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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tafford Manufacturing, Inc.

Serial No. 76/286,048

Timothy D. Pecsénye, Christopher M. Turk and Alison P. Grossman of Blank Rome LLP for Tafford Manufacturing, Inc.

Ann Kathleen Linnehan, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Simms, Walters and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Tafford Manufacturing, Inc. seeks registration on the Principal Register for the mark COTTONSCRUBS.COM for services recited as follows:

"retail store services offered via the Internet featuring clothing and medical uniforms; and mail order catalog services featuring clothing, shoes, uniforms, medical uniforms, medical equipment, and medical accessories," in International Class 35.¹

¹ Application Serial No. 76/286,048 was filed on July 16, 2001 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

The Trademark Examining Attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the term COTTONSCRUBS.COM is merely descriptive of them.

Applicant contends that the Trademark Examining Attorney has failed to demonstrate the descriptiveness of this composite mark in that it takes a multi-stage reasoning process to link this composite term with applicant's recited services. Certainly, the information in the file confirms that applicant's website is directed to members of the general public, not just to health care professionals like doctors and nurses. Additionally, consistent with the recitation of services, in addition to providing "cotton scrubs," applicant does offer diverse goods at this website, including shoes and earrings.

Applicant has appealed. Briefs have been filed. Although applicant initially requested an oral hearing, this request was subsequently withdrawn.

We affirm the refusal to register.

A term is 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 In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978); and In re Eden Foods Inc., 24 USPQ2d 1757 (TTAB 1992). 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 services. In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); and 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. In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). That is, the question is not whether someone presented with only the term or phrase 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 term or phrase 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).

Clearly, the United States Patent and Trademark Office has consistently held that a top-level domain [TLD] like ".com" has no trademark or service mark significance. See United States Patent and Trademark Office, Examination Guide 2-99, Marks Composed in Whole or in Part, of Domain Names (September 29, 1999); In re Martin Container Inc., 65 USPQ2d 1058, 1060 (TTAB 2002); In re Page, 51 USPQ2d 1660 (TTAB 1999); and In re Patent & Trademark Services Inc., 49 USPQ2d 1537 (TTAB 1998). This position is consistent with a leading trademark treatise (1 J. McCarthy, McCarthy on Trademarks & Unfair Competition, §7:17.1 (4th ed. 2002) at 7-28.1) and is being widely adopted by Federal Courts around the country. See e.g., Image Online Design, Inc. v. Core Ass'n, 120 F.Supp.2d 870, 877 (C.D. Cal. 2000); and 555-1212.COM, Inc. v. Communication House International, Inc., 157 F.Supp.2d 1084, 59 USPQ2d 1453 (N.D. Cal. 2001).

Applying these principles to the present case, we find that the ".COM" designation within applicant's composite mark is a critical address element used to access online computer information. It serves as a top level domain name indicating that applicant is a commercial entity. As such,

in the context of applicant's service mark, this TLD lacks any source-indicating significance for retail services provided over the Internet.

As to the leading portion of this composite, applicant does not seriously dispute that the term "cotton scrubs" names at least some of the items of clothing which are the subject of applicant's retail services. However, applicant argues that this mark is not merely descriptive "... because Applicant's services offer not only the green, sterile clothing that doctors are expected to wear, the 'cotton scrubs' with which most people are familiar, but a full line of stylish, colorful clothing." (applicant's response of January 25, 2002, p. 3).

In response, the Trademark Examining Attorney contends that it is irrelevant to our disposition herein that applicant's services include offering other items (i.e., other than green hospital scrubs) for sale. The Trademark Examining Attorney has shown the following:

The applicant's homepage provides the customer with an area specifically designated "cotton scrubs." The customer clicks on this [area] and a full range of cotton scrubs appears on the next page for the customer's choosing ...

(Trademark Examining Attorney's final refusal of April 15, 2002).

It is well settled that a descriptive term or phrase does not have to provide information regarding every aspect of an applicant's goods or services. See In re Opryland USA Inc., 1 USPQ2d 1409 (TTAB 1986); and In re The Weather Channel, Inc., 229 USPQ 854 (TTAB 1985). It is sufficient that among the items provided by applicant at this website, one of them is "cotton scrubs." Accordingly, we agree with the Trademark Examining Attorney that to run afoul of Section 2(e)(1) in this context, the mark does not need to describe all of the items provided at retail.

It is true that applicant has applied for registration of a service mark, but it is also true that applicant's service is selling a wide array of loose-fitting cotton clothing with a look, feel and structure quite similar to medical scrub tops, draw-string bottoms and combined sets. The webpage stresses applicant's commitment to providing "scrubs" made of cotton and other natural fibers available in a variety of prints, colors and styles. Hence, judging by applicant's own usage, despite the fact that applicant's scrubs can be ordered having prints and colors not traditionally associated with hospital green scrubs, this modification to the appearance of the goods does not appear to take them out of the general category of "scrubs."

Moreover, we note that the term "medical uniforms" appears multiple times in applicant's recitation of services. Accordingly, there is simply no question but that one of the central features of applicant's retail services is the sale of medical uniforms and loose-fitting clothing having similarities to scrub sets. Hence, we conclude that the purchasing public would recognize the ordinary meaning of the term "cotton scrubs" within the applied-for mark, when used in connection with applicant's services. That is, the designation COTTONSCRUBS.COM, when considered in its entirety, will readily be understood by consumers to refer to applicant's services of providing cotton scrubs and a variety of similar items of apparel - the latter not necessarily being limited to the traditional all-cotton, solid green clothing items usually associated with this term.

In the present case, it is our view that, when applied to applicant's services, the entire composite term COTTONSCRUBS.COM, does not evoke a unique commercial impression. When COTTONSCRUBS is combined with .COM, the separate meanings of the individual components are not lost. This combination of elements does not create a double entendre or an incongruous meaning in relation to applicant's services that might render the combination

registrable as a mark. Rather, the composite mark is as merely descriptive of applicant's services as are each of the components of the term viewed separately.

Hence, when viewed in its entirety, COTTONSCRUBS.COM immediately describes, without conjecture or speculation, a significant feature or characteristic of applicant's services, namely, that it offers for sale over the Internet cotton garments closely patterned after hospital or medical scrubs. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective customers of applicant's services to readily perceive the merely descriptive significance of the term COTTONSCRUBS.COM as it pertains to applicant's services. In re Omaha National Corporation, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994).

Decision: The refusal to register the proposed mark as merely descriptive under Section 2(e)(1) of the Lanham Act is hereby affirmed.