THIS OPINION IS NOT A PRECEDENT OF THE TTAB

Mailed:
January 14, 2008
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Nikken, Inc.

Serial No. 76573402

on Request for Reconsideration

Jeffrey A. Babener of Babener and Associates, and Mitchell A. Goldstein, for Nikken, Inc.

Barney L. Charlon, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Bucher, Rogers and Drost, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

The Trademark Examining Attorney, citing to *In re Ferrero S.p.A.*, 22 USPQ2d 1800 (TTAB 1992), has requested reconsideration of the Board's decision of July 17, 2007, reversing the Trademark Examining Attorney's refusal to register the mark **KENZEN WELLNESS** for goods identified in the application as "dietary supplements" in International Class 5. In that decision, we found the mark as a whole not to be merely descriptive under Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1).

The Trademark Examining Attorney criticizes the Board for relying on a foreshortened version of a Japanese dictionary entry drawn from applicant's reply brief rather than the full text version of that entry placed into the record by the Trademark Examining Attorney. In summary, the earlier opinion consisted of two alternative holdings: (1) that the English language translation of the Japanese term "Kenzen" is somewhat imprecise as applied to these goods, and alternatively, (2) that the mixture of the two languages in the composite mark did not clearly result in a merely descriptive composite, and any doubt as to whether the composite is merely descriptive must be resolved in applicant's favor.

In response to the request for reconsideration, applicant argues that the Examining Attorney is merely rehashing previously-made arguments, and that due to the multiple translations and usages of the word "Kenzen," this composite mark does not merely describe a dietary supplement product. Rather, applicant argues that due to the vagueness and ambiguity of the term "Kenzen" within the composite mark, the applied-for mark suggests a wholesome and safe product used to maintain health and wellness. Complying with our earlier opinion, applicant has agreed to disclaim the descriptive term "Wellness" apart from the

mark as shown. However, as noted in our earlier decision, the ultimate question before us is whether the composite term **KENZEN WELLNESS** conveys information about a significant feature or characteristic of applicant's goods with the immediacy and particularity required by the Trademark Act.

In the face of the Trademark Examining Attorney's request for reconsideration, we review the record again to determine if we erred in reaching our earlier decision. See TBMP § 543 (2d ed. rev. 2004).[1]

The record contains various translations of the term "kenzen." This caused us to express doubts about whether this composite mark would convey to consumers having a knowledge of the Japanese language an immediate connotation of a descriptive nature, or whether they would need to employ at least some degree of mental gymnastics or cogitation to discern meaning in the composite. *See In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992) [Spanish term ATAVIO is not merely descriptive of fashion jewelry given that it

[1] It was technically an error on our part, which we regret, to quote a foreshortened version of a Japanese dictionary entry drawn from applicant's reply brief rather than the full text version placed into the record by the Trademark Examining Attorney. However, this was not outcome determinative for our earlier decision, and we do not find that applicant's cropping of the dictionary entry, though unwarranted and unwise, rises to the level of fraudulent behavior.

is an overly-inclusive word (~'adornment') referring to an individual's overall attire]; and *In re Pan Tex Hotel Corporation*, 190 USPQ 109 (TTAB 1976) [while LA POSADA may be literally translated as "the inn," the various dictionary definitions showing that the term "carries the added implication of a home or dwelling" made it clear that the designation had a "connotative flavor" slightly different from that of the English-language words "the inn"].

Similarly, while we accept that "kenzen" may be literally translated as "health of body and mind," we find that it has a "connotative flavor" of "soundness" which is broader and slightly different from that of the English-language word "health." We therefore still have doubt about whether a relevant consumer would, without pause for cogitation, perceive the mark as meaning merely "health / wellness," or might well conclude that it simply suggests a wholesome dietary product. We resolve such doubt, as we did in our earlier decision, in applicant's favor.

Decision: Accordingly, we deny the Trademark Examining Attorney's request for reconsideration, and this application should be approved for publication with a disclaimer of the word "Wellness."