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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re George Alan Stibbard

Serial No. 76236247

Faye L. Tomlinson of Christensen O'Connor Johnson Kindness PLLC for George Alan Stibbard.

Lourdes D. Ayala, Trademark Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Seeherman, Hohein, and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On April 5, 2001, George Alan Stibbard (applicant) applied to register the mark PSYCHOLOGICAL SELF-DEFENSE (in typed form) on the Principal Register for services in International Class 41 ultimately identified as:

Educational classes, seminars and workshops presented live and online relating to philosophy, study and science of the subconscious existence and the distribution of course materials, pre-recorded audio-visual materials, namely, video cassettes, videotapes,

compact discs, CD-ROM's, DVD's featuring information on philosophy, study and science for the subconscious existence, software for training, teaching, counseling and study relating to philosophy, study and science of the subconscious existence and course materials in connection therewith; therapy, counseling and personal development services relating to philosophy, study and science and of the subconscious existence and distribution of course materials in connection therewith, training of individuals to become licensed practitioners in the field of philosophy, study and science of the subconscious existence and the distribution of course materials in connection therewith.¹

The application has been amended to disclaim the term "psychological."

The examining attorney² refused to register the mark on the ground that the mark, when used in association with the services, is merely descriptive. 15 U.S.C. § 1052(e)(1). The examining attorney's position is that the "language 'psychological self-defense' is used commonly in the industry and the applicant's educational services are likely to include information on psychological self-defense." Office Action dated June 5, 2002 at 2. Applicant maintains that there is "a multi-stage reasoning process here ... because in the self-defense industry physical self-defense techniques predominate[;] a program including educational classes, seminars, and workshops

¹ Serial No. 76236247 is based on applicant's allegation of a bona fide intention to use the mark in commerce.

² The current examining attorney was not the original examining attorney in this case.

accompanied by training materials on the philosophy, study, and science of the subconscious existence is not readily conveyed by Appellant's mark." Applicant's Brief at 4.

After the examining attorney made the refusal final, applicant appealed to this board.

We affirm.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is merely descriptive. Abcor, 200 USPQ at 218.

The examining attorney has submitted numerous examples of the use of the term "psychological self-

defense." Several examples include the use of the term in association with courses or classes.

The classes are designed to teach participants basic physical, verbal and psychological self-defense skills.

Herald-Sun (Durham, NC), June 5, 2000.

... other seminars at the Garrahy courthouse on "handling difficult people" that ran from March 16 to March 23, 1987, and "psychological self-defense["] that ran from May 18 to June 4, 1987.

Providence Journal-Bulletin, April 3, 1996.

But there is a gimlet-eyed group out there, many of them academics, who practice and teach a form of "psychological self-defense"...

Christian Science Monitor, December 19, 1991.

"You live with it and you tell yourself nothing is going to happen almost as psychological self defense" said Francis. "If you live in fear of it, it can turn you into a pool of putty."

Boston Globe, October 19, 1989.

Psychological self-defense: self-help strategies for the physically challenged.

Independent Living, May 1989.

"I think the judge was eminently correct in his decision. I think psychological self-defense should be a defense in New York State." Saltzman said.

Newsday, March 14, 1991.

Unable to handle the trauma, the personality splits into alter egos as a form of psychological self-defense.

Palm Beach Post, April 6, 1999.

Yet many healthcare workers, perhaps in psychological self-defense, believe that accidents could never happen to them.

Modern Healthcare, July 5, 1999.

Applicant argues that the excerpts "use the phrase descriptively to refer to a basic technique or intentional, conscious approach to potentially damaging situations," but that his term "is not used in the manner generally set forth in the articles." Applicant's Brief at 4. The term "psychological self-defense," however, is used in these excerpts to describe types of learned and subconscious psychological self-defense techniques. Some excerpts describe training for individuals to develop psychological self-defense techniques while other excerpts indicate that some "psychological self-defense" mechanisms are apparently subconscious behavior ("Unable to handle trauma, the personality splits into alter egos as a form of psychological self-defense" and "many healthcare workers, perhaps in psychological self-defense, believe that accidents could never happen to them").

Applicant's services include "classes, seminars and workshops ... relating to [the] philosophy, study and science of the subconscious existence." As identified, such courses and classes on the study of the subconscious are broad enough to encompass the study of "psychological self-defense" in areas such as the mechanisms of the subconscious in handling trauma or dealing with dangerous occupational situations. The fact that applicant's

services could also include other areas of studies of the subconscious is not critical because if a term is descriptive of any significant feature of applicant's services, the term is merely descriptive. See In re Andes Candies Inc., 478 F.2d 1264, 178 USPQ 156, 157 (CCPA 1973) ("A mark is 'merely descriptive' under Sec. 2(e)(1) if it merely describes a characteristic (flavor) of the goods (candy)").

Applicant also argues that no competitors are using the term PSYCHOLOGICAL SELF-DEFENSE for applicant's exact services. Certainly, the record indicates that others are using the term in the area of consciously developing psychological self-defense techniques. However, even if applicant were the only user of the term for its specific services, that would not establish that it is not merely descriptive. In re Tekdyne Inc., 33 USPQ2d 1949, 1953 (TTAB 1994) ("The fact that applicant will, or intends to be, the first and/or only entity to use the term "MICRO-RETRACTOR" for surgical clamps is not dispositive where, as here, such term unequivocally projects a merely descriptive connotation"). Here, there is evidence that applicant did not originate the term "psychological self-defense" and others use the term in the area of psychology. The fact that applicant's classes on the study of the subconscious

would not be identical to some of those referenced in the articles does not warrant a finding that applicant's term is suggestive. When prospective users of applicant's services encounter the term, they will immediately know that applicant's classes involve the study of the mind's self-defense mechanisms and the use of the subconscious to create methods to defend oneself.

With its appeal brief, applicant lists four registration numbers along with the registration date, the mark, and the identifications of goods or services.³ Applicant argues that the "marks were all allowed and received federal registration, based on the suggestive relationship of the phrase to the goods or services." We note that one registration is for the mark SELF DEFENSE for vitamins, which goods are clearly different from applicant's services. Two registrations (No. 1,773,507 and No. 1,866,034) are cancelled. "[A] canceled registration does not provide constructive notice of anything." Action Temporary Services Inc. v. Labor Force Inc., 870 F.2d 1563,

³ While normally registrations submitted during an appeal would not be considered (37 CFR 2.142(d)), inasmuch as the examining attorney has discussed the registrations and not objected to them, we will consider them. Applicant's brief asserts that these registrations were attached to the brief. There are no registrations attached to the brief in the application file. Inasmuch as the attachments are apparently USPTO registrations, we will refer to the USPTO's electronic version of those records.

10 USPQ2d 1307, 1309 (Fed. Cir. 1989). In addition, these two registrations as well as the remaining registration (No. 2,146,883) are either registered on the Supplemental Register or the term "self-defense" has been disclaimed in the registration. Rather than supporting applicant's argument that the term "self defense" is suggestive, if anything, they point toward the descriptiveness of the term. Finally, even if they were evidence that supported applicant's argument, the Federal Circuit has noted that the fact that applicant can point to other registrations that have "some characteristics similar to [this] application, ... does not bind the Board or this court." In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

In this case, we do not have any doubts that the term PSYCHOLOGICAL SELF-DEFENSE is merely descriptive when used in association with applicant's identified services involving the philosophy, study, and science of the subconscious existence.

Decision: The examining attorney's refusal to register the term PSYCHOLOGICAL SELF-DEFENSE on the ground that the term is merely descriptive of the involved services is affirmed.