

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

Mailed:  
July 31, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

\_\_\_\_\_  
Trademark Trial and Appeal Board

\_\_\_\_\_  
In re Virgel M. Allen

\_\_\_\_\_  
Serial No. 78240344

Virgel M. Allen, pro se.<sup>1</sup>

Howard Smiga, Trademark Examining Attorney, Law Office 102  
(Thomas V. Shaw, Managing Attorney)

\_\_\_\_\_  
Before Walsh, Cataldo and Wellington, Administrative  
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Virgel M. Allen, an individual, has appealed from the final refusal of the USPTO examining attorney to register the mark LIFETIME WARRANTY for "clothing, namely, bodysuits, caps, cardigans, coats, dresses, hats, hosiery,

\_\_\_\_\_  
<sup>1</sup> Applicant's appeal brief was filed by counsel for applicant at the time, Karla Shippey of Law Offices of Karla Shippey. Pursuant to the Board's orders dated June 5, 2007 and August 9, 2007, Ms. Shippey has withdrawn as counsel of record in this case and applicant is representing himself.

jackets, jeans, jumpsuits, motorcycle gloves, overalls, pajamas, pants, shirts, pull-overs, skirts, shoes, shorts, slacks, ski gloves, socks, suits, sweatshirts, sweatpants, sweatshorts, sweatsuits, swimwear, sweaters, t-shirts, tank tops, tops, trousers, undergarments and vests.”<sup>2</sup>

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant’s mark is merely descriptive of his identified goods.

The appeal has been fully briefed.<sup>3</sup> We affirm the refusal.

It is the examining attorney’s position that “the prospective purchaser of such goods, i.e., a purchaser of clothing - will have no problem determining that LIFETIME WARRANTY relates to clothing which features a guarantee that the product would be replaced or exchanged no matter the condition.” Brief, (unnumbered) p. 11. In support of his position, the examining attorney has made of record

---

<sup>2</sup> Application Serial No. 78240344, filed April 21, 2003, based on Section 1(b) of the Trademark Act (intent-to-use).

<sup>3</sup> An oral hearing was requested by applicant and was scheduled by the Board for May 15, 2008. However, the hearing did not take place because, without any explanation, applicant (or counsel for applicant) did not appear on the scheduled date.

definitions of the terms "lifetime" and "warranty." We take notice of the following definitions:<sup>4</sup>

Lifetime: the duration of the existence of a living being (as a person or an animal) or a thing (as a star or a subatomic particle)

Warranty: a usually written guarantee of the integrity of a product and of the maker's responsibility for the repair or replacement of defective parts.

The examining attorney also attached internet evidence regarding third-party usage of the term "lifetime warranty."<sup>5</sup> This evidence essentially comprises advertisements wherein the term "lifetime warranty" is used by the advertisers to tout the quality of their goods. Because the examining attorney only attached one page from each website, the exact nature or purpose of the goods being advertised is not always clear. However, we are able to discern that the term is used on a variety of advertised goods which include: hand and power tools, knives, telecommunications hardware, a "parasite zapper", wireless

---

<sup>4</sup> The American Heritage Dictionary of the English Language: Fourth Edition (2000). It is well settled that the Board may take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n.7 (TTAB 1981). We note these definitions are essentially the same as those attached by the examining attorney to the Office Action dated September 16, 2003.

<sup>5</sup> Attached to Office Action March 4, 2005.

dog fences, vision-related apparatus, carrying cases for portable electronics, bird feeders, furniture, windows, and computer memory products.

The examining attorney also relies on the following statement made by applicant during the prosecution of his application in describing his goods<sup>6</sup>:

[T]he Applicant's products are not "warranted for the life of the product." Rather, a consumer who buys the goods is additionally and simultaneously buying basically a right of exchange-not a warranty. At a date after the initial sale, the consumer may exchange the initial product for a similar product of similar quality but having a different design on it-**regardless of the condition of the initial product at the time of the exchange**. The consumer can select the design from among a portfolio of designs offered, and the consumer then obtains a brand new product with a new design and pays only for the cost of the design applied. **The consumer is allowed to make this exchange any number of times during the consumer's lifetime regardless of the condition of the product exchanged.**

[Emphasis added by the Examining Attorney in his Brief at (unnumbered) p. 11].

