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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re McNeil & Company, Inc.

Serial No. 77243312

Robert E. Purcell of Hiscock & Barclay for McNeil & Company, Inc.

Colleen M. Dombrow, Trademark Examining Attorney, Law Office 101 (Ronald R. Sussman, Managing Attorney).

Before Quinn, Grendel and Wellington, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

McNeil & Company, Inc. filed an application to register the mark FARMEDIC [*in standard character format*] for "educational services, namely, providing seminars and courses in training and instruction for emergency services personnel and the agricultural community in connection with

farm-related fire and medical emergencies" in International Class 41.[1]

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 FARMEDIC, when used in connection with applicant's services, is merely descriptive thereof.

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

The examining attorney maintains that "those in the educational arena offering courses and training for emergency services personnel and the agricultural community in connection with farm-related fire and medical emergencies call these courses farmedic courses." Brief, (unnumbered) p. 8. In support, the examining attorney attached website evidence showing various third-party uses of the term "farmedic" or "farm medic" to describe educational courses or seminars akin to applicant's identified services. She was not persuaded by applicant's argument that course-givers identified in the website evidence are affiliated with applicant; indeed, she argues that the evidence indicates that there is no such

[1] Application Serial No. 77243312, filed July 31, 2007, alleging first use anywhere and first use in commerce on December 31,

affiliation. The examining attorney further contends that applicant's mark is merely a telescoped combination of the terms "farm medic" and, based on the dictionary definitions of these terms, the mark remains descriptive because the novel spelling employed by applicant will be perceived by consumers as the equivalent of the descriptive terms. Thus, the examining attorney concludes, all meanings are descriptive in relation to the services. In addition to the printouts from internet website evidence, the examining attorney introduced dictionary definitions for the words "farm" and "medic".

As alluded to above, applicant has argued that "with respect to the website references upon which the Examining Attorney relied in making an initial rejection of the application that many of those references [showing use of the term "Farmedic"] specifically mention an affiliation with Cornell University, which is Applicant's predecessor-in-interest by Agreement dated July 17, 2007." Brief, p. 2. Applicant contends that its purported predecessor-in-interest, Cornell University, had "sponsored 147 trainers and instructors around the U.S.A. for its 'FARMEDIC' courses" and suggests that the examining attorney has not shown that the references are "other than those to the

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trademark of Applicant or its predecessor-in-interest." Brief, pp. 6-7. Applicant also argues that "[e]ven presuming *arguendo* that any of the website references to the 'FARMEDIC' course were not affiliated with applicant or its predecessors-in-interest, the examining attorney has failed to demonstrate why such infringing uses by third parties may be converted into some sort of evidence of 'industry recognition' and that Applicant's trademark is merely descriptive." Reply Brief, p. 3. Finally, applicant also opposes, what it refers to as, the examining attorney's improper dissection of applicant's mark. Applicant states that "[p]resuming that such definitions [provided by the examining attorney of the terms 'farm' and 'medic'] are accurate, they result in a totally nonsensical, non-descriptive connection with applicant's services." Reply brief, p. 3. In this regard, applicant notes that the same mark was previously registered for the similar services.[2]

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[2] Registration 1427867 for the mark FARMEDIC for "educational services namely conducting seminars and courses in the areas of agricultural safety, health and rescue for the agricultural community and emergency services providers." The registration issued on March 2, 1987 to Empire Regional Emergency Medical Services Agency, Inc.. An assignment was recorded on December 8, 1986 (reel 0546, frame 0550) indicating an assignment was executed on December 19, 1986 to an assignee identified as Farmedic Training, Inc. The registration was cancelled on August 9, 1993 under Section 8.

Before addressing the merits of refusal, we note an objection by the examining attorney to the admissibility of applicant's listing of third-party registrations (attached to applicant's response to an Office Action and incorporated in applicant's brief).

