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THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Don Granatstein

Serial No. 76600305

Eric R. Pellenbarg and Adam E. Crall of Shutts & Bowen for
Don Granatstein.

Rudy Singleton, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Walters, Kuhlke and Walsh, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Don Granatstein has filed an application to register on
the Principal Register the mark ALTERNATIVE LIFESTYLE
EXCHANGE for "travel and vacation services, namely, making
reservations and booking for temporary lodging," in
International Class 43.¹

¹ Serial No. 76600305, filed July 1, 2004, based on an allegation of a
bona fide intention to use the mark in commerce.

The 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 ground that applicant's mark is merely descriptive in connection with his services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The examining attorney contends that the mark is merely descriptive because it "describes the salient characteristic of the applicant's services, namely, accommodation reservation services targeted to individuals who engage in alternative lifestyles [and] that facilitate the exchange of vacation lodging" (brief, p. 4). In support of his position, the examining attorney submitted excerpts from articles retrieved from the NEXIS database and from Internet websites showing the use of the term "alternative lifestyle(s)," and excerpts from Internet websites showing use of the term "exchange" in connection with vacations and travel. The examining attorney also argues that, if the Board should find that "alternative lifestyle(s)" describes the intended user of the identified services, this renders the term merely descriptive as well; and that, while "exchange" may have different meanings in other contexts, it is the context of the services identified in the application that is relevant. The examining attorney concludes that the

combination of the two merely descriptive terms, "alternative lifestyle" and "exchange," creates no incongruity and ALTERNATIVE LIFESTYLE EXCHANGE remains merely descriptive herein. The record includes definitions of "alternative lifestyles" as "an unconventional way of life: a way of living adopted by people who reject the prevailing lifestyle ..." (www.encarta.msn).

The following excerpts are representative samples of the evidence submitted by the examining attorney from the NEXIS database:

Chicago Tribune, February 8, 2004: Gays and lesbians can rejoice at the first-ever cruise for **alternative lifestyle** families, setting sail from New York, July 11, under the auspices of R Family **Vacations**, which was founded by talk-show host Rosie O'Donnell and her partner Kelli O'Donnell.

The Atlanta Journal and Constitution, January 21, 2001: Over the years, Key West has evolved from a he-man haunt (Ernest Hemingway and Harry Truman hung out here) to an **alternative-lifestyle** haven for hippies, gays and others.

Tulsa World (Oklahoma), December 28, 1998: "The Curmudgeon's Guide to Child-Free Travel." The book is for adults who don't want children around during their vacations.

Author Jennifer Lawler provides a variety of adult-oriented **vacations** in the United States and abroad. They focus on romance, adventure, learning, culture, seniors and **alternative lifestyles**.

The examining attorney submitted excerpts from eight travel-related websites referring to "alternative lifestyle" travel and five travel-related websites referring to and specializing in vacation "exchanges," which includes

travelers exchanging homes or exchanging timeshare weeks and/or timeshare locations. The following excerpts are a representative sample:

www.eHow.com: "How to Buy It: **Alternative Lifestyle** Travel Service"

www.about.com: "Naturist, Nude or Topless Options and **Alternative Lifestyle** Travelers - If you're gay or lesbian or looking for naturist resorts or topless or nude beaches, this is the place to find information especially for you."

www.neworleanscvb.com: "New Orleans Convention and Visitors Bureau - **Alternative Lifestyle** Groups - Uniquely New Orleans - New Orleans has become the 'Hot Spot' for international and domestic gay and lesbian travelers."

www.chiff.com: "check out the scene before you arrive to find the best gay, lesbian and **alternative lifestyle** friendly spots on the planet ..."

www.4homex.com: "Home **exchange** is the fun and affordable way for families, singles and seniors to holiday travel and save money."

www.intervac.com: "We invented home **exchange** for vacations some fifty years ago in Europe. Ever since we have grown from referrals by thousands of satisfied members who have proven this unique travel concept - one exchange at a time."

www.tradingplaces.com: "Welcome to Trading Places' Vacation **Exchange** Club. Take advantage of Trading Places' preferred inventory of vacation weeks and unique opportunities to vacation in new ways each year."

