in the computer exposition business and among computer companies as a trademark of applicant, that no other computer show in the United States uses PC EXPO, and that when persons in the computer industry speak of PC EXPO, it is understood that they are speaking of applicant's trade shows. Also accompanying the Terranella declaration are copies of correspondence between applicant and Pace Membership Warehouse, Inc., which used "PC Expo" to identify a computer sale involving LEADING EDGE computers. In response to applicant's cease and desist letter, Pace stated that it would make no further use of "PC Expo."

A review of the numerous press articles submitted by applicant reveals that all of the articles refer to applicant as the source of PC EXPO trade shows. The following are representative of these uses (emphasis added):

> Lotus Development Corp. and WordPerfect Corp. will unveil significant upgrades to their software suites at the ***PC Expo*** trade show in New York on June 28 that they hope will challenge Microsoft's near monopoly on the market. Information Week; June 27, 1994;

> The massive Fall-Comdex trade show in Las Vegas is essentially a marketing festival and is not worth the hassles involved in

> attending; it attracts massive crowds and displays few surprises. Spring Comdex; ***PC Expo*** and the Software Publishers Association conference are better places for networking with fellow professionals. PC Magazine; February 8, 1994;
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> Such large shows as the Interface Group's COMDEX, Bruno Blenheim's ***PC EXPO*** and Advanstar Communication Group's VOICE offload a majority of their calls and registration procedures to an unattended phone and fax machine. Convention South; April 1994.

Further, applicant submitted six additional declarations (one from a magazine publisher, one from an officer of a major computer manufacturer, and four from trade group representatives) wherein the declarants state that the primary significance of the name PC EXPO is the computer industry trade show organized and sponsored by applicant; that it is not a generic term for a personal computer exposition; that whenever people in the computer industry refer to PC EXPO they are referring to applicant's trade show; and that PC EXPO is not used in the industry other than to refer to applicant's trade show. Applicant also submitted a survey taken at applicant's 1996 New York trade show, and the results of applicant's search of the NEXIS data base of PC EXPO per se.

The critical issue in genericness cases is whether members of the relevant public primarily use or understand

the term sought to be registered to refer to the genus (category or class) of goods or services in question. H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986).

We agree with applicant that the Examining Attorney has not produced sufficient evidence that the relevant public would regard PC EXPO as a term for a trade show or exhibition in the field of computer hardware and software. Rather, considering all of the evidence of record, it appears to us that the primary significance to the relevant public of the designation PC EXPO is a trade show in the field of computer hardware and software arranged and conducted by applicant and not a generic expression for such a trade show.

First, there is no evidence that the relevant public uses the designation PC EXPO to refer to a trade show other than applicant's. The NEXIS excerpts submitted by the Examining Attorney are not particularly probative of how PC EXPO is perceived inasmuch as they refer to designations other than PC EXPO. There were no appearances in the NEXIS excerpts of the term PC EXPO per se, and only four appearances of the designation closest thereto, "*PC Exposition*," which, in any event, is a weak showing. It is

also important to note that three of these excerpts appeared in 1984, a number of years ago.

On the other hand, applicant's search of the NEXIS data base for PC EXPO per se returned 958 articles published between November 1, 1995 and November 8, 1996. Of this number, 897 stories referred to applicant's trade show and 22 stories referred to the Best of PC Expo Award, an honorarium related to applicant's trade show. Of the remaining stories, 28 referred to trade shows that use PC Expo in their titles, but are outside of the United States; three refer to another entity that uses PC Expo in its title; and eight stories contained no reference to PC EXPO at all.

Second, we are not convinced from the dictionary entries that the relevant public would use PC EXPO to refer to a trade show in the field of computer hardware and software. While there is no question that "PC" is an initialism commonly used to refer to a personal computer, this record does not establish that "PC" is a term which would ordinarily be used with EXPO to refer to a trade show such as applicant's. Stated differently, while "computer exposition" or even "computer expo" may be understood to refer to a trade show in the field of computer hardware and software, it does not automatically follow that PC may be

substituted for computer in these expressions and the relevant public would understand the designation PC EXPO to refer to such a trade show. To us, PC EXPO creates a somewhat different commercial impression from either "computer exposition" or "computer expo."

