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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Maharishi Ayur-Ved Products International, Inc.

Serial No. 75/395,046
Serial No. 75/395,048

James C. Nemmers, Esq. for Maharishi Ayur-Ved Products International, Inc.

Dominick J. Salemi, Trademark Examining Attorney, Law Office 107 (Thomas Lamone, Managing Attorney).

Before Quinn, Chapman and Rogers, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

The two applications involved herein were filed on November 24, 1997 by Maharishi Ayur-Ved Products International, Inc. to register on the Principal Register the marks KAPHA (application Serial No. 75/395,046) and PITTA (application Serial No. 75/395,048), both for "aromatherapy oils for personal use; massage oils; facial masks, scrubs, creams and moisturizers; body lotions; and hair conditioners and shampoos." Applicant claimed a date of first use of January 1992 in each application.

Registration has been finally refused in each application under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark, when used on applicant's goods, is merely descriptive of them.[1]

Applicant has appealed, and applicant and the Examining Attorney have briefed the issue before us. An oral hearing was not requested.

In view of the common questions of law and fact which are involved in these two applications, and in the interests of judicial economy, we have consolidated the applications for purposes of final decision. Thus, we have issued this single opinion.

The Examining Attorney contends that the words KAPHA and PITTA each connote a particular body type (one of the three body types in the Ayurveda, an alternative health or medicine system[2]); and that the terms immediately describe both the results or purpose of the goods (to alleviate

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[1] Both applications were published for opposition on July 7, 1998. However, letters of protest were granted by the Assistant Commissioner for Trademarks, and jurisdiction in both applications was restored to the Examining Attorney, who then refused registration in each case.

[2] The third Ayurveda body type is VATA (air/wind). Applicant applied to register that term (application Serial No. 75/395,370), and the Board affirmed the Examining Attorney's refusal to register under Section 2(e)(1), in a decision dated July 25, 2000. Application Serial No. 75/395,370 was held abandoned by this Office in September 2000.

various skin and hair conditions which are typical of the involved Ayurveda body type) and the intended users of applicant's goods (persons of the specific Ayurveda type). That is, these two terms will be understood by the purchasing public to refer to products that will control or alleviate problems relative to the body type defined as "kapha" or "pitta," respectively.

In support of the refusal to register in each application, the Examining Attorney relied on the evidence of record submitted with the letter of protest which included, inter alia, the following: (i) definitions of "kapha" (phlegm) and "pitta" (bile) from the Sanskrit - English Dictionary; and (ii) excerpts from numerous printed publications and from the Internet. Examples of the latter include: Ayurveda: What Is My Body Type?, by Dr. Mary Jo Cravatta, wherein she stated that "The translation of 'kapha' is biological water and its bodily principles are from the two elements, earth and water," and "'Pitta' is translated as fire, although the term does not literally mean 'fire'...the bodily heat-energy, the pitta-doshas, which manifests as metabolism..."; and Living Wholeness: Concepts of Ayurveda: Vata, Pitta, and Kapha: The Three Doshas [of the body] of Ayurveda, wherein it is stated that

"Vata governs movement... Pitta governs heat... Kapha governs structure and lubrication...."

The Examining Attorney also relies on applicant's specimens of record which include the following wording, respectively: "HERBAL CONDITITONER FOR KAPHA" and "This formula is especially for normal to oily hair (Kapha type)"; and "HERBAL SHAMPOO FOR PITTA" and "This formula is especially for fine, thinning, reddish or prematurely graying hair (Pitta type)."

Applicant acknowledges that the respective terms KAPHA and PITTA "may certainly suggest that the particular goods with which the mark is used would be most beneficial if used by someone with that particular mind-body type or 'dosha'" (brief – Serial No. 75/395,046, p. 3); and that the marks "suggest a purpose or use for a body care product through a suggestive reference to a characteristic of the user" (brief – Serial No. 75/395,048, p. 4). However, applicant contends that while the words suggest the characteristics to be treated, they do not impart a direct connection between the mark and the goods; that because the terms KAPHA and PITTA suggest a broad range of products and services, consumers must exercise imagination, thought and perception in order to conclude what the nature of the goods or services may be; that registration of the

applicant's applied-for marks will not preclude legitimate descriptive uses of the words "kapha" and "pitta"; and that applicant's parent company owns registrations for the marks KAPHA and PITTA for "tea."[3]

The test for determining whether a mark is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Venture Associates, 226 USPQ 285 (TTAB 1985); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). A mark does not have to describe every quality, feature, function, etc. of the goods or services in order to be found merely descriptive; it is sufficient for the purpose if the mark describes a single significant quality, feature, function, etc. thereof.

