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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Classroom Products, Inc.

Serial No. 76209168

Barry W. Sufrin and Judith L. Grubner of Michael Best & Friedrich for applicant.

Kathleen M. Vanston, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Simms, Seeherman and Quinn, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Classroom Products, Inc. to register the mark CLASSROOM PRODUCTS for

Teaching apparatus, teaching instruments and hands-on educational manipulative products for children for mathematical and scientific purposes, namely, scales and balances, measuring cups, measuring beakers, measuring jars, thermometers not for medical use, protractors, pre-recorded audio tapes and video tapes featuring mathematics and science for children (in International Class 9);

Drawing and drafting instruments; drafting compasses, drafting rulers, and drafting triangles; printed manuals and instruction sheets for the use of manipulatives for mathematics instruction; mathematics workbooks and teaching manuals; hands-on manipulatives for mathematics instruction, namely, flash cards and printed clock faces for educational use; origami paper; templates for drawing and drafting, paper and plastic transparencies that include plastic manipulatives; rubber stamps; printed number boards; lettering guides; posters for teaching temperature concepts; [and] office requisites, namely, rubber bands (in International Class 16); and

Mathematical teaching and learning manipulative games utilizing one or more toy manipulatives, namely, plastic beads, colored plastic tiles and colored plastic stacking chips, cubes, pegs, blocks, geometric solids, disks, counters, nuts and bolts, chain links, playing cards, animal figures, play money, learning clocks, spinners, dice, dominoes, marbles; kits comprised of manipulative games and printed materials for teaching mathematics to children; toy peg boards; manipulative strategy games; construction toys; manipulative games; manipulative puzzles; dice; card games; [and] marbles (in International Class 28).¹

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground

¹ Application Serial No. 76209168, filed February 12, 2001, based on an allegation of a bona fide intention to use the mark in commerce.

that applicant's mark, if applied to applicant's goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the examining attorney submitted briefs. An oral hearing was not requested.

Applicant contends that the mark sought to be registered is only suggestive of the goods. Applicant states that the goods are known in the trade as "manipulatives" (e.g., items such as toy money, weights and measures, dice, rulers, beads, counters and the like) intended for use by teachers to demonstrate to children mathematical and scientific concepts. Applicant argues that the word "product" has a meaning in mathematics (i.e., the number obtained by multiplying two numbers together), and that the term is used in the mark "as a clever play on words." According to applicant, the mark "conveys only the suggestion of goods intended for teaching math and science concepts to children, in the form of a clever pun based on a multiplication term (the "product" of multiplying two numbers together)." (Brief, pp. 5-6). This double entendre, applicant argues, removes its mark from the merely descriptive category. Applicant further contends that desks, chairs, pens, pencils, notebooks and the like are the goods that more likely come to mind in connection

with the mark CLASSROOM PRODUCTS, none of which is included in applicant's application. In support of its position, applicant submitted numerous third-party registrations of marks which include the term "classroom" for goods and services in the educational field; as pointed out by applicant, none of these registrations includes a disclaimer of this term or a resort to Section 2(f).²

Applicant also criticizes the NEXIS evidence relied upon by the examining attorney, asserting that "the fact that it is possible to use a term in a descriptive sense does not mean that the same term cannot also have a suggestive meaning with respect to particular goods, as it does here."

(Brief, p. 20).

² Applicant's brief is accompanied by Exhibit A which comprises copies of over thirty third-party registrations retrieved from the PTO's TESS database. The examining attorney, in her brief, objected to this submission as being untimely, relying on Trademark Rule 2.142(d).

Applicant submitted, with its response filed August 16, 2001, a printout of applications and registrations retrieved from TESS records. Although the evidence was in the form of a list only, the examining attorney made no objection thereto. See: *In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 n. 2 (TTAB 1998). Further, with its request for reconsideration filed November 20, 2002, applicant submitted copies of several of the listed third-party registrations. In view thereof, we have considered those third-party registrations which were introduced during the prosecution of the application. To the extent that any of the third-party registrations were submitted for the first time with the appeal brief, the registrations have been excluded. Any confusion about this evidentiary matter might be attributed to the fact that the examining attorney authoring the brief is the third examining attorney who has handled the application.