Applicant, on the other hand, argues that his mark is not descriptive when used in connection with clothing. Applicant asserts that the legal resource, Black's Law Dictionary, does not provide a definition for "lifetime warranty," but acknowledges that the term is used with respect to certain goods. However, applicant puts forth that "lifetime warranty" has no significance to consumers

---

<sup>6</sup> Applicant's response (dated February 3, 2004) to Office Action.

of textiles and clothing because such goods are not "durable goods," i.e., goods designed to be used repeatedly over a long period. Applicant explains that "[t]he nature of goods in this [clothing] industry is that they have a relatively short life span...[and] it has not made economic sense, and therefore this term has no meaning for the average consumer of clothing and textile." Brief, p. 2. As to others' use of the term, he states that the "only significance of the term 'LIFETIME WARRANTY' to the average consumer of goods in other industries and trades that use this term is to satisfy the consumer that the *products will be replaced if defective or worn out before the period of warranty expires.*" *Id.*, p. 5 (emphasis in original). Applicant counters that the internet evidence submitted by the examining attorney showing third-party use of the term "lifetime warranty" actually "underscore[s] the fact that this term is used other than for textile and clothing." *Id.* at p. 4. And, as a result, applicant argues that his mark "evokes a commercial impression previously unknown in the textile and clothing industry" and that consumers are "surprised and curious about the meaning because it is incongruous when applied to Applicant's goods." *Id.* at p. 8.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(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 Abcor Development Corp.*, 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 to be 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); *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 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; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Neither the examining attorney nor applicant introduced a definition of the phrase "lifetime warranty," and the Board has been unable to locate a definition upon which we may take judicial notice. Nonetheless, based on the definitions of the terms "lifetime" and "warranty," as well as the evidence of third-party use, we conclude that a "lifetime warranty" is used to describe some level of guarantee of the integrity or quality of a product for a period of time and that there is some degree of responsibility of the seller to repair or replace the product. The details of the actual warranty provided may differ; for example, the internet evidence submitted by the examining attorney demonstrates that a "lifetime warranty" may have any one of the following possible meanings:

The one-piece seamless aluminum roof comes with a Lifetime Warranty to the original owner and the roof material shall be free from rust through, corrosion, wear through, and leakage.  
[www.carmate-trailers.com]

SOG's Lifetime Warranty...All SOG products are guaranteed against defects in workmanship and materials through the life of the original owner.  
[www.sogknives.com]

Connect Tech Inc. provides a Lifetime Warranty for all Connect Tech Inc. hardware product and warrants that it is to be in good working order for the product's lifetime from the date of purchase...  
[www.connecttech.com]

Life Time Warranty & Service Agreement...Smith  
Equipment will repair or replace any Lifetime torch  
for as long as you own it FREE.  
[www.smithequipment.com]

CRAFTSMAN hand tools have a Lifetime Warranty...they  
are guaranteed forever...unconditionally, no questions  
asked. If one should ever fail to give you complete  
satisfaction, Sears will replace it, free of charge.  
[www.sears.com]

In the context of the goods identified in the  
application, i.e., a wide variety of clothing articles, we  
conclude that phrase "lifetime warranty" will be readily  
understood by consumers as denoting some guarantee from the  
seller as to the integrity or quality of the clothes for a  
certain period of time. Even if (as applicant contends)  
clothes wear quickly and have such a short life span, we  
are unconvinced that his mark LIFETIME WARRANTY is somehow  
incongruous with the idea of providing a "lifetime  
warranty" on such goods. We see no reason why consumers  
will not believe that they are receiving some guarantee as  
to the quality of the clothes upon viewing the mark  
LIFETIME WARRANTY. Applicant's argument is also belied by  
his own statement that he intends to allow exchanges of the  
clothes during the consumer's lifetime. And, although his  
warranty may differ from other warranties inasmuch as he  
intends to allow for exchanges for reasons other than  
defects, his mark LIFETIME WARRANTY would still be readily

Ser. No. 78240344

perceived by consumers of clothes as describing a key feature or characteristic of the clothes, i.e., that they are being sold with a guarantee.

For the aforementioned reasons, we find that LIFETIME WARRANTY merely describes the goods identified in the subject application.

**Decision:** The refusal of registration is affirmed.