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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 Greenwood Lake Health Spot Inc.

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Serial No. 76647446

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Myron Amer, Esq. for Greenwood Lake Health Spot Inc.

Warren L. Olandria, Trademark Examining Attorney, Law  
Office 112 (Angela Wilson, Managing Attorney).

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Before Quinn, Grendel and Walsh, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Greenwood Lake Health Spot Inc. filed an application  
to register the mark NATURAL MOTION UNIVERSAL GYM ("GYM"  
disclaimed) for "exercise equipment in the form of single  
and multiple station weight-lifting machines" in  
International Class 28.<sup>1</sup>

The trademark examining attorney refused registration  
under Section 2(d) of the Trademark Act on the ground that

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<sup>1</sup> Application Serial No. 76647446, filed September 26, 2005,  
alleging a bona fide intention to use the mark in commerce.

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applicant's mark, if applied to applicant's goods, would so resemble the previously registered marks identified below as to be likely to cause confusion.

UNIVERSAL for

exercise equipment in the form of single and multiple station exercise machines and parts therefore, treadmills, indoor joggers, exercise bicycles, exercise benches and chairs, ballet bar, abdominal conditioning board, free standing ladder for use with exercise board, hip flexor, exercise bar, shot put ball, head harness, weights, ankle straps, barbells, dumbbells, [and] racks for barbells and dumbbells (in International Class 28)<sup>2</sup>;

UNIVERSAL FITNESS ("FITNESS" disclaimed) for

exercise and health equipment, tread mills, home gyms comprised of weight benches, leg curl pulley, weight training machines, weight lifts; manually operated exercise equipment, namely, head and neck operated lift systems, hand and finger operated lift systems, chest and arm operated lift systems, leg operated lift systems, jump ropes, exercise benches and weight-lifting benches, wrist and ankle weights, barbells, dumbbells, exercise bars, exercise thigh bands, exercise waist belts, exercise mats, exercise hand grips, [and] exercise bicycles (in International Class 28)<sup>3</sup>; and

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<sup>2</sup> Registration No. 1350575, issued July 23, 1985; renewed.

<sup>3</sup> Registration No. 2697269, issued March 18, 2003.



("FITNESS" disclaimed) for

exercise and health equipment, namely tread mills, home gyms comprised of exercise machines, exercise weights, weight lifting benches, weight training machines comprised of exercise machines, exercise weights, weight lifts, namely, an exercise machine used for weight lifting exercises; manually operated weight lifting machines, chest and arm operated weight lifting machines, leg operated weight lifting machines, jump ropes, exercise benches and weight-lifting machines, wrist and ankle weights, barbells, dumbbells, exercise bars, exercise thigh bands, exercise waist weight training belts, personal exercise mats, exercise hand grips for exercising the hands, [and] stationary exercise bicycles (in International Class 28).<sup>4</sup>

All three registrations are owned by the same entity.

The examining attorney also refused registration based on applicant's failure to comply with a requirement to disclaim the words "Natural Motion" apart from the mark.

When the refusals were made final, applicant appealed.

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<sup>4</sup> Registration No. 2712859, issued May 6, 2003.

Applicant and the examining attorney filed briefs.<sup>5</sup>

**Disclaimer**

The examining attorney has required a disclaimer of the words "Natural Motion" (in addition to the already-disclaimed word "Gym"), contending that the words are merely descriptive when applied to applicant's goods. More specifically, the examining attorney maintains that the words "natural motion" are merely descriptive of a characteristic or feature of applicant's gym equipment, namely that the equipment allows the user to employ the body's natural motion when doing the exercises. In support of the disclaimer requirement, the examining attorney submitted dictionary definitions; a listing of search results using the GOOGLE search engine; and excerpts of numerous third-party websites and NEXIS articles.

The examining attorney may require an applicant to disclaim an unregistrable component of a mark otherwise

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<sup>5</sup> Applicant filed, with its brief, a paper captioned "Evidentiary Declaration." Michelle La Placa, applicant's secretary, set forth several allegations, including that applicant received \$25,000 in royalty income the last business year, and that "as known by those familiar with martial arts of which karate is one discipline, the movements are those embodying 'natural motion' and it was applicant's intent to achieve a synergistic relation to martial arts for its exercising apparatus." This submission is untimely and, accordingly, the paper has not been considered in reaching our decision. Trademark Rule 2.142(d). Even if considered, however, the paper does not compel a different result in this case.

registrable. Section 6 of the Trademark Act. Merely descriptive terms are unregistrable under Section 2(e)(1) of the Trademark Act, and therefore are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is grounds for refusal of registration. See *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006).

