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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Attitudes in Dressing, Inc.

Serial No. 78463616

John C. Pokotylo of Straub & Pokotylo for Attitudes in Dressing, Inc.

Peter Bromaghim, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).¹

Before Holtzman, Zervas and Walsh, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

On August 6, 2004, Attitudes in Dressing, Inc. (applicant) filed an application to register PREMIERE COLLECTION in standard-character form on the Principal Register for goods now identified as:

bags, namely dance gear bags (based on intent to use in commerce), in International Class 18; and

women's and girl's dance, figure skating, gymnastic, cheering and aerobics apparel and accessories, namely,

¹ A different Examining Attorney acted on this application prior to this appeal.

tights, body suits, leggings, tee shirts, shirts, belts, shawls, shoulder wraps, leg warmers, and liturgical dance clothing, namely leotards, pullovers, skirts, hooded head wraps, blouses, pants, dresses, briefs, unitards, sashes, apron tops and capes (based on intent to use in commerce), and women's and girl's dance, figure skating, gymnastic, cheering and aerobics apparel and accessories, namely, warm ups, leotards, skirts, wraps, pullovers, cover-ups, sweaters, jumpers, jackets, pants, and shorts (based on use in commerce), in International Class 25.

The Examining Attorney has refused registration on the Principal Register on the ground that the mark merely describes the goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). Applicant argued against the refusal in its response; the Examining Attorney made the refusal final; and applicant appealed. Applicant and the Examining Attorney have filed briefs. We affirm.

A term is merely descriptive of goods 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. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and 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 in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods. See In re

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H.U.D.D.L.E., 216 USPQ 358, 359 (TTAB 1982); and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods identified in the application, and the possible significance that the term would have to the average purchaser of the goods because of the manner of use or intended use. In re Polo International Inc., 51 USPQ2d 1061, 1062 (TTAB 1999); and In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

When two or more merely descriptive terms are combined, we must determine whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, then the resulting combination is also merely descriptive. See, e.g., In re Tower Tech, Inc., 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER held merely descriptive of commercial and industrial cooling towers).

The Examining Attorney argues that PREMIERE COLLECTION is merely descriptive of the identified goods in both classes. The Examining Attorney states, "First, the term merely lauds the high quality and stylishness of the goods by describing them as PREMIERE." Examining Attorney's brief at 5. The Examining Attorney also argues that PREMIERE is merely descriptive because it conveys the idea

that the line of goods is "...the first line of clothing'—an 'introductory collection,' a 'debut collection' or simply a 'new collection,' each of which merely describes to consumers a quality or feature of the goods, namely, that they are new." Id. at 6. The Examining Attorney also argues that COLLECTION is merely descriptive, if not generic, as applied to the goods.

Applicant argues first that the Examining Attorney failed to consider the identified goods in determining that PREMIERE COLLECTION was laudatory. Applicant states, "*Indeed, in relation to the goods for which registration is sought, PREMIERE would evoke the unique commercial impression of a theatrical or dance performance to the average purchaser of the goods.*" Applicant's brief at 7 (emphasis in the original). Applicant also argues, without any supporting evidence, that "COLLECTION" is not merely descriptive here because the term is used to describe designers' seasonal "collections" of clothing, and not goods like dance apparel, "...where goods are more stable and do not change with the seasons..." Id.

"Laudatory terms," that is, terms which simply "puff" the merits of the goods, are generally regarded as merely descriptive. See In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (THE ULTIMATE BIKE

RACK held laudatory and merely descriptive); In re The Boston Beer Co., 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA held laudatory and merely descriptive).

We conclude that PREMIERE is merely descriptive of the goods identified in the application. The Examining Attorney provided a dictionary definition of "premiere" from The American Heritage Dictionary of the English Language (2000). At the outset we note that the definition specifies the following: "ETYMOLOGY: French *première* from feminine of *premier*, first." Accordingly, we view "premiere" and "premier" as equivalent, variant forms of the same term for purposes of our analysis. In particular, we conclude that either form would convey the same overall meaning and impression when used in a mark, such as PREMIERE COLLECTION. The definition specifies further "ADJECTIVE: First or paramount, premier."

This definition generally supports the Examining Attorney's position. We have consulted additional dictionaries which provide a more expansive definition of "premiere" or "premier" when used as an adjective, as it is

in PREMIERE COLLECTION, to aid in our consideration of the mark.² We note the following definitions:

Webster's Third New International Dictionary of the English Language Unabridged (1986):

"pre-mier... adj. ... 1: first in position, rank, or importance: CHIEF, PRINCIPAL, LEADING <the ~ place> <a ~ angling fish - J.L.B.Smith>..."

Random House Compact Unabridged Dictionary (special 2d ed. 1987):

"pre-mier... adj. 3. first in rank; chief; leading."
and

The New Oxford American Dictionary (2d ed. 2005):

"pre-mier... adj. [attrib.] first in importance, order or position; leading: *Germany's premier rock band| the premier national publication...*"

The Examining Attorney has also provided examples from various web pages. For example, the fashionstore.com site includes the following statement: "The highly anticipated premiere collection of JLo Clothes is now in retail stores nationwide." The alluringlooks.com site includes the following statement: "The premiere collection consists of vibrant colors, unusual prints, intricate patterns and a variety of fabrics from light wool and French lace, to silk charmeuse and chiffon." The arabdesigns.com site includes the following statement: "In Fall 2002, Lara Van Slyke

² We take judicial notice of these dictionary definitions. See 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).

turned heads as creative passion transformed her design of sensational shapes, spacious compartments and shimmering interiors into a premiere collection of luxurious Italian leather handbags."

The evidence indicates the descriptive use of PREMIERE in a laudatory sense as applied to goods generally, including the goods identified in the application, to tout goods as being the leading or best goods within a particular category. Furthermore, the evidences indicates the descriptive use of PREMIERE specifically in relation to clothing and bags as denoting a new line.

We find applicant's argument that relevant consumers would perceive PREMIERE to suggest "the unique commercial impression of a theatrical or dance performance" unpersuasive. The goods include dance gear bags and a wide range of clothing, well beyond clothing for use in a theatrical or dance performance. For example, the goods include clothing for use in cheering, aerobics and liturgical activities, and individual items, such as, tee shirts, shirts, belts, shawls, leg warmers, pullovers, warm ups, sweaters, jumpers, jackets, and shorts. We conclude that relelvent purchasers would not percieve a suggestion of a theatrical or dance performance when viewing PREMIERE

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COLLECTION as applied to these goods, as identified in the application.

Furthermore, we find applicant's arguments with regard to the significance of COLLECTION, as used in the mark, unpersuasive. In addition to the evidence we have already noted showing the use of the entire phrase PREMIERE COLLECTION in relation to clothing and bags, the Examining Attorney has also presented examples of numerous registrations for marks which include COLLECTION for clothing and other goods and services. These registrations show that "COLLECTION" has been treated as a descriptive, if not generic term. See, for example: Reg. No. 2716670 for the mark BIGIO COLLECTION on the Supplemental Register for clothing; Reg. No. 2978058 for the mark COLLECTION and Design on the Principal Register for clothing with "COLLECTION" disclaimed; and Reg. No. 2929610 for the mark BORICUA COLLECTION on the Principal Register for clothing with "COLLECTION" disclaimed.

Contrary to applicant's assertion, the evidence shows that "collection" is not only used to designate a seasonal line, but that "collection" is used generally to denote a line or grouping of related clothing or other goods, and in this case, a "COLLECTION" which is either the first or the purported leading line or grouping.

Furthermore, we conclude that there is nothing new and unique in the combination of terms in this mark which would render the combination anything more than the simple sum of its parts. See In re Bright-Crest, Ltd., 204 USPQ at 593.

Finally, we note that applicant has requested that we either reverse the refusal or that, "... the Board remand this application with any suggested amendments to the goods and/or disclaimers to the mark." We deny applicant's request for remand because it, in effect, seeks to reopen the application and we have no authority to do so in these circumstances. See Trademark Rule 2.142(g). During examination of the application, applicant could have either amended the identification of goods or proffered a disclaimer, but applicant did not do so. Furthermore, in view of our determination that the entire mark is merely descriptive, a disclaimer of one of the terms in the mark would not alter that determination.

In conclusion, we find that PREMIERE COLLECTION is merely descriptive of bags, namely dance gear bags, in International Class 18, and women's and girl's dance, figure skating, gymnastic, cheering and aerobics apparel and accessories, namely, tights, body suits, leggings, tee shirts, shirts, belts, shawls, shoulder wraps, leg warmers, and liturgical dance clothing, namely leotards, pullovers,

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skirts, hooded head wraps, blouses, pants, dresses, briefs, unitards, sashes, apron tops and capes, and women's and girl's dance, figure skating, gymnastic, cheering and aerobics apparel and accessories, namely, warm ups, leotards, skirts, wraps, pullovers, cover-ups, sweaters, jumpers, jackets, pants, and shorts, in International Class 25.

Decision: The refusal to register the mark under Section 2(e)(1) of the Trademark Act is affirmed.