Applicant contends that the proposed mark creates a distinctive unitary mark that the examining attorney has improperly dissected; and that ALTERNATIVE LIFESTYLE EXCHANGE is at most suggestive. In arguing this point,

applicant makes several contradictory statements in his brief that he seeks to clarify in his reply brief by stating that "applicant does not argue or admit that the wording 'Alternative Lifestyle' is descriptive of a potential segment of consumers"; rather, applicant contends that "the examining attorney has misapplied the descriptiveness standard" and that "the appropriate legal standard for descriptiveness requires a focus on the services - not a focus on a potential segment of consumers for the identified services." (Reply brief, p. 4.)

Applicant also argues that "exchange" has numerous meanings. Applicant submitted a definition of "exchange" in pertinent part as "the act of giving or taking one thing in return for another which is regarded as an equivalent" (www.brainydictionary.com) and makes the following statement:

[A] consumer would initially be presented with the mark and have to use his or her imagination to grasp that ALTERNATIVE LIFESTYLE EXCHANGE relates to a service for making reservations and bookings for temporary lodging. The mark could just as easily relate to an Internet 'chat room' where individuals swap various ideas relating to 'alternative lifestyles.' Or the mark could relate to a retail store selling various items, services, etc.

In this regard, applicant submitted excerpts from two Internet websites, one showing use of the term "adoption exchange" and the other showing use of the term "exchange" in connection with the game of chess.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

We agree with the examining attorney and find that the evidence establishes that "alternative lifestyles" has a merely descriptive meaning, as noted herein, that is understood and used in the travel industry, with vacations and destinations specifically identified as friendly to, or organized for, "alternative lifestyle" individuals and families. Additionally, the record establishes that, in the context of travel and vacation services, the noun "exchange" has a distinct meaning, as noted herein. Each of these terms is merely descriptive in connection with the identified travel and vacation services. "Alternative lifestyles" is merely descriptive of the likely target audience for applicant's travel services, or it will be so perceived by potential customers. "Exchange" is merely descriptive of a type of vacation travel service, which is encompassed by applicant's identification of services.

Moreover, the combination of these two merely descriptive terms, "alternative lifestyles" and "exchange," does not give rise to a distinctive mark. The combined term ALTERNATIVE LIFESTYLES EXCHANGE is not unique or incongruous, nor does it create a meaning different from the meanings of the individual terms. In connection with the identified services, the mark is likely to be understood by prospective consumers to involve reservations and bookings of vacation exchanges for alternative lifestyle travelers. These are significant aspects of the identified services.

Applicant's arguments to the contrary are not well taken. It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Applicant's argument that this case is analogous to *Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*, 687 F.2d 563, 215 USPQ 662 (2nd Cir. 1982) is misplaced. This case does not stand for the proposition, argued by applicant, that "[a] mark which describes the aspirations or attributes of the end users of a product or service is suggestive and therefore entitled to trademark protection without a showing of secondary meaning." (Brief, p. 3.) This case is distinguishable from the case herein on its facts. *Playboy Enterprises* was an infringement action finding a likelihood of confusion between PLAYBOY and PLAYMEN for magazines. In considering the marks, the Appeals Court agreed with the District Court's finding that the PLAYBOY mark is "distinctive and enjoy[s] wide recognition" and noted that "PLAYBOY is a mark of value due in large part to the longstanding success of PLAYBOY magazine" and that PLAYBOY is suggestive rather than descriptive (215 USPQ at 665). In this regard, the court stated "Although the word may signify the aspirations of PLAYBOY's readership, it does not describe the product or its contents. Also, the PLAYBOY mark has been registered by the United States Patent and Trademark Office, which further indicates that the mark is not merely descriptive and gives to it a strong presumption of validity. 15 U.S.C. §1057(b)" (Id).

In conclusion, when applied to applicant's services, the term ALTERNATIVE LIFESTYLE EXCHANGE immediately describes, without conjecture or speculation, a significant feature or function of applicant's services as noted herein. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the term ALTERNATIVE LIFESTYLE EXCHANGE as it pertains to applicant's services.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.