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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jennifer H. Lyne

Serial No. 78357832
(filed January 26, 2004)

Robert C. Lyne of Thompson & McMullan, P.C. for Jennifer H. Lyne

Edward Nelson, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Taylor, Bergsman, and Wellington, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Jennifer H. Lyne filed an intent-to-use application for the mark MAN CAMP (in standard character format) for services originally recited as follows:

Providing physical training and instruction in occupational and life skills, in International Class 41.

During the prosecution of the application, applicant amended the recitation of services to the following:

Providing via the internet to others, who may be either male or female, instruction in occupational and life skills to develop self-sufficiency, handiness, and problem-solving competency, but not including

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services provided in a camp, in International Class 41.

The application has been refused registration on the ground that the mark is merely descriptive pursuant to Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1), and because the recitation of services, as amended, is indefinite and unacceptable. Trademark Rule 2.71(a), 37 C.F.R. §2.71(a).

Before we address the grounds for refusal, we find it helpful to briefly review the prosecution history of this application.

In his first Office Action (issued August 19, 2004), the Examining Attorney refused registration of applicant's mark MAN CAMP on the ground that it is merely descriptive of the recited services because "applicant is providing a 'camp' (a place of temporary structures) where man/men are trained or educated about occupational and life skills."

On April 27, 2005, applicant responded to the first Office Action arguing that her mark simply "evokes images of a 'camp'." She argues the mark is not descriptive of the recited services because CAMP is not "intended to refer to an actual, physical place," rather it is "intended to conjure up positive images." She also argues that MAN is

being used suggestively, namely, that "a person attends to learn to be a man."

On June 24, 2005, the Examining Attorney issued an Office Action making the descriptiveness refusal final. To support the refusal, he attached dictionary definitions of the terms "man" and "camp."

In response to the final refusal, applicant filed (on December 8, 2005) the amendment to her application's recitation of services.¹ Again, by way of the amendment, the recitation of services now reads:

Providing via the internet to others, who may be either male or female, instruction in occupational and life skills to develop self-sufficiency, handiness, and problem-solving competency, but not including services provided in a camp.

[Emphasis provided]

The amendment prompted the Trademark Examining Attorney to issue (on February 6, 2006) a short non-final Office Action wherein he stated the amended recitation of services is unacceptable because it "no longer makes reference to 'providing physical training' and the use of 'instruction' by itself broadens the scope of the recited services and can not be accepted," citing Trademark Rule

¹ On January 12, 2006, the Board received applicant's notice of appeal. On the following day, the Board issued an order suspending action on the appeal and restored jurisdiction to the Examining Attorney for consideration of the amendment.

2.71(a) and TMEP Section 1402.06. He continued the descriptiveness refusal "for reasons previously set forth in the prior office actions."

On July 29, 2006, applicant filed a response arguing that her amendment to the recitation is acceptable because the deletion of "physical training" does not broaden the original recitation of services. Applicant also argued that the term CAMP is not descriptive because the amended recitation contains the exclusion phrase, "but not including services provided in a camp."

On September 8, 2006, the Trademark Examining Attorney issued a Office Action reinstating the "finality" status of the refusal to register applicant's mark. He maintained the descriptiveness refusal. As to the recitation of services, the examining attorney did not address applicant's arguments in her response, but offered a completely new reason for not accepting the amended recitation of services based on the underlined phrase in the recitation of services provided above.² Specifically, he states that this exclusionary phrase ("but not including

² In the Office Action, the Examining Attorney states "[a]ll other requirements previously set forth have been satisfied." We assume that this does not refer to the refusal to accept the amended description of services even though the Examining Attorney changed the reasoning behind the refusal.

services provided in a camp") in the recitation of services needs clarification because "the language is contradictory, the instruction and skills attained as a result of applicant's intended services can in fact be provided in a camp. Applicant must amend this wording to specify the common commercial or generic name for the services. TMEP §1402.01."³

On February 14, 2007, applicant filed a request for reconsideration wherein she argued, *inter alia*, that "any exclusion is going to be to some degree contradictory to the general statement to which it refers." She also cited TMEP Section 1402.06 which provides, in part Under 37 C.F.R. §2.71(a), there is no general prohibition against specific types of limitations in identifications of goods and services, such as the use of negatives, exceptions or similar language. Limitations on identifications phrased in the negative or as exceptions are acceptable, if they are otherwise proper.