In its response (dated November 27, 2007) to the first Office Action, applicant attached a list of what it described as registrations for marks that "include the words or formatives 'FARM' or 'MEDIC' for farm or medically related goods or services that were not obtained under Section 2(f)." In the final Office Action, the examining attorney informed applicant that the Board "does not take judicial notice of registrations, and the mere submission of a list of registrations does not make the registrations of record...soft copies of the registrations or the complete electronic equivalent...must be submitted." Applicant did not heed the examining attorney's advice and instead incorporated the list of registrations in its brief, without submitting any copies thereof. The examining attorney, in her brief, objected to applicant's reliance upon these registrations. In response, applicant stated that "the TTAB case law cited in the TMEP [section cited by the examining attorney] is antiquated...[i]t is a ministerial task to print from the USPTO's own database

copies of the registration certificates...where, as here, there is no dispute regarding the existence of such registrations." Reply brief, p. 2.

The Board manual of procedure makes it clear that the mere listing of registrations is not sufficient to make the identified registrations of record. See TBMP § 1208.02 (2d ed. rev. 2004) and cases cited therein, including, *In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 n.2 (TTAB 1998) and *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1560 n.6 (TTAB 1996). In spite of increased public access (via the internet) to USPTO databases, including registration databases, the requirement for the submission of copies of registrations has not changed. In view thereof, the examining attorney's objection to the admissibility of the list of registrations is sustained. Accordingly, the list of registrations has been given no consideration; and we further note that applicant did not otherwise submit any evidence into the record.

We now turn to the substance of the descriptiveness refusal.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the services with which it is used. *In re Gyulay,* 820 F.2d 1216, 3 USPQ2d 1009 (Fed.

Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.,* 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle,* 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the services are will understand the mark to convey information about the services. *In re Tower Tech, Inc.,* 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.,* 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville,* 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.,* 226 UPSQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.,* 199 USPQ 496, 497 (TTAB 1978). *See also, In re Shutts,* 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.,* 209 USPQ 165, 166 (TTAB 1980).

Finally, in determining whether a mark is merely descriptive, we must consider the mark in its entirety. As argued by applicant, common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. *See Concurrent Technologies Inc. v. Concurrent Technologies Corp.,* 12 USPQ2d 1054, 1057 (TTAB 1989).

With the above principles in mind and based upon the record, we find that the mark FARMEDIC is merely descriptive of educational services, namely, providing seminars and courses in training and instruction for emergency services personnel and the agricultural community in connection with farm-related fire and medical emergencies.

The record includes a substantial number of online articles, course descriptions, and third-party websites showing that there are courses of instruction or seminars wherein the subject matter, or the course itself, is described as "Farmedic" (or, in fewer cases, "Farm Medic" and "farm medic"). Indeed, the examining attorney attached approximately twenty different online sources showing usage of this term. The record establishes that these "Farmedic" courses or seminars are being provided at a wide variety of educational institutions and are geared toward providing

first aid or rescue training for either emergency medical technicians (EMT's), firefighters or those who may work or come in contact with farm-related medical emergencies. In one course description, the "Farm Medic Hands On Rescue Training Program" is described as "provid[ing] specialized techniques on handling dozens of different agriculture related accident situations."[3] We disagree with applicant's assertion that these references "do not establish any industry recognition of the term 'FARMEDIC' as being merely descriptive." Brief, p. 7. To the contrary, the evidence bears out that there are various different entities providing nearly identical educational services to applicant's recited services and who use the term "Farmedic" to describe the subject matter for the courses or seminars. As such, FARMEDIC immediately describes, without conjecture or speculation, the subject matter of applicant's educational services, namely, providing seminars and courses in training and instruction for emergency services personnel and the agricultural community in connection with farm-related fire and medical emergencies.

[3] Moultrie Technical College website (www.moultrietech.edu). Printout attached to December 19, 2007 Office Action.

Although most of the references show the term "Farmedic" beginning with an uppercase letter "F", the term is used by so many different institutions and in news articles using this term, without attributing a common source for the services. In other words, the evidence does not suggest that the term is being used as a source-identifier. Thus, to the extent that usage of an uppercase "F" may be construed as indicating trademark use, this does not appear the case. Instead, we conclude the evidence suggests that the term "Farmedic" is used by many different persons in a merely descriptive, if not generic, fashion to denote a type of course or other mode of instruction that promotes safety and first-aid training in an agricultural setting.