A term is merely descriptive if it immediately describes the ingredients, qualities or characteristics of the goods or if it conveys information regarding a function, purpose, or use of the goods. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). We look at the mark in relation to the goods, and not in the abstract, when we consider whether the mark is descriptive. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1783 (Fed. Cir. 2003). It is well settled that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

The term "natural" means "conforming to the usual or ordinary course of nature; not produced or changed artificially; a natural reflex; faithfully representing nature or life." The American Heritage Dictionary of the

English Language (4<sup>th</sup> ed. 2000). The term "motion" is defined as "the manner in which the body moves, as in walking; a mechanical device or piece of machinery that moves or causes motion; the movement or action of such a device." Id.

The examining attorney introduced a third-party patent registration (U.S. Patent Registration No. 5971897) covering a product identified as "Multi-purpose, natural-motion exercise machine." Also of record are numerous excerpts retrieved from third-party websites and NEXIS articles showing merely descriptive uses of the words "natural motion" in connection with exercise machines, examples of which include the following:

Features: Natural Motion  
Benefits: Our patented Natural Motion handles allow users to adjust the angle of use during lifting exercises. Thus eliminating stress from joints in shoulders, wrists and hands. Our Natural Motion technology produces the ultimate range and freedom of movement while protecting your body from unwanted and unneeded stress.  
(www.universalgymequipment.com)

As opposed to stationary vibrating platforms, the ExerVive stepper and climber applies vibration through foot pedals, handrails, handgrips and a seat during the natural motion of dynamic exercise.  
(www.clubolutions.biz)

The VX-18 Sets the Standard for Single Stack Weight Machines

The patented Parallelogram Direct-Drive Press Arm eliminates cable stretch, lifts the weight at an exact 1:1 ratio and generates an arc similar to the natural motion for a correctly performed free weight bench press.  
([www.vectrafitness.com](http://www.vectrafitness.com))

Nautilus NS 200

Dual pivoting pulleys follow your body's natural motion  
([www.syracusefitness.com](http://www.syracusefitness.com))

Power-Pak 3000

Natural Motion handles (A feature found only on the Power Pak series) essentially eliminate wrist, elbow, and shoulder joint stress.  
([www.gearrends.com](http://www.gearrends.com))

Plus, using SMARTGYM'S natural motion flow, you get the cardio benefit, burning calories AND strengthening your heart and lungs at the same time!  
([www.smartgym.com](http://www.smartgym.com))

FT-Functional Trainer

Movement is bi-lateral, allowing a free and natural motion.  
([www.allaboutfitness.com](http://www.allaboutfitness.com))

The Bowflex uses...technology to provide users more than 95 exercises without any cable changes--the equivalent of an entire gym of strength equipment in a single, compact unit for the home. Those familiar with other models of Bowflex strength gyms will notice its overall redesign, including a new natural-motion squat exercise that can be performed with this unit...  
(*Business Wire*, March 31, 2005)

BodyCraft PL 1000 Lever Gym  
The bio-mechanically correct squat  
attachment provides a natural motion...  
(www.fitnessblowout.com)

The low impact, intensive  
cardiovascular workout of an elliptical  
trainer is achieved through smooth and  
natural motion...due to the natural  
motion, combined with an upper and  
lower body workout...  
(www.healthstatus.com)

Slowly raise the weight by flexing your  
arms at your elbows. Keep your upper  
arms stationary. Raise the weight to  
the limit of your natural motion.  
(www.runningplanet.com)

In addition, although we have not reproduced any of the excerpts of the search result summaries using the GOOGLE search engine, suffice it to say that there are hundreds of examples of uses of the words "natural motion" in connection with exercise equipment. While search result summaries may be of limited probative value, *In re Fitch IBCA, Inc.*, 64 USPQ2d 1058 (TTAB 2002), given the context provided by many of the summaries that place use of "natural motion" under the headings "Exercise Machines," these summaries have some probative value, particularly when considered in combination with the evidence recited above.

The words "natural motion," as applied to applicant's exercise machines, immediately describe, without conjecture

or speculation, a significant quality or characteristic about them, namely that the machines allow the user to exercise the muscles using the body's natural motion. As shown by the evidence, this is a desirable characteristic or feature that serves to eliminate harmful stress from the user's body joints.

The examining attorney's requirement to disclaim the merely descriptive words "natural motion" is affirmed.