Finally, it is important to note that trade shows featuring computer hardware and software are not new services such that we should simply look at the dictionary definitions of the separate terms PC and EXPO to determine the issue of genericness herein. Compare, In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) [SCREENWIPE for a premoistened, antistatic cloth for cleaning computer and television screens is not registrable]. Trade shows of this type have been around for a number of years, and if PC EXPO were the generic term members of the trade and consumers used for these services, one would expect to see it used as a generic name in at least some NEXIS excerpts. See In re Ferrero S.p.A, 24 USPQ2d 1155, 1156 (TTAB 1992) ["[F]or an established product such as milk chocolate, the fact that no one else has used the term [EXTRA-MILK MILK CHOCOLATE] is significant."] Similarly, this case is different from the situation referred to in J. Kohnstam, Ltd. v. Louis Marx & Company, Inc., et al., 280 F.2d 437, 126 USPQ 362, 364

(CCPA 1960). In finding that MATCHBOX SERIES for toy vehicles was generic, the court noted that, "where there is only one source for a particular kind of merchandise over a period of time, the public might come to associate that source with the name by which the merchandise is called." In this case, the record indicates that at least two other entities have conducted trade shows similar to applicant's.

We are cognizant of those cases cited in the dissent wherein terms were held to be generic where the applicant was apparently the first and only user of the term. However, as we have often stated, each case must be decided on its own set of facts. In this case, it is the totality of the record, not simply the fact that there are no uses of PC EXPO other than by applicant, that leads us to conclude that PC EXPO is not a generic name for applicant's trade shows.

Having found that PC EXPO is not a generic name for applicant's trade shows, we turn to the evidence submitted to prove distinctiveness. As noted above, applicant submitted its advertising and revenue figures which are certainly impressive, twelve declarations, over fifty press clippings, and the results of its search of the NEXIS data base of PC EXPO per se. As discussed above, the results of applicant's NEXIS search are particularly noteworthy.

Taken together, this evidence demonstrates that the relevant public has come to identify PC EXPO with applicant's trade shows. We conclude that applicant has made a sufficient showing of distinctiveness to justify publication of the mark for opposition.[3]

To the extent that any evidence of record raises a doubt about our conclusion on the issue of genericness, we elect to resolve that doubt in favor of applicant. Any person who has a legitimate interest in the use of PC EXPO may file an opposition. Cf. In re Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987).

Decision: The refusal to register is reversed.

E. J. Seeherman

P. T. Hairston
Administrative Trademark Judges, Trademark Trial and Appeal Board

[3] In reaching this decision, we have accorded little weight to the survey conducted by applicant at its 1996 New York trade show. It is not surprising that persons attending applicant's trade show would identify the name of the show as PC EXPO.

Simms, Administrative Trademark Judge, dissenting:

Because I believe that applicant's asserted mark PC EXPO is a generic term for applicant's services of arranging and conducting trade shows in the field of computer hardware and software, I dissent.

The original application was filed under Section 2(f) of the Act, a concession of the descriptive (or non-inherently distinctive) nature of applicant's asserted mark, and, in the application, applicant has disclaimed exclusive rights to use the term "EXPO" apart from the mark as a whole.[4] Also, in applicant's request for reconsideration, 17, and in its main brief, 19, applicant has conceded the descriptiveness of the asserted mark. And in a prior registration applicant disclaimed the words "PC EXPO."

A term is generic if it names the class of the goods or services to which it is applied. See: H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986), and In re

[4] In a response filed February 21, 1996, applicant attempted to withdraw this disclaimer. The Examining Attorney did not

Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985). The test for determining whether a term is generic is its primary significance to the relevant public, that is, whether the term is used or understood, by purchasers or potential purchasers of the goods or services at issue, primarily to refer to the class of such goods or services. See: Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); In re Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., supra; and In re Leatherman Tool Group, Inc., 32 USPQ2d 1443 (TTAB 1994).