Applicant further contended that the term "services" in the exclusionary phrase clearly refers to and limits

³ The Examining Attorney's designation of this Office Action as "final" appears to have been premature inasmuch as this is the first time he objected to the exclusionary language. See TMEP Section 714.03 ["Final action is appropriate when a clear issue has been developed between the examining attorney and the applicant, *i.e.*, the examining attorney has previously raised all

applicant's recited services immediately preceding the phrase. The applicant also proposed substituting "specifically excluding" for "not including."

In denying applicant's request for reconsideration, the examining attorney elaborated a little further on his reasons for rejecting the exclusionary phrase. He stated that "[t]he breath (sic) of activities or services that can be offered in a camp are so broad and wide that the language suggested by applicant fails to meet the level of specificity required for the recitation of services."

The record includes several dictionary definitions of the terms "man" and "camp" and copies of printouts from third-party websites showing use of the phrase "man camp."⁴ The term "camp" is defined in the record, in pertinent part, as follows:⁵

1a. A place where tents, huts, or other temporary shelters are set up, as by soldiers, nomads, or travelers. **b.** A cabin or shelter or group of such buildings: *gathered branches and grasses for a makeshift camp; had a fishing camp in Vermont.* **c.** The people using such shelters: *a howl that awakened the whole camp.* **2a.** A place in the country that offers simple group

outstanding issues and the applicant has had an opportunity to respond to them."]

⁴ Dictionary definitions attached by the Examining Attorney to the June 24, 2005 Office Action. Website printouts were attached to the Examining Attorney's May 2, 2007 Office Action in addition to a second set of dictionary definitions for the terms "man" and "camp."

⁵ *The American Heritage® Dictionary of the English Language*, Fourth Edition (2000).

accommodations and organized recreation or instruction, as for vacationing children: *a girls' summer camp; a tennis camp.* **b. Sports** A place where athletes engage in intensive training, especially preseason training. **c.** The people attending the programs at such a place. **3.** Military service; army life. **4.** A group of people who think alike or share a cause; side: *The council members disagreed, falling into liberal and conservative camps.*

We turn first to the Examining Attorney's rejection of applicant's amendment to the recitation of services.

Trademark Rule 2.71(a) provides that the identification of goods and/or recitation of services may be amended to clarify or limit, but not to broaden, the identification of goods and/or services. As cited to by applicant, Section 1402.06(a) of the TMEP provides:

37 C.F.R. §2.71(a), there is no general prohibition against specific types of limitations in identifications of goods and services, such as the use of negatives, exceptions or similar language. Limitations on identifications phrased in the negative or as exceptions are acceptable, if they are otherwise proper.

Upon review of the parties' arguments and the evidence of record, we disagree with the position taken by the Examining Attorney. Instead, we find the recitation of services, as amended, to be acceptable. Specifically, we construe the exclusionary phrase at issue as limiting applicant's instructional services to not include any services rendered in a camp setting of the type indicated in the definitions. The Examining Attorney's argument that the term "camp" is so broad or vague so as to render the

recitation as meaningless is not well taken. Again, the relevant defined meanings of the term "camp" reference a type of physical place or location. The recitation, as amended, has therefore been limited to not include instructional services rendered within any of these places. Although the exclusionary phrase may be redundant because the services are already limited to being "provided via the internet", it is not otherwise improper.

We are cognizant of the possibility that applicant may actually intend to offer (or is already offering) her services in a "camp" setting of the type contemplated by the definitions. However, because this is an ex parte appeal of an intent-to-use application, the issue of whether or not applicant will render such services is not before us. We nonetheless note that any registration that issues based on the application before us will only cover the services identified in the recitation.

