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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Amend Group, Inc.

Serial No. 77022128

Robert D. McCutcheon of Munck Carter for The Amend Group,
Inc.

Tasneem Hussain, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Quinn, Kuhlke and Walsh, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Amend Group, Inc. filed, on October 16, 2006, an
intent-to-use application to register the mark MAJOR LEAGUE
BOWLING ("BOWLING" disclaimed) for "bowling equipment,
namely, bowling pins, bowling ball returns, bowling balls,
bowling ball covers, bowling pinsetters and parts
therefore, bowling bags, bowling deflectors, bowling
gloves, bowling pin mats, and masking units to hide the pin
spotters from the bowler's view" in International Class 28.

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the proposed mark, when applied to the goods, is merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

Before turning to the merits of the Section 2(e)(1) refusal, we first direct our attention to a procedural matter involving the identification of goods. The original identification included the terminology "masking units to hide the pin spotters from the bowler's view." The examining attorney asked for clarification of the term "masking units." In response, applicant deleted the terminology "to hide the pin spotters from the bowler's view." The examining attorney, in the final refusal, noted that this deletion served to broaden the identification and, therefore, the amendment was unacceptable. The examining attorney went on to indicate, however, that, upon further review, the original terminology was acceptable. Applicant failed to mention the identification issue in its brief, and referred to the identification as including "masking units" (i.e., the terminology used in the proposed amended identification). Likewise, the examining attorney's brief failed to mention the identification

issue, and the examining attorney also referred to the identification as including "masking units."

Inasmuch as deletion of the terminology "to hide the pin spotters from the bowler's view" serves to broaden the identification of goods, we agree with the examining attorney, as set forth in the final refusal, that the proposed amendment is unacceptable. Given that this issue was specifically raised in the final refusal, it is strange that both applicant and the examining attorney ignored it in their briefs, and that both referred in their briefs to the proposed identification (that is, including the terminology "masking units" *per se*) as the operative identification. Be that as it may, the deletion of the terminology "to hide the pin setters from the bowler's view" served to theoretically broaden the identification and, thus, the deletion is impermissible. Accordingly, we will consider the identification to include the goods as originally identified and now found by the examining attorney to be acceptable, namely "masking units to hide the pin setters from the bowler's view."

We now turn to the Section 2(e)(1) refusal. The examining attorney maintains that "[t]o the extent that the goods are bowling equipment of such high quality as befits an organization of major league bowlers, the mark is merely

descriptive." (Brief, p. 2). The "wording MAJOR LEAGUE BOWLING denotes the quality of the equipment while the wording BOWLING merely identifies the type of sport for which the equipment is used." (Brief, p. 3). In making the refusal the examining attorney relied upon four third-party registrations covering sporting goods wherein the term "MAJOR LEAGUE" is disclaimed, or the registration issued under Section 2(f) or on the Supplemental Register.

Applicant argues that the proposed mark does not describe bowling equipment, but rather is only suggestive "of the sport of bowling and, perhaps, goods associated with the sport of bowling." Applicant also asserts that "no such organization with the name Major League Bowling" exists." (Brief, p. 6). Applicant points to the absence of any competitors using either "major league" or "major league bowling" in connection with their goods or services. Applicant further discounts the third-party registration evidence submitted by the examining attorney, asserting that the prior actions of the Office are not binding on the merits of this case.¹

¹ To counter the examining attorney's evidence, applicant, in its September 7, 2007 response, listed fifty-one registrations, showing the mark, owner, status and goods/services. Applicant argues as follows: "[T]here are a significant number of marks registered on the Principal Register that are similar to Applicant's Mark and registered in connection with similar goods and/or services as those for which Applicant seeks registration.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (TTAB 2007); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *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

Applicant's Mark should not be refused while other similar marks are allowed to proceed to registration." In response, the examining attorney indicated in the final refusal that merely listing third-party registrations, without also submitting copies thereof, was insufficient to make them of record. We agree. The registrations were not properly introduced and, in reaching our decision, we have not considered applicant's listing of them. *See In re Styleclick.com Inc.*, 57 USPQ2d 1445, 1446 n. 2 (TTAB 2000). This evidence, even if considered, would not compel a different result on the merits herein. As often stated, each case must stand on its own record. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the board or this court."].

which registration is sought, the context in which it is being used on or in connection with the goods or services, 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 Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of applicant's goods or services. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

The term "major league" is defined, in relevant part, as "a league of major importance in any of various sports; big time." (www.m-w.com). We also take judicial notice of the following definition: "belonging to or among the best or most important of its kind: *a major-league orchestra.*" (The Random House Dictionary of the English Language, 2d ed. unabridged 1987).

The term "bowling" is defined as "any of several games in which balls are rolled on a green or down an alley at an object or group of objects." (www.m-w.com).

The examining attorney also introduced excerpts of the following articles:

Bowlers in the South Bend/Mishawaka area have always considered the Classic League the major league of bowling, the ultimate destination of bowling competition. It's where you went if you wanted to find out just how good you really were.
(*South Bend Tribune* (Indiana), December 14, 2006)

This area is home to many of the country's richest tournaments and the ABC Seniors Masters, but you can't be a major league bowling town without the sport's major league.
(*Las Vegas Review-Journal*, October 20, 2004)

Besides, there is precedent here. In 2000, Paul Allen (who founded Microsoft with Gates and is its second largest shareholder, behind Gates)...led a group that bought the Professional Bowlers Association -- the major league of bowling.
(*USA Today*, January 29, 2003)

The examining attorney further submitted copies of the following registrations, all covering a variety of sporting goods: Reg. No. 2932002, issued on the Supplemental Register, of MAJOR LEAGUE LACROSSE ("LACROSSE" disclaimed); Reg. No. 1057264, issued on the Principal Register, of

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MAJOR LEAGUE BASEBALL and design ("MAJOR LEAGUE BASEBALL" disclaimed); Reg. No. 1648643, issued on the Principal Register, of MAJOR LEAGUE BASEBALL ("BASEBALL" disclaimed) under Section 2(f) as to the mark for some of the goods; and Reg. No. 2459891, issued on the Principal Register, of MLS MAJOR LEAGUE SOCCER ("MAJOR LEAGUE SOCCER" disclaimed).

Based on the evidence of record, we find that the proposed mark MAJOR LEAGUE BOWLING is merely descriptive. The term immediately informs prospective customers that applicant's bowling equipment is high quality, that is, it is equal in quality to that used by the best bowlers in the world. The term "major league" is, without question, a term of art that has a particular meaning in the sporting field, namely as a laudatory term to describe the best in any sport. As shown by the dictionary definitions and the manner in which the term "major league" has been used in connection with bowling, the term refers to top-notch performance or performers. The term would keep this descriptive meaning when combined with the name of a sport, in this case, bowling. The mark is laudatorily descriptive of bowling equipment that is high quality that may be used on a professional level.

We have reached our decision without giving any probative weight to the third-party registrations relied

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upon by the examining attorney. As indicated earlier in this opinion, the Board is not bound by the actions of prior examining attorneys. *In re Nett Designs Inc.*, 57 USPQ2d at 1566.

Decision: The refusal to register is affirmed.