The examining attorney maintains that applicant's mark is merely descriptive in that CLASSROOM PRODUCTS immediately describes products used in the classroom. In support of the refusal, the following evidence was made of record: dictionary definitions of the words "classroom" and "products"; excerpts retrieved from the NEXIS database showing uses of "classroom products"; and copies of third-party registrations of marks which include either the word "classroom" or "products", all covering educational goods/services, and all indicating that the word was disclaimed.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or

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services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling.

In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); see also *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985). Similarly, as the Board has explained:

...the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but

rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the goods or services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998).

The word "classroom" is defined as "a room or place especially in a school in which classes are conducted." The word "product" means, in relevant part, "1. Something produced by human or mechanical effort or by a natural process....4. *Mathematics*. a. The number or quantity obtained by multiplying two or more numbers together." The American Heritage Dictionary of the English Language (3d ed. 1992).

The record also includes descriptive, if not generic uses of the term "classroom products" in connection with products used in the classroom. Uses include the following examples:

a series of middle-school science CD-ROMS that are among Discovery's best-selling classroom products.
(*The Washington Post*, April 12, 2003)

Fredericks designs vivid classroom products--bulletin boards, stickers, bookmarks, flash cards, certificates, posters, learning charts, calendars--at her New Brighton company, Trend Enterprises.
(*Citybusiness*, July 20, 2001)

One program that gets high marks from teachers is a giveaway of office and classroom products that would have otherwise ended up in the trash.
(*Investor's Business Daily*, May 10, 2002)

He will be overseeing Bigchalk's daily operations as well as bringing new e-learning products to market from the company's three divisions: library resources publishing, classroom products and consumer products.
(*Electronic Education Report*, May 23, 2001)

When you are developing a library/classroom product, you have to choose a topic of interest in the news or the world and a topic in a curriculum area and bring those two together.
(*Heller Report on Educational Technology Markets*, March 1, 2002)

Bellevue Apex Learning, a Bellevue-based provider of online courses and classroom products, said yesterday that it agreed to acquire Beyond Books of Philadelphia....
(*The Seattle Times*, May 14, 2003)

Based on the dictionary and on the NEXIS evidence showing how the term is used, we find that the mark CLASSROOM PRODUCTS is merely descriptive of a feature or characteristic of applicant's goods, that is, that the goods are products used in the classroom.

We are not persuaded by applicant's argument that the mark conveys a double entendre, that is, that the term "products" in the mark has a mathematical meaning and that

the mark therefore is a clever play on words. Firstly, given the common ordinary meaning of "classroom products," any double meaning, to the extent that it even exists, is not obvious, but rather is likely to be lost on consumers. Cf.: In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968) [SUGAR & SPICE for bakery products]. At the very least, this purported double meaning would be overwhelmed by the primary, ordinary meaning of the term "classroom products" as it relates to applicant's products. Secondly, applicant's argument is based on the fact that its goods are used in teaching mathematics. The identification of goods includes, however, a range of items used in the classroom, some of which would not be limited to use in mathematics lessons. These include tape measures, drafting rulers, drafting compasses, origami paper, rubber stamps and card games.

Applicant also asserts that the term "classroom products" is more commonly used in connection with items such as desks, notebooks, and pens and pencils. Even assuming *arguendo* the truth of this statement, the term is no less descriptive as used in connection with the specific goods listed in the involved application. In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), *aff'd without pub. op.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

The third-party registrations submitted by applicant do not compel a different result herein. In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the board or this court."]. We recognize that the competing registration evidence submitted by applicant and the examining attorney show the Office's somewhat inconsistent treatment of marks like the one involved in the present application. However, while uniform treatment under the Trademark Act is an administrative goal, our task in this appeal is to determine, based on the record before us, whether applicant's particular mark sought to be registered is merely descriptive. As is often stated, each case must be decided on its own merits. In re Best Software Inc., 58 USPQ2d 1314 (TTAB 2001).

We conclude that, if used in connection with applicant's goods, the term CLASSROOM PRODUCTS would immediately describe, without conjecture or speculation, a significant characteristic or feature of the goods, namely, that the goods are products for use in a classroom.

Decision: The refusal to register is affirmed.