Applicant's vice president and general counsel has, in a declaration, recognized that PC is a "well-used acronym for personal computer…". With respect to the term "EXPO," the Examining Attorney has relied upon materials discussed by the majority indicating that this word is an abbreviated word for "exposition." In addition to the materials which the Examining Attorney has relied upon, I also note that the Random House Compact Unabridged Dictionary defines "expo" as

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acknowledge this withdrawal of the disclaimer. The disclaimer remains entered in the file.

> 1. a world's fair or international exposition: *Expo '67 in Montreal*. 2. any exhibition or show: *an annual computer expo*. [1960-65; by shortening]

Also, The Oxford Dictionary and Thesaurus has the following listing for "expo":

> a large international exhibition. [abbr. of EXPOSITION 4]…see EXHIBITION 1.

The Thesaurus of Slang, under the word "EXPOSITION," lists "expo." And, as noted, applicant has even disclaimed exclusive rights to this word apart from the mark as a whole. Therefore, not only is "PC" widely recognized as an abbreviation for "personal computer," but also the word "expo" is a dictionary word meaning "exposition" or "exhibition." These individual words, used in connection with a trade show featuring computer hardware, including personal computers, and software, have unambiguously descriptive meanings which, when joined, have a meaning identical to the meaning that common usage would ascribe—-that is, a personal computer (or PC) exposition. Together, the combined term PC EXPO identifies the type of services offered by applicant—-a PC exposition. In this regard, the Examining Attorney has made of record evidence that the expression "PC exposition" has been used in the trade press as a generic term. See, for example, references to "Comdex

PC exposition" and "regional IBM PC exposition." I believe, therefore, that, in accordance with case law, the Examining Attorney has met his evidentiary burden by submitting materials including dictionary definitions establishing a prima facie case of genericness. See In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (SCREENWIPES held generic for wipes for computer and television screens). See also In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991) (MULTI-VIS held generic for multiple viscosity motor oil).

While applicant argues that its services are "not focused on personal computers" (brief, 4), it is clear that, at applicant's trade shows, exhibitors include such companies as Compaq, Microsoft, Dell and IBM. These companies show their latest products, including PC hardware and software. It is clear, therefore, that applicant's expositions prominently feature PCs. While it may be true that applicant's expositions feature more than just PCs, such as desktop publishing, mass storage, imaging, printers, Internet software, on-line services, mobile computing, etc., the salient fact in this case is that the display by exhibitors of PCs is a significant or important part of applicant's trade shows.

While applicant's attorney has argued that the dictionary definitions do not show the understanding or the primary significance of its asserted mark to the relevant public (attendees and exhibitors), applicant has admitted that individuals who buy PCs for their home use, as well as professionals, attend applicant's trade shows. Accordingly, I believe that the dictionary definitions are significant in determining the understanding of applicant's asserted mark to the relevant public.

Incredibly, in applicant's briefs, main brief, 10, and reply brief, 8, applicant has even disputed that such terms as "personal computer exposition" and "PC exposition" are generic terms for computer industry trade shows. To take applicant's arguments, presented in its briefs and at the oral hearing, to their logical conclusion, applicant would argue that these and even such other clearly generic expressions as "Computer Exposition" and "Automobile Exposition," though they tell nothing about the source of those services, are not generic. However, I believe that applicant (as well as the majority) misreads the case law with regard to genericness. While of course the PTO has the burden of demonstrating genericness, case law indicates that this burden is satisfied if the Office shows that the expression sought to be registered *inherently* has a generic

meaning in the ordinary language. See *Gould*, supra, and In re DC Comics, Inc., 689 F.2d 1042, 215 USPQ 394, 405 (CCPA 1982) (Nies J., concurring)("Thus, to refuse registration on the ground that an applicant seeks to register the generic name of the goods, the PTO must show that the word or expression inherently has such meaning in ordinary language, or that the public uses it to identify goods of other producers as well." [Footnote and case citation omitted]). Where an applicant combines two obviously generic terms to form a phrase which loses no generic significance in the combination (for example, "Automobile Exposition"), the Office has satisfied its burden of demonstrating genericness by, at a minimum, introducing dictionary definitions of those generic words.

