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Paper No. 12
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CRASH COURSE.COM, INC.

Serial No. 75/873,632

Andrew R. Basile of Young & Basile for CRASH COURSE.COM,
INC.

Richard S. Donnell, Trademark Examining Attorney, Law
Office 106 (Mary Sparrow, Managing Attorney).

Before Cissel, Hanak and Rogers, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On December 17, 1999, applicant filed the above-
referenced application to register the mark "CRASH COURSE"
on the Principal Register for "educational services, namely
conducting on-line training classes on a global computing
network," in Class 41. The basis for filing the
application was applicant's claim of first use of the mark
in connection with its services in interstate commerce in
January of 1998.

In addition to refusing registration based on the likelihood of confusion with a previously registered mark, the Examining Attorney refused registration under Section 2(e)(1) of the Lanham Act, 15 U.S.C. Section 1052(e)(1), on the ground that "CRASH COURSE" is merely descriptive of applicant's educational services because the term is defined in the dictionary¹ as "a brief, intensive course of instruction, as to prepare one quickly for a test."

The Examining Attorney also required applicant to amend the recitation of services to indicate the subject matter of the training courses applicant provides under the mark.

Applicant responded to the first Office Action by amending the recitation of services to read as follows: "educational services, namely, conducting online training classes in the field of general interest via a global computer network." Applicant also argued against the refusals to register based on likelihood of confusion and descriptiveness, but applicant did not submit any evidence in support of these arguments.

The Examining Attorney did not accept the proposed amendment to the recitation of services. In his second Office Action, he maintained and made final the requirement

¹ Random House Unabridged Dictionary, Second Edition, 1987,

for a more definite recitation of services. Similarly, the refusals to register were both made final in the second Office Action.

Submitted with that action, in support of the refusal based on descriptiveness, were copies of a number of excerpts retrieved from the Nexis database of published articles wherein the term sought to be registered is used descriptively in connection with training on or involving the Internet. For example, the November 26, 2000 edition of the Sarasota Herald-Tribune stated that "Kimmel may be focusing on music and recordings, but he's also been getting a crash course on the Internet." The November 7, 2000 edition of the San Francisco Chronicle stated that "Gruden said cellulitis was a new one on him, and he was taking a crash course on it from the Internet and the trainers." The October 20, 2000 edition of the Chicago Tribune stated that "[s]ome Neuqua Valley High School students are giving about 30 seniors a crash course on topics such as Internet and e-mail." The July 24, 1999 edition of the Orange County Register stated that "[e]verything Armstrong knew about testicular cancer came from a two-week Internet crash course since his case had been diagnosed in October 1996."

Also submitted in support of the final refusal to register based on descriptiveness were copies of articles retrieved from a Web search that show similar descriptive uses of the term sought to be registered. One touts a "Crash Course in Copyright"; another offers an "HTML Crash Course for Educators"; the third offers a "Photoshop Crash Course Overview"; and a Website offering guided tours of Boston begins the text of its promotion with the following subtitle: "Welcome to Boston and Cambridge—A Crash Course in Boston!"

Applicant responded by filing a Notice of Appeal, arguing that the refusals to register are improper, and amending the recitation of services to read as follows: "educational services, namely conducting online training classes in the field of computers, finance, investing, bookkeeping, cooking, languages, computer graphic design and layout, starting a small business, craft making, art, and photography via a global computer network."

The Board instituted the appeal, but suspended action on it and remanded the application file to the Examining Attorney for consideration of the amendment and arguments presented by applicant responsive to the second Office Action.

Upon reconsideration, the Examining Attorney withdrew the requirement for further amendment to the recitation of services. The refusals to register based on likelihood of confusion and mere descriptiveness, however, were maintained. The application was sent back to the Board for resumption of action on the appeal.

Applicant filed an appeal brief, and the Examining Attorney filed his brief on appeal, but applicant did not file a reply brief, nor did applicant request an oral hearing before the Board.

In its brief, applicant requested that if the Board determined that applicant's mark is merely descriptive within the meaning of the Act, the application be amended to seek registration on the Supplemental Register. Trademark Rule 2.142(d), however, provides that "an application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under Section 6 of the Act of 1946 or upon order of the Commissioner..." so applicant's request is denied.

In his brief on appeal, the Examining Attorney withdrew the refusal to register under Section 2(d) of the Act based on likelihood of confusion.

Thus, the sole issue before us on appeal is whether "CRASH COURSE" is merely descriptive of "educational

services, namely conducting online training classes in the field of computers, finance, investing, bookkeeping, cooking, languages, computer graphic design and layout, starting a small business, craft making, art, and photography via a global computer network."

Under Section 2(e)(1) of the Lanham Act, a mark is merely descriptive of the goods or services in connection with which it is used if it immediately and forthwith describes a quality, characteristic, function, feature, purpose or use of the relevant services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 751 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The mark does not have to describe every aspect or feature of the services in order to be found unregistrable under this section of the Act. Refusal of registration is appropriate if the term sought to be registered describes even one significant attribute or characteristic of the services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). The descriptiveness of a mark must be determined in the context of the specific services in connection with which the mark is used, rather than in the abstract. *In re Omaha*

National Corp., 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

When the record in the instant application is considered in the context of these legal principles, it is apparent that "CRASH COURSE" is merely descriptive of the educational services specified in the application because, in connection with these services, the term immediately and forthwith conveys information about a significant characteristic or feature of them, namely, that they consist of providing brief, intensive courses of instruction in the specified subject areas.

Applicant does not appear to dispute the fact that its courses provide brief overviews of the designated subject matter, agreeing, in its brief, that the term, as used in the excerpts made of record by the Examining Attorney, as well as "the thousands of uses over the Internet found by applicant, is consistent with the Examining Attorney's definition of the term 'crash course' meaning a 'brief, intensive course of instruction.'" Applicant argues, however, that the term does not describe applicant's online training classes because it "does not tell the purchaser what the services are beyond a general sense. The purchaser needs more information to know that the product is an interactive, online class that is actually taught by

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a teacher in which the student(sic) can take the course online and interact with the teacher and other students in a virtual classroom." As noted above, however, a mark does not need to provide information about more than one significant characteristic or feature of services in order for it to be unregistrable under Section 2(e)(1) of the Act. In that "CRASH COURSE" immediately conveys to prospective purchasers of applicant's educational services, without need for speculation or conjecture, that they are brief, intensive courses of instruction, the term is merely descriptive of the services with which applicant uses it. Accordingly, the refusal to register is well taken.

DECISION: The refusal to register under Section 2(e)(1) of the Lanham Act is affirmed.