**Likelihood of Confusion**

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also: *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also: *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In support of the Section 2(d) refusal, the examining attorney submitted five third-party registrations to show

that, to the extent that the goods are not identical, registrant's other identified goods are related to applicant's goods.

With respect to the goods, applicant's goods are identified as "single and multiple station weight-lifting machines," and registrant's identifications of goods include "single and multiple exercise machine," "home gyms comprised of weight benches, leg curl pulley, weight training machines, and weight lifts," and "home gyms comprised of exercise machines, weight training machines comprised of exercise machines, and weight lifts, namely, an exercise machine used for weight lifting exercises."

There is no question, and applicant does not contend to the contrary, that the involved goods are legally identical in part as set forth above. Further, the goods otherwise are closely related. That exercise machines and other fitness equipment, such as those items listed in registrant's identifications of goods, are closely related is shown by the examining attorney's third-party registration evidence. *See In re Albert Trostel & Sons Co.*, 29 USPQ 1783 (TTAB 1993) [third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that

the listed goods are of a type that may emanate from a single source].

Given that applicant's and registrant's goods are legally identical or otherwise are closely related, we assume that these goods travel in the same channels of trade (e.g., retail exercise equipment stores, sporting goods stores, etc.), and that the same classes of purchasers buy these goods. These purchasers would include ordinary consumers who would be expected to employ nothing more than ordinary care in buying either applicant's or registrant's goods.

That the goods are legally identical, and that they move in the same trade channels to the same purchasers are factors that weigh heavily in favor of a finding of a likelihood of confusion.

We next turn to compare registrant's UNIVERSAL and UNIVERSAL FITNESS marks (with or without a design) with applicant's mark NATURAL MOTION UNIVERSAL GYM. In determining the similarity or dissimilarity of the marks, we must compare the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test is not whether the marks can be

distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Finally, where, as in the present case, the marks appear on, at least in part, legally identical goods, the degree of similarity between the marks that is necessary to support a finding of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Although we must compare the marks in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ["There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in

their entireties. Indeed, this type of analysis appears to be unavoidable.”] For example, “that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark...” Id. at 751.

When considering applicant’s mark, the generic word “GYM” has been disclaimed, and we have determined, as discussed above, that the merely descriptive terms “NATURAL MOTION” must be disclaimed as well. Although applicant contends that the words “NATURAL MOTION” are the dominant words of its mark because these words convey the patented status of its goods, the disclaimed terms in applicant’s mark are subordinate to the only remaining distinctive portion of applicant’s mark, “UNIVERSAL.” This dominant, most distinctive portion of applicant’s mark is identical to the entirety of registrant’s mark UNIVERSAL, and is identical to the dominant portion of registrant’s UNIVERSAL FITNESS (“FITNESS” disclaimed) marks (with or without the design). The term “UNIVERSAL” is the one term in applicant’s mark that is most likely to be remembered by consumers. The same is true with respect to registrant’s UNIVERSAL FITNESS marks.

Registrant has registered UNIVERSAL alone, and its other two marks, as is applicant’s mark, are dominated by

the term UNIVERSAL. When applicant's and registrant's marks are compared in light of the above-mentioned legal principles, we find that the marks are similar in sound and appearance. Although applicant's mark conveys more specific information about the type of applicant's exercise machine, this meaning does not sufficiently distinguish the mark from the cited marks. Further, when the marks are considered as applied to identical goods, the marks engender similar overall commercial impressions. Consumers familiar with registrant's UNIVERSAL exercise machines will believe that NATURAL MOTION UNIVERSAL GYM identifies a line of natural motion exercise machines emanating from registrant.

In sum, applicant has taken the entirety of registrant's UNIVERSAL mark (and the dominant portion of registrant's UNIVERSAL FITNESS marks) and simply added the merely descriptive wording "NATURAL MOTION" and "GYM" to it. This mere addition of descriptive wording does not serve to sufficiently distinguish the marks as applied to identical or closely related goods. See *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975); and *In re United States Shoe Corp.*, 229 USPQ 707 (TTAB 1985).

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We conclude that consumers familiar with registrant's exercise machines and equipment sold under the marks UNIVERSAL and UNIVERSAL FITNESS (with or without a design) would be likely to believe, upon encountering applicant's mark NATURAL MOTION UNIVERSAL GYM for exercise equipment, that the goods originate from or are associated with or sponsored by the same source.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision:** The refusals to register are affirmed.