

THIS DISPOSITION IS NOT CITABLE
AS PRECEDENT OF THE TTAB JUNE 7, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lifemasters Supported Selfcare, Inc.

Serial Nos. 75/417,673, 75/417,679 and 75/444,365

Lisa T. Simpson and Peter Bucci of Orrick, Herrington &
Sutcliffe for applicant.

Ann E. Sappenfield, Trademark Examining Attorney, Law
Office 113 (Meryl Hershkowitz, Managing Attorney).

Before Simms, Quinn and Rogers, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Applications have been filed by Lifemasters Supported
Selfcare, Inc., by change of name from HiLife Incorporated
(which has been recorded in the Assignment Branch records
of the Office as to each application), to register the mark
LIFEMASTERS SUPPORTED SELFCARE for "health information and
monitoring services by which health care professionals can
monitor and track through remote and non-remote means the
current status of patients, leasing personal electronic

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data processing, storage, transmission and receiving devices, computers, pagers and computer software for a personal health care network";¹ and "electronic transmission of messages and data for a personal health network."² Applicant also filed an application to register the mark shown below

for "electronic transmission of messages and data for a personal health network."³ In each application, applicant claims ownership of Registration No. 1,998,449 for the mark LIFEMASTERS.

The Trademark Examining Attorney has refused registration in each application based on applicant's failure to disclaim the words "SUPPORTED SELFCARE" apart from each of the marks. The Examining Attorney contends that the term "supported selfcare," when applied to applicant's services, is merely descriptive of them.

¹ Application Serial No. 75/417,673, filed January 14, 1998, alleging a bona fide intention to use the mark in commerce.

² Application Serial No. 75/417,679, filed January 14, 1998, alleging a bona fide intention to use the mark in commerce.

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When the refusals were made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. Because of the essentially identical nature of the issues involved in these three appeals, the Board shall decide these cases in one opinion.

The Board, in a decision dated May 31, 2000 (copy attached), affirmed the refusal to register under Section 2(e)(1) in applicant's related co-pending application Serial No. 75/378,636.⁴ In that application, applicant sought to register the mark SUPPORTED SELFCARE for "health information and monitoring services by which health care professionals can monitor and track through remote and non-remote means the current status of patients."

The present appeals involve the same issue, namely, the mere descriptiveness of the words "SUPPORTED SELFCARE" as applied to services that are the same as or closely related to those in the prior appeal. Further, the present appeals involve the same record as that in the other application.

For the reasons stated in the Board's May 31, 2000 opinion, we conclude here that the words "supported

³ Application Serial No. 75/444,365, filed May 4, 1998, alleging first use and first use in commerce on February 9, 1998.

⁴ In that application, no mention was made of the present appeals.

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selfcare" are merely descriptive as applied to applicant's services. Accordingly, a disclaimer is warranted in the three involved applications.

As applicant has pointed out in the present appeals, its application Serial No. 75/417,680 was recently approved for publication and its mark LIFEMASTERS SUPPORTED SELFCARE for computer products appeared in the *Official Gazette*. According to applicant, although the Examining Attorney made the same initial request for a disclaimer of "SUPPORTED SELFCARE" due to descriptiveness, ultimately a disclaimer was not required. Suffice it to say, the Board is not bound by this prior determination by an Examining Attorney. As is often noted, each case must be decided on its own set of facts, and we are not privy to the facts of applicant's other application not involved here. While uniform treatment under the Trademark Act is highly desirable, our task here is to determine, based on the record before us, whether applicant's mark is registrable.

Decision: The refusal to register in each application is affirmed in the absence of a disclaimer of the descriptive words "supported selfcare." Applicant is allowed thirty days from the date of this decision to submit a disclaimer of "supported selfcare" apart from the

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mark in each application. If the disclaimers are submitted, this decision will be set aside. Trademark Rule 2.142(g).

R. L. Simms

T. J. Quinn

G. F. Rogers
Administrative Trademark
Judges, Trademark Trial
and Appeal Board