

**THIS OPINION IS  
NOT A PRECEDENT  
OF THE TTAB**

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Dialysis Purchasing Alliance, Inc.

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Serial No. 76643099

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Myron Amer of Myron Amer, P.C. for Dialysis Purchasing Alliance, Inc.

David J. Elton, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

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Before Hairston, Cataldo and Taylor, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Dialysis Purchasing Alliance, Inc. has filed an application to register the mark VETERINARY PURCHASING ALLIANCE, in standard character form, on the Principal Register for services ultimately identified as

"procurement, namely, group purchasing services for others of veterinary pharmaceuticals and products in Class 35.<sup>1</sup>

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 ground that applicant's mark, if used in connection with the identified services, would be merely descriptive of them. When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.

Before turning to the merits of the appeal, we must discuss an evidentiary matter. Applicant, for the first time with its appeal brief, submitted what it refers to as an "Evidentiary Declaration." The examining attorney, in his brief, has objected to this evidence as untimely. Trademark Rule 2.142(d) provides that the record in an application should be complete prior to the filing of an appeal. Additional evidence filed after appeal normally will be given no consideration. TBMP §1207.01 (2d ed. rev. 2004). In view of the foregoing, the examining attorney's objection is sustained, and the declaration has not been considered in reaching our determination. We hasten to add

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<sup>1</sup> Serial No. 76643099, filed July 15, 2005, based on a bona fide intention to use the mark in commerce. The term PURCHASING ALLIANCE is disclaimed apart from the mark as shown.

that the declaration, even if considered, would not compel a different result in this case.

We now turn to the refusal to register on the ground of mere descriptiveness. The examining attorney maintains that the mark sought to be registered clearly describes the nature of the identified services, that is, a purchasing alliance for veterinary pharmaceuticals and products. According to the examining attorney, the individual terms "veterinary" and "purchasing alliance" are descriptive, and the combination is no less descriptive. In support of the refusal, the examining attorney submitted, inter alia, brief excerpts of twenty hits from a Google search for the term "purchasing alliance."

Applicant, in urging reversal of the refusal to register, does not dispute that the individuals term VETERINARY and PURCHASING ALLIANCE are descriptive. Rather, it is applicant's position that the combination is not merely descriptive of the identified services. In particular, applicant argues that the term PURCHASING ALLIANCE begs the question of "for what or for whom," and when preceded by the term VETERINARY, the combination of the terms "makes no sense." (5/15/06 Response to Office Action). Applicant contends that the proper response to the foregoing question would be the words "veterinary

products," and not simply the word "veterinary." Thus, it is essentially applicant's position that its mark, which does not include the word "products," is not merely descriptive of the identified services.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or services in connection with which it is used, or intended to be used. See, e.g., *in re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, feature or property of the goods or services. *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 or intended to be used, 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 Recovery, 196 USPQ 830 (TTAB 1977).

VETERINARY, in the context of applicant's services, directly and immediately describes the type of pharmaceuticals and products that are the subject of the group purchasing services. Thus, "veterinary" is a merely descriptive term in the context of group purchasing services such as applicant's.

PURCHASING ALLIANCE is just another term for group purchasing services, and in the context of applicant's services, directly and immediately conveys that the veterinary pharmaceuticals and products are procured by way of group purchasing services. The Google excerpts show descriptive use of the term PURCHASING ALLIANCE in connection with group purchasing services in a variety of fields. Further, we note that applicant has disclaimed the term PURCHASING ALLIANCE apart from the mark as shown.

In view of the above, we find that the individual terms VETERINARY and PURCHASING ALLIANCE have descriptive significance as used in connection with the identified services. As previously noted, applicant does not dispute this. We also find that the mark as a whole, VETERINARY PURCHASING ALLIANCE, to be as descriptive of the identified services as the individual terms. The mark immediately

describes a significant feature of the identified services, that is, such services are a purchasing alliance for procuring veterinary products. In making this determination, we have considered applicant's argument that its mark does not include the word "products," and therefore the mark is not merely descriptive. However, we do not view the fact that "products" has been left out from applicant's mark as significant. The descriptiveness of the mark as a whole is evident regardless of whether the word "products" is present in the mark. As noted, a mark is not to be viewed in the abstract but must be viewed in relation to the specific goods or services in connection with which the mark is or will be encountered by prospective purchasers. When the mark VETERINARY PURCHASING ALLIANCE is viewed in connection with the services listed in the application, there is nothing in the mark which is incongruous, nor is there anything which would require the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to prospective purchasers of the services. See, for example, *In re Abcor Development Corp., Inc.*, 588 F.2d 811, 200 USPQ 215 (CCPA) (Rich, J., concurring) [GASBADGE described as a shortening of the name "gas monitoring badge"]; and *Cummins Engine Co., Inc. v.*

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Continental Motors Corp., 359 F.2d 892, 149 USPQ 559 (CCPA 1966) [TUBODIESEL held generically descriptive of engines having exhaust driven turbine super-chargers].

In sum, we find that the mark VETERINARY PURCHASING ALLIANCE is merely descriptive of the services listed in the application, i.e., "procurement, namely, group purchasing services for others of veterinary pharmaceuticals and products."

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