[3] Applicant did not submit a copy of any registration. The fact that applicant's parent company may own registrations of the currently applied-for terms for unrelated goods from those in issue in these two applications is not relevant. Moreover, even if copies of the registrations had been properly submitted, the Board does not have the record of those registration files before us, and each case must be decided on its own record. See In re Scholastic Testing Service, Inc., 196 USPQ 517 (TTAB 1977).

Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); and In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991). The question is not whether someone presented with only the mark could guess what the goods are. Rather, the question is whether someone who knows what the goods are will understand the mark to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corp., 226 USPQ 365 (TTAB 1985).

We note that our primary reviewing court, the Court of Appeals for the Federal Circuit, commented on the test for mere descriptiveness in the case of In re Omaha National Corporation, 819 F.2d 1117, 2 USPQ2d 1859, at 1861 (Fed. Cir. 1987) as follows:

> Finally, appellant would limit merely descriptive rejections, as a matter of law, to terms which identify a characteristic or quality of an article or service, for which proposition it

> cites Citibank, N.A. v. Citibanc Group, Inc., 724 F.2d 1540, 1545, 222 USPQ 292, 296 (11th Cir. 1984). We cannot agree. The factual situations in which mere descriptiveness must be resolved are too varied to lend themselves to resolution under any rigid formula. Accord In re Abcor, 588 F.2d at 813, 200 USPQ at 217-218...

We agree with the Examining Attorney that the words KAPHA and PITTA immediately and directly convey information about both a significant result or purpose of applicant's goods, body lotions, shampoos, moisturizers, etc., (to alleviate oily skin/hair conditions[4]), and the intended users of the goods (people with oily skin/hair). The record relied on by the Examining Attorney establishes that the terms KAPHA and PITTA are associated with oily skin/hair, and it is clear from applicant's specimens of use that its involved goods (body lotions, massage oils, facial creams and moisturizers, hair conditioners and shampoos, etc.) are specially formulated to alleviate the problem of oily skin/hair.

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[4] Both the "kapha" and the "pitta" body types are described as having oily hair and/or skin. See e.g., Ayurveda The Science of Self-Healing, by Dr. Vasant Lad, at page 35, wherein the hair characteristics of the "kapha" type are described as "thick, oily, wavy, dark or light" and those of the "pitta" type are described as "soft, oily, yellow, early gray, red"; and the skin characteristics of the "kapha" type are described as "thick, oily, cool, pale, white" and those of the "pitta" type are described as "soft, oily, warm, fair, red, yellowish."

Thus, when the marks KAPHA and PITTA are viewed in the context of applicant's goods, the purchasing public (including, but not limited to, those familiar with the Ayurveda health system) would immediately understand the purpose of the goods, namely, that applicant's various personal care products are for relieving or moderating the condition of oily skin/hair. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Omaha National Corporation, supra; In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994).

In addition, the purchasing public would immediately understand that the intended users of the goods are people with oily skin/hair. See Hunter Publishing Co. v. Caulfield Publishing Ltd., 1 USPQ2d 1996 (TTAB 1986). See also, In re Camel Manufacturing Company, Inc., 222 USPQ 1031 (TTAB 1984), and cases cited (and distinguished) therein.

The argument made by applicant that its marks are only suggestive of a characteristic of the products or of a characteristic of the intended consumer of the products is not persuasive. Consumers will readily understand that applicant's body lotions, massage oils, hair shampoos, etc. are for oily skin/hair, the "kapha type" or "pitta type"

within the three body-mind types of the Ayurveda health system. Applicant's marks require no imagination or thought in order to ascertain their meaning in relationship to the goods either in the context of the purpose of the goods or in referring to intended users of the goods. That is, the terms immediately and without conjecture or speculation describe a significant result/purpose of the goods, as well as the intended users of the goods, and we believe competitors would have a competitive need to use this term. See 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2000).

When the totality of evidence referring to "kapha" and that referring to "pitta" is considered, we are of the opinion the applied-for marks KAPHA and PITTA are each merely descriptive of the goods on which applicant uses the marks, "aromatherapy oils for personal use; massage oils; facial masks, scrubs, creams and moisturizers; body lotions; and hair conditioners and shampoos."

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