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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pacific Coast Feather Company

Serial No. 78483981

Clark A. Puntigam of Jensen & Puntigam, P.S. for Pacific Coast Feather Company.

Doritt Carroll, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Bucher, Rogers and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

The Pacific Coast Feather Company (applicant) has filed an application to register CASSIA (in standard character form) on the Principal Register for goods ultimately identified as "pillows and fiber beds" in International Class 20 and "comforters, blankets, mattress pads" in International Class 24.[1]

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[1] Application Serial No. 78483981, filed September 15, 2004, alleging a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

The examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is deceptively misdescriptive of its goods.

When the refusal was made final, applicant appealed and briefs have been filed.

The test for deceptive misdescriptiveness has two parts. First it must be determined if the matter sought to be registered misdescribes the goods. If so, then it must be ascertained if it is also deceptive, that is, if anyone is likely to believe the misrepresentation. In re Quady Winery Inc., 221 USPQ 1213, 1214 (TTAB 1984). See also In re Phillips-Van Heusen Corp., 63 USPQ2d 1047 (TTAB 2002).

The examining attorney argues that applicant has "made it clear that, 'no part of applicant's goods are made from cassia' [and] [t]his satisfies the first part of the two-part test for deceptive misdescriptiveness." Br. p. 3. Applicant does not dispute that CASSIA misdescribes its goods. See Br. p. 3.

In support of her contention that the misdescription is deceptive, i.e., consumers are likely to believe the misrepresentation, the examining attorney asserts that at least some consumers would be familiar with the meaning of Cassia. She submitted the following definitions of CASSIA:

> 1. Any of various chiefly tropical or subtropical trees, shrubs, or herbs of the genus Cassia in the pea family, having pinnately compound leaves, usually yellow flowers, and long, flat or cylindrical pods.
>
> 2. a. A tropical Asian evergreen tree (Cinnamomum cassia) having aromatic bark used as a substitute for cinnamon. b. The bark of this tree.

The American Heritage Dictionary of the English Language (3d ed. 1992).

In addition, she submitted excerpts from various web pages showing the meaning of Cassia as a type of cinnamon, listing cassia as an ingredient in therapeutic pillows, listing cinnamon as an ingredient in eye and therapeutic pillows, and showing a discontinued decorative pillow called the Cassia pillow. See e.g., www.pajebynight.net, www.sensaria.com, www.warmspirit.com, wildsageskincare.com, store.bluegiraffespa.com, comfortbags.com, and sweet-dreams.com.

The examining attorney argues that "the term 'cassia' appears to be fairly well known, since it appears on lists of common spices and essential oils" and highlights one advertisement noting that "the Sweet Dreams pillow is referred to specifically as the 'cassia pillow.'" Br. p. 4. In addition, she notes that cassia "appears in a list that includes other pillows named with spices, for example, ginger, cranberry, and jasmine pillows." Br. p. 5. She

contends that "when used in connection with goods very similar to the applicant's goods, the word 'cassia' identifies a selling feature [and] consumers of such products are urged to purchase them because of their soothing and healing properties, properties that in part stem from the product's use of 'cassia'." Id. She concludes that the evidence shows that consumers are familiar with the notion that pillows and other related goods may contain spices or essential oils added for their soothing or healing properties and that consumers familiar with the word "cassia" "reasonably could believe that pillows and bedding items labeled 'cassia' in fact contain cassia." Br. p. 7.

Applicant argues that the term cassia is "obscure relative to the public's understanding of cassia [and that] any misrepresentation is not likely to be believed by the consuming public, even if they understand the meaning of the mark." Br. p. 3. First, applicant notes that there are two definitions for cassia and further applicant contends that the evidence overall is "insufficient to establish that the average consumer would know or understand in this case the meaning of the rather specialized term 'cassia'." Id. Moreover, applicant argues that "it is the cinnamon term which is used

commercially, not 'cassia' [and] there is no evidence...that the average consumer encounters the term 'cassia' in ordinary commerce." Id.

We cannot agree with applicant that the term is so obscure that no consumers would know its meaning. When we consider the dictionary definitions of the word CASSIA and use of the word CASSIA in the excerpts retrieved from the Internet, we find that at least some consumers would be familiar with the meaning of CASSIA as a form of cinnamon and are accustomed to seeing pillows that contain herbal ingredients including cassia. In re Quady, supra. However, there is no evidence of record to support a finding that consumers would expect comforters, blankets and mattress pads to contain an herbal ingredient. In this case, we find that it is not sufficient to assume that the custom of stuffing pillows with herbs would cause the consumer to believe the same has been done with comforters, blankets and mattress pads, and there is no evidence to establish such a connection.

In view of the above, we are persuaded that CASSIA when used in connection with pillows and fiber beds in International Class 20 would be deceptively misdescriptive.[2]

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[2] Although the record is not as clear with regard to the fiber beds, inasmuch as these goods are in the same class as the

However, we find that the record does not support such a finding as to the goods in International Class 24, namely, comforters, blankets and mattress pads.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed as to pillows and fiber beds in International Class 20 and reversed as to comforters, blankets and mattress pads in International Class 24.

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pillows, we affirm also as to the fiber beds. In re Analog Devices, Inc., 6 USPQ2d 1808 (TTAB 1988); Electro-Coatings, Inc. v. Precision National Corp., 204 USPQ 410 (TTAB 1979).