In view thereof, the Examining Attorney's refusal to register applicant's mark on the basis that the recitation of services is unacceptable as indefinite is reversed. We now turn to the remaining issue on appeal is the Examining Attorney's descriptiveness refusal under Section 2(e)(1). The examining attorney bears the burden of showing that a mark is merely descriptive of the identified

goods or services. See *In re Merrill, Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 21567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987).

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. See Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. See also *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985). The issue is whether

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someone who knows what the services are will understand the mark to convey information about them. *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).

After carefully reviewing the arguments and the evidence of record, we find that the mark MAN CAMP does not immediately describe, without conjecture or speculation, a significant characteristic or feature of the services, as amended, recited in the application. The Examining Attorney has not met his burden of establishing that the term CAMP is descriptive of applicant's instruction services which are "provided via the internet to others" and "do not include services provided in a camp."

From the outset, we candidly note that our decision is constrained by the scant record. The Examining Attorney concentrated his argument on a descriptiveness refusal based on application's original recitation of services, and submitted evidence that only supported that argument. Throughout the prosecution of the application and in his appeal brief, his argument has been essentially that MAN CAMP is merely descriptive because the instructional

services "can or will be made available to man (men) in a camp or camp like setting." Brief, p. 4. When applicant amended her recitation of services to specify that the services would be offered "via the internet" and "not including services provided in a camp", the Examining Attorney did not adapt his argument or proffer any new evidence to establish that the term CAMP or the mark MAN CAMP remains merely descriptive of the services. In particular, the Examining Attorney did not explain how a service provided via the internet can be rendered in a camp or camp-like setting. Thus, the use of the word "camp" in connection with providing a service via the internet is incongruous, and would take some thought or reasoning to associate the word "camp" with an Internet activity.

The only relevant evidence of record bearing on the issue of whether the term "camp" may be descriptive in relation to applicant's services consists of the dictionary definitions of the term and copies of printouts from third-party websites showing use of terms "man camp" and "camp." The definitions of record limit the term "camp" to a physical location or structure, e.g., a place for tents or camper vehicles, a place of summer recreation for children,

a prison camp, etc.⁶ (See definition of record recited in this decision.) None of the defined meanings of "camp" lend themselves to include or potentially describe services rendered via the internet.

As to the third-party website evidence, it also only shows use of the phrase "man camp" or the term "camp" to describe recreational activities being offered at a specific physical location or place. There is no indication from these websites that any of uses of the terms "camp" or "man camp" could also be used to describe applicant's instruction services provided via the internet. One website advertises a "Father & Son MAN CAMP in the Blue Ridge Mountains", over a three-day period, with directions to a specific location (Sandy Cove, MD), and featuring activities such as fishing, archery, canoeing, etc. Another website printout advertises "The Aspen Man Camp" as "Life changing, Butt Kicking, Fitness Adventures for the 'Real Man'" below a picture of several people in countryside, one of whom is holding a sword. The third

⁶ The only defined meaning of the term (as a noun) that does not reference a physical location is "a group of people who share the same ideas," e.g., members of the environmentalist camp. This defined meaning is not relevant to nor does it describe applicant's instructional services provided over the internet.

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website is from a radio station advertising a radio program on the subject of:

"one of the largest gas drilling companies has started housing some of its employees at the drill rigs themselves, to keep tables on them and enforce strict anti-substance polices. Aspen Public Radio's [reporter] visited a man camp near Parachute [town] and filed this report."

The radio program description clearly uses the phrase "man camp" to describe a physical location where employees are housed.

There is no evidence to suggest that internet-provided services, such as applicant's instruction services, may be rendered in a camp or camp-like setting. And, simply put, without any evidence in this regard, we can not make a finding that applicant's mark MAN CAMP, as a whole, is merely descriptive of applicant's services.

Decision: The recitation of services, as amended, is acceptable and the requirement for a more definite recitation is reversed. The descriptiveness refusal under Section 2(e)(1) of the Act is also reversed.⁷

⁷ The application will be forwarded to the Intent to Use division of the Office for issuance of a notice of allowance.