Applicant's suggestion that the examining attorney's evidence possibly points to usage of the term "Farmedic" by persons affiliated with applicant's purported predecessors-in-interest, including Cornell University, is simply not supported by the evidence. Indeed, applicant has not submitted any evidence to show that it has acquired trademark rights, or any other rights, from Cornell University. Applicant's argument is just that, mere argument and, without any supporting evidence, we find no reason to treat this argument, or the underlying premise

thereto, as fact. See, *In re Vsesoyuzny Oordena Trudovogo Krasnogo Znameni*, 219 USPQ 69, 70 (TTAB 1983) ("Unfortunately we have no evidence of record to this effect...assertions in briefs are normally not recognized as evidence"), citing *In re Simulations Publications, Inc.*, 187 USPQ 147 (CCPA 1975). The CCPA has noted in a case regarding arguments of counsel, a party "had ample opportunity to submit rebuttal evidence but failed to do so, placing his faith in the arguments of counsel, which are not evidence." *Peeler v. Miller*, 535 F.2d 647, 190 USPQ 117, 121 (CCPA 1976). *See also Enzo Biochem Inc. v. Gen Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence"). Likewise, as to the now-cancelled registration, there is simply no evidence that it was owned by any of applicant's predecessors-in-interest. Instead, Office records indicate that the registration was owned by one corporation and assigned to a second corporation (neither of which appears to be related to Cornell University or applicant) before being cancelled.[4] And, we do not hesitate to add that, even if applicant were able to establish that a predecessor-in-interest once owned the now-cancelled registration, it would have little effect on

[4] See footnote 2.

our decision herein. The registration was cancelled in August 1993, and it is possible that any trademark rights the owner of the registration had may have lapsed during the last fifteen years.

In addition to our finding that applicant's mark itself, FARMEDIC, is a term used to merely describe the subject matter of the same type of instruction or educational services as those of applicant, we also agree with the examining attorney's contention that applicant's mark will also be perceived by consumers as a "telescoped" combination of the descriptive terms "farm" and "medic." Based on the dictionary definitions made of record by the examining attorney, both terms are clearly descriptive in connection with the recited educational services concerning "farm-related...medical emergencies." The evidence of record also includes several references to the phrase "farm medic", i.e., as two separate words, being used to describe similar courses of instruction or those trained in the same field.

The registrability of a mark created by combining only descriptive words depends on whether a new and different commercial impression is created or the mark so created imparts an incongruous meaning as used in connection with the goods or services. *In re Tower Tech, Inc.*, 64 USPQ2d

1314 (TTAB 2002). However, the mere combination of descriptive words to form a telescoped mark does not automatically create a new non-descriptive word or phrase. See, e.*g.*, *In re Wells Fargo & Co.*, 231 USPQ 95 (TTAB 1986) (EXPRESSERVICE merely descriptive of banking and trust services); *In re BankAmerica Corp.*, 229 USPQ 852 (TTAB 1986) (PERSONALINE is merely descriptive of consumer loan services in which a personal line of credit is provided); *In re U.S. Steel Corp.*, 225 USPQ 750 (TTAB 1985) (SUPEROPE merely descriptive of wire rope); *In re Gagliardi Bros., Inc.*, 218 USPQ 181 (TTAB 1983) (BEEFLAKES is merely descriptive of thinly sliced beef).

In line with the cases cited above, we find that there is no thought process required to determine the subject matter of applicant's educational services upon viewing applicant’s mark in connection with the services. The telescoped combination of the descriptive words “farm” and “medic” creates no incongruity and no imagination is required to understand the nature of the services.

In summary, we find that the evidence supports the examining attorney’s refusal to register applicant’s mark on the basis the mark is merely descriptive of the recited services. Specifically, we find that the mark FARMEDIC immediately describes, without conjecture or speculation,

the subject matter of applicant's educational services, namely, providing seminars and courses in training and instruction for emergency services personnel and the agricultural community in connection with farm-related fire and medical emergencies.

Decision: The refusal to register is affirmed.