Inexplicably, the majority would apparently find "Computer Expo" to be a generic term for a computer trade show but not "Personal Computer Expo" or the equivalent "PC Expo." This distinction is baffling. The majority seems to think that an applicant may take a generic expression, say "Automotive Trade Show" or "Automotive Expo" or "Motorcycle Expo" and, through long use and extensive promotion, convert this term into a registrable service mark. That, of course, is contrary to hornbook law. Truly generic terms are almost never capable of being registered

trademarks or service marks for the goods or services of which they are generic. I can only hope that the Examining Attorneys and the outside bar, whose task it is to try to understand the case law, including our decisions, and apply it to the facts before them, are able to divine the difference between "Computer Expo" and "PC Expo." I certainly cannot.

It is also noteworthy to observe that there seem to be no commonly used alternatives (say, "Personal Computer Trade Show") which communicate the same information as quickly as applicant's asserted mark. Since all generic terms should be freely available, none should be registered to any one entity. The competitive need to use all such terms should be of paramount importance.

Also, the majority places too much weight on the fact that there is of record no use by third parties. While it is generally important to determine if others have used a term descriptively or generically, it is not necessary, in order to find a term generic, for the record to reflect such third-party use. See, for example, In re Sun Oil Co., 426 F.2d 401, 165 USPQ 718 (CCPA 1970) [CUSTOMBLENDED for gasoline held unregistrable because category of gasoline

was blended personally for the motorist];[5] In re Helena Rubinstein, Inc., 410 F.2d 438, 161 USPQ 606 (CCPA 1969) [PASTEURIZED for face cream held generic]; In re Preformed Line Products Co., 323 F.2d 1007, 139 USPQ 271 (CCPA 1963) [PREFORMED for preformed electrical equipment held generic]; Servo Corp. of America v. Servo-Tek Products Co., 289 F.2d 955, 129 USPQ 352 (CCPA 1961) [SERVO for servomechanisms stated to be generic]; J. Kohnstam, Ltd. v. Louis Mark & Co., 280 F.2d 437, 126 USPQ 362 (CCPA 1960) [MATCHBOX for toy vehicles held generic because that category of toy cars was sold in matchbox-sized boxes];[6] In

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[5] In a concurring opinion, Judge Rich commented, in a manner that I believe also applies to this case, that if a term is incapable of registration, then:

> registration must be refused…no matter what evidence of alleged "secondary meaning" is adduced; in other words, under the facts of this case the law proscribes the *possibility* of a de jure "secondary meaning."…[fn. cont'd.]
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> In my opinion, CUSTOM-BLENDED is so highly descriptive that it cannot, under the law, be accorded trademark rights even though at some times, or to some people, or in some places, it has de facto secondary meaning…
>
> …Because one merchandiser has latched onto one of the descriptive terms does not mean it can force its competitors to limit themselves to the use of the others, which appellant, it seems to me, is trying to do here. *All* of the generic names for a product belong in the public domain.

[6] The Court noted, 126 USPQ at 364:

> We will concede, arguendo, that under such circumstances, *where there is only one source* for a particular kind of merchandise over a

re Central Sprinkler Company, ___USPQ2d___ (TTAB October 22, 1998, Application Serial No. 74/505,190) [ATTIC for automatic sprinklers for fire protection of attics held generic]; In re Pennzoil Products Co., supra [MULTI-VIS for multiple viscosity motor oil held generic]; In re Reckitt & Colman, North America Inc., 18 USPQ2d 1389 (TTAB 1991) [PERMA PRESS for soil and stain removers held generic]; In re National Patent Development Corp., 231 USPQ 823 (TTAB 1986) [ULTRA PURE for biological interferons for medical use held generic]; Fluid Energy Processing & Equipment Co. v. Fluid Energy, Inc., 212 USPQ 28 (TTAB 1981) [FLUID ENERGY for hydraulic/pneumatic equipment held generic]; Ethicon, Inc. v. Deknatel, Inc., 183 USPQ 503 (TTAB 1963) [COTTONY for sutures held generic]; and In re Demos, 172 USPQ 408 (TTAB 1971)(CHAMPAGNE held generic for salad dressing). These cases are illustrative of situations where we have found terms to be generic where the applicant was apparently the first and only user of the term in question in connection with its goods. Therefore, the fact

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> period of time, the public might come to associate that source with the name by which the merchandise is called. But such a circumstance cannot take the *common descriptive* name of an article out of the public domain and give the temporarily exclusive user of it exclusive rights to it, no matter how much money or effort it pours into promoting the sale of the merchandise.

that competitors do not currently use PC EXPO as the name for their services is not determinative. What the *Gould* court said, 5 USPQ2d at 1111-12, is noteworthy:

> We hold, however, that the PTO has satisfied its evidentiary burden if, as it did in this case, it produces evidence including dictionary definitions 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…
>
> The Board concluded that because Gould's wipes are used on television and computer screen, and the combination of "SCREEN" and "WIPE" does not render Gould's mark unique or incongruous, the common descriptive aspect of applicant's mark is not lost in the combined form. We agree.
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> …Nothing is left for speculation or conjecture in the alleged trademark. The compound immediately and unequivocally describes the purpose, function and nature of the goods as Gould itself tell [sic] us. Gould has simply joined the two most pertinent and individually generic terms applicable to its product, and then attempts to appropriate the ordinary compound thus created as its trademark…

Nor is this the first time that the Office has refused registration of terms which have achieved some level of recognition. While I do not doubt that there may be people who have come to associate the asserted mark PC EXPO with applicant's services, the law calls such secondary meaning of generic terms "de facto secondary meaning." That is, this is recognition in fact which is not entitled to legal

protection. See J.T. McCarthy, McCarthy on Trademarks and Unfair Competition, §§12:47, 15:22 and 15:24 (4th ed. 1998).

The Board and the courts have repeatedly said that the length of time and even high level of exposure of the public to a designation does not mean that it automatically functions as a mark and is registrable. For example, in In re E.I. Kane, 221 USPQ 1203, 1204 (TTAB 1984), the Board said:

In that case there was a survey showing 31 percent recognition of the term as the name of a company and nine affidavits attesting to recognition as a mark. In In re Paint Products Co., 8 USPQ2d 1863, 1866 (TTAB 1988), applicant had sold 600,000 cans of paint in ten years under the asserted mark PAINT PRODUCTS CO. and spent around

$500,000 per year on advertisements. The mark had been used since 1957. There were ten affidavits from people in the trade who had dealt with applicant. We said, however, that the unambiguously descriptive meaning of the words PAINT PRODUCTS CO. was more convincing of public perception, and that these words were generic. In In re Half Price Books, Records, Magazines, Inc., 225 USPQ 219 (TTAB 1984), applicant submitted evidence that those in the industry recognized the term to be applicant's mark. We said the evidence of recognition was de facto secondary meaning. These cases and others presented situations, like this one, where the words sought to be registered were so inherently descriptive as to be generic from the outset. I agree with the Examining Attorney that the evidence, including dictionary definitions, is simply more compelling of the public perception of these clearly generic terms than are the declarations (some of which appear to be form declarations) submitted by applicant.

In conclusion, it may be helpful to remember what our primary reviewing court (then called the U. S. Court of Customs and Patent Appeals) stated in Weiss Noodle Co. v. Golden Cracknel and Specialty Co., 290 F.2d 845, 129 USPQ 411, 414 (1961):

> While it is always distressing to contem-

> plate a situation in which money has been invested in a promotion in the mistaken belief that trademark rights of value are being created, merchants act at their peril in attempting, by advertising, to convert common descriptive names, which belong to the public, to their own exclusive use. Even though they succeed in the creation of de facto secondary meaning, due to lack of competition or other happenstance, the law respecting registration will not give it any effect.

For these reasons, I would affirm the refusal of registration.

R. L. Simms
Administrative Trademark
Judge, Trademark Trial
and Appeal Board