THIS OPINION IS NOT A PRECEDENT OF THE TTAB

Mailed:
June 6, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Intelligent Nutrients, LLC

Serial No. 78513904

Sherri L. Rohlf of Siegel, Brill, Groupner, Duffy & Foster, P.A. for Intelligent Nutrients, LLC.

Cynthia Sloan, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Quinn, Grendel and Mermelstein, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration[1] on the Principal Register of the mark FLAVOR-AROMATHERAPY (in standard character

---

[1] Serial No. 78513904, filed November 9, 2004. The application is based on applicant's allegation of bona fide intention to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

form) for goods and services identified in the application as follows:[2]

Class 1: Artificial sweeteners;

Class 3: Hair care products, namely shampoos, conditioners, spray and sculpting gels, hair color and waving lotion; skin care products namely moisturizers, toners, skin cleaning creams, lotions and gels, body and facial lotions, masks and astringents for cosmetics purposes; cosmetics, namely lipstick, eye shadow, foundation, blