

**THIS OPINION
IS NOT A PRECEDENT OF
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Grapevine Intellectual Properties, LLC

Serial No. 77141442

Edmund J. Ferdinand, III and Jessica S. Rutherford of
Grimes & Battersby, LLP for Grapevine Intellectual
Properties, LLC.

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Office 116 (Michael Baird, Managing Attorney).

Before Hairston, Zervas and Wellington, Administrative
Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On March 27, 2007, Grapevine Intellectual Properties,
LLC filed an application to register on the Principal

GRUNGE

Register the designation **GRUNGE** as a trademark
for the following goods: "clothing, namely, athletic
footwear, beachwear, blazers, blouses, boxer shorts,
briefs, coats, dresses, footwear, gloves, hosiery, jackets,
leather jackets, neckties, neckwear, pajamas, panties,

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pants, pantsuits, rainwear, robes, scarves, shirts, shoes, shorts, sleepwear, socks, sport coats, suits, swim wear, T-shirts" in International Class 25.¹ Applicant has disclaimed the word GRUNGE.

The examining attorney has issued a final refusal of registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's goods, applicant's designation would be merely descriptive of such goods.²

When the refusal was made final, applicant filed this appeal. We affirm the refusal to register.

There is no dispute that the word GRUNGE is merely descriptive of a feature of the goods, and the record contains ample evidence that the term is merely descriptive of a feature of applicant's goods, namely that the goods comprise "grunge" clothing. Applicant, by entering a disclaimer of the term GRUNGE, has acknowledged the descriptive nature of this term as applied to its goods. The examining attorney and applicant dispute, however,

¹ Application Serial No. 77141442, based on applicant's assertion of its bona fide intention to use the mark in commerce under Trademark Act § 1(b), 15 U.S.C. § 1051(b).

² In her brief, the examining attorney withdrew a second basis for refusal of registration set forth in her final Office action, namely, that applicant had not complied with her requirement for additional information such as samples of advertisements or promotional materials, etc., and for a description of the nature,

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whether the mark is barred from registration on the Principal Register under Section 2(e)(1) despite the lettering style of the designation. Applicant maintains that "[e]ach letter in the word 'grunge' is displayed in its own highly stylized typeface, characterized by erratic edges and inconsistent sizes and thicknesses, creating a striking commercial impression separate and apart from the word portion of the mark." Brief at p. 7. The examining attorney responds that "the presentation of the applicant's mark in curved jagged edges is not sufficiently substantial or distinctive as to create a separate commercial impression apart from the disclaimed portion of the mark to render the mark registrable on the Principal Register." Brief at unnumbered p. 5.

In order for a term otherwise unregistrable to be capable of distinguishing an applicant's goods, the presentation of the term must be sufficiently distinctive so as to create a commercial impression separate and apart from the unregistrable components whereby it is possible to disclaim those unregistrable components and still have a mark which is registrable as a whole. See *In re Carolyn's Candies, Inc.*, 206 USPQ 356 (TTAB 1980).

purpose and channels of trade of the goods. Accordingly, we need not consider her second basis for refusal.

The determination of whether the stylization of an otherwise unregistrable designation is sufficiently distinctive in character to "rescue" the designation as a whole is a subjective one. *In re Bonni Keller Collections Ltd.*, 8 USPQ2d 1224 (TTAB 1987). It is our view that the presentation of applicant's mark simply does not possess the degree of stylization necessary to warrant allowance on the Principal Register without a claim of distinctiveness. Applicant's stylization is nowhere near the stylization of the CONSTRUCT-A-CLOSET mark discussed in *In re Clutter Control Inc.*, 231 USPQ 588 (TTAB 1986), with its "tube-like rendition of the letter 'C' in the words 'construct' and 'closet.'" Further, the stylizations of the marks in other cases which applicant's relies on in its brief are all more fanciful, eye catching and imaginative than the stylization of applicant's GRUNGE mark.³ Moreover, many of those marks involved applications for registration on the Supplemental Register, not the Principal Register, as is the case with applicant's designation. *In re Miller Brewing Co.*, 226

³ See, for example, *In re The Wella Corp.*, 196 USPQ 7 (CCPA 1977)

regarding the mark , *In re School Book Fairs, Inc.* 229 USPQ 556 (TTAB 1986) regarding the mark , and *In re Carolyn's Candies, supra*, regarding the mark



USPQ 666 (TTAB 1985), regarding the mark , involved a showing of acquired distinctiveness. As for *In re Grand Metropolitan Foodservice Inc.*, 30 USPQ2d 1974 (TTAB 1994), mentioned at p. 6 of applicant's brief, the Board did not find that the stylization of the mark was sufficiently distinctive; the Board found that the mark MUFFUNS was not merely descriptive of baked mini-muffins and reversed the Section 2(e)(1) refusal of registration. Thus, the cases relied on by applicant in support of registration are not persuasive.

In sum, we find the presentation of applicant's stylized GRUNGE designation to be not sufficiently distinctive to permit registration on the Principal Register. Registration is accordingly barred under Trademark Act § 2(e)(1).

Decision: The refusal to register is affirmed.