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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Naturopathic National Council, Inc.

Serial No. 76642489

Howard M. Cohn, Esq. for Naturopathic National Council,
Inc.

Carrie Genovese, Trademark Examining Attorney, Law Office
115 (Tomas V. Vlcek, Managing Attorney).

Before Hairston, Holtzman and Zervas, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Naturopathic National Council, Inc. seeks to register
on the Supplemental Register the certification mark DOCTOR
OF NATUROPATHY, N.D. (standard character form, DOCTOR
disclaimed) for services ultimately identified as "medical
services featuring organic medicine, functional medicine
and natural healing."¹

¹ Serial No. 76642489, filed on July 8, 2005, which alleges dates
of first use of April 15, 2005. The application was originally
filed seeking registration on the Principal Register. The
examining attorney refused registration under Section 2(e)(1) of
the Trademark Act, and applicant amended to seek registration on
the Supplemental Register.

The application includes the following statement:

The certification mark, as used by persons authorized by the certifier, certifies that [the] services are provided by individuals who have successfully completed their undergraduate education and post-graduate education in the field of naturopathy from an accredited school, the individual's degree is legitimate, the individual has proven to be highly knowledgeable in the field of traditional naturopathy by successfully completing the board certification exam, the individual has successfully completed an internship of supervised practical training to further ensure public safety, the individual has successfully completed a jurisprudence exam to ensure compliance of [sic] the law as it relates to the field of traditional naturopathy, the individual is of legal immigration status, the individual has malpractice insurance, maintain[s] a standard of excellence through continuing education and that the individual maintains a good standing in the community.

The trademark examining attorney has issued a final refusal to register under Section 23 of the Trademark Act, on the ground that applicant's mark is generic for the identified services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs.²

² We note that much of the argument in applicant's reply brief is directed to its contention that the applied-for mark is not generic for "licensing services for traditional naturopaths." The Board, however, in an October 23, 2007 order, denied applicant's request to remand the application for consideration of such an amendment to the recitation of services. Thus, we have given no consideration to applicant's arguments in this regard.

A mark is generic if it refers to the class, genus, or category of goods and/or services on or in connection with which it is used. In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001), citing H. Marvin Ginn Corp. v. Int'l. Ass'n. of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986).

The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question. Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue. Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services? (citations omitted)

H. Marvin Ginn Corp., 228 USPQ at 530.

The examining attorney has the burden of establishing by clear evidence that a mark is generic and thus unregistrable. In re Merrill Lynch, Pierce, Fenner and Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

In support of her position that the mark DOCTOR OF NATUROPATHY, N.D. is generic for the identified services, the examining attorney submitted the following dictionary definitions:

doctor: 1. A person, especially a physician, dentist, or veterinarian, trained in the healing arts and licensed to practice. 2a. A person who has earned the highest academic degree awarded by a college or university in a specified discipline. b. A person awarded an honorary degree by a college or university. 3. *abbr.* Dr. Used as a title and form of address for a person holding the degree of doctor. The American Heritage Dictionary of the English Language (4th ed. 2000)

naturopathy: A system of therapy that relies on natural remedies, such as sunlight supplemented with diet and massage, to treat illness. The American Heritage Dictionary of the English Language (4th ed. 2000)

ND: Doctor of Naturopath. www.mercksource.com

The examining attorney also submitted Nexis articles and Internet printouts showing what she views as generic uses of the term "Doctor of Naturopathy, N.D." and the individual terms "Doctor of Naturopathy" and "N.D."³

³ Two of the Nexis articles are from Canadian publications. The Board has stated that it is reasonable to assume that medical professionals "are likely to utilize all reasonable resources, regardless of country of origin or medium," and that "the Internet is a resource that is widely available to these same professionals and to the general public in the United States." In re Remacle, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002). In this case involving medical services, it is reasonable to consider relevant articles regarding such services from Canadian publications.

Examples include the following:

Paul Saunders is a *doctor of naturopathy*, who teaches at the college. (The Toronto (Canada) Star, November 12, 1999);

When looking for homeopathic care, it is safest to choose a licensed *doctor or naturopathy (ND)*, who has completed the rigorous requirements by the Canadian Naturopathic Association. (Canadian Business and Current Affairs, August, 1994); *Doctors of naturopathy (ND)* studied homeopathy as part of their medical school training. (Contemporary Women's Issues, March 16, 2006);

Ted Spence, a *doctor of naturopathy*, certified herbalist, and certified nutritionist who has been a family dentist for 25 years on the Eastern Shore of Virginia. (Mothering Magazine, July 1, 2002);

ANMA has a nondiscriminatory policy, with membership open to individuals with *Doctor of Naturopathy (N.D.)* or *Doctor of Naturopathic Medicine (N.M.D.)*, as well as other health care fields.

<http://www.anma.com>

Dr. Walker is in the process of completing his *Doctor of Naturopathy (N.D.)* degree in Natural Medicine at the Florida College of Integrative Medicine in Orlando, FL.

<http://openinghumanpotential.com>

Four schools in the United States offer accredited programs in naturopathic medicine where you can earn a *Doctor of Naturopathy (N.D.)*. Most of these programs take about four to five years of full-time study after getting your bachelor's degree.

www.mnvu.org

ND Open House Bastyr University encourages prospective students interested in earning the *Doctor of Naturopathy* degree to tour the campus, attend panel discussions, and speak with administrators and faculty about the demands of Bastyr's *ND* program. (Seattle Weekly, January 12, 2005);

In his extensive online profile, he calls himself "Dr. Birdsall," but he also explains that he is an *ND*, which stands for *doctor of naturopathy*, not an MD. (Contra Costa Times - California, February 6, 2000);

A Naturopath has earned a *Doctor of Naturopathy (ND)* degree and employs non-medical, non-diagnostic, natural therapies in practice.
www.naturomac.com/wsn/page;

Naturopathy - *The Doctor of Naturopathy (N.D.)*, or naturopath, integrates traditional therapies including homeopathy, acupuncture, oriental medicine, herbal remedies, and manipulative therapies with scientific diagnostics and care.
www.holisticcapecop.com/systems;

FNPA [Florida Naturopathic Physicians Association] has a nondiscriminatory policy with regular membership open to licensed Florida naturopathic physicians with *Doctor of Naturopathy (N.D.)* or Doctor or Naturopathic Medicine (N.M.D.) degrees.
www.fnpa.org/index;

Our naturopathic doctor, Alison J. Finger, *N.D.*, believes in the healing power of nature.
<http://cihh.net>;

A licensed naturopathic doctor (*N.D.*) attends a five-year graduate-level naturopathic medical school and is educated in all of the same basic sciences as an M.D., in addition to studies of the holistic and non-toxic approaches to therapy with a strong emphasis on disease prevention and optimizing wellness.
<http://cihh.net>; and

N.D.s are licensed in Alaska, Arizona, California, Hawaii, Maine...
<http://www.findnd.com>

Applicant, in urging reversal of the refusal to register, presented no evidence to rebut the examining

attorney's showing. Rather, applicant makes three arguments. First, applicant asserts that "[t]he arbitrary decision to deny the registration of the present mark, Doctor of Naturopathy, N.D., was repercussive of its counterpart Doctor of Naturopathic Medicine being illegally withdrawn and cancelled after it had been approved for registration." (Brief at unnumbered 4). Applicant maintains that the examining attorney assigned to its companion application Serial No. 78851026 approved that application for issuance of a registration on the Supplemental Register; that the application was subsequently withdrawn; that the examining attorney's decision to withdraw that application was improper; and that the refusal to register herein was prompted by that decision.

The decision of the examining attorney to withdraw applicant's companion application, after it was approved for registration, is not appropriate subject matter for consideration by the Board in this appeal. Rather, this is a procedural matter reviewable only by petition to the Director in connection with that application. Even if applicant filed such a petition and the Director determined that the examining attorney's withdrawal of application Serial No. 78851026 was somehow improper, this would not

impact our decision in this appeal. Rather, our determination of whether the mark in the present application is generic for the identified services must be based on the facts and record before us. We therefore have given no consideration to applicant's arguments in this regard.

Second, applicant argues that it is the only entity authorized to license medical professionals in the field of naturopathic medicine, and thus, legally entitled to use the mark DOCTOR OF NATUROPATHY, N.D.; that third-party uses of the designation "Doctor of Naturopathy, N.D." are illegal; and that such illegal uses cannot serve as the basis for finding that applicant's involved mark is generic. Suffice it to say that applicant has offered no evidence to support its contention that third-party uses of this designation are illegal, and we will not disregard the evidence of such uses in determining whether applicant's mark is generic.

Third, applicant argues that the applied-for mark "is suggestive and it has acquired secondary meaning." (Brief at unnumbered page 4). Because applicant amended its application to seek registration on the Supplemental Register, without condition, applicant has conceded that the mark is descriptive and secondary meaning is simply

irrelevant. Thus, applicant cannot be heard to argue at the briefing stage of the proceeding that its mark is suggestive and/or has acquired secondary meaning.

We begin our analysis with a determination of the genus of the services at issue. The services which applicant certifies are identified as "medical services featuring organic medicine, functional medicine and natural healing." Thus, in this case, the genus or class of services is essentially naturopathic medical services. See *In re Council on Certification of Nurse Anesthetists*, 85 USPQ2d 1403 (TTAB 2007); and *In re American Institute of Certified Public Accountants*, 65 USPQ2d 1972 (TTAB 2003) [Genus of services is that described by applicant's chosen identification of services]. Next, the relevant public for these services consists of persons responsible for hiring medical professionals with training in the field of naturopathic medicine, e.g., hospital administrators, and the general public seeking naturopathic medical services.

This brings us to the question of whether the relevant public would understand DOCTOR OF NATUROPATHY, N.D. primarily to refer to naturopathic medical services. See *H. Marvin Ginn, supra*. The Nexis and Internet articles show uses by others of the phrase "Doctor of Naturopathy, N.D." and the individual terms "Doctor of Naturopathy" and

"N.D" in a generic manner to refer to a medical professional and a program of study and/or degree awarded in the field of naturopathic medicine.

We find that this evidence clearly and convincingly establishes that the mark DOCTOR OF NATUROPATHY, N.D. names a specific type of medical professional and that the phrase is recognized and understood as such. Specifically, it identifies a medical professional in the field of naturopathic medicine.

A review of the specimen of record reveals that applicant's services consist of an examination and supervised internship for naturopaths, the successful completion of which certifies that he or she has achieved a level of competency in the field of naturopathic medicine. In our view, the designation is generic for applicant's services, which essentially are the providing of a certification program for naturopaths.

The designation "Doctor of Naturopathy, N.D." should not be subject to exclusive appropriation, but rather should remain free for others in the naturopathy profession to use in connection with their medical services. In re Boston Beer Co. L.P., 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999).

Decision: The refusal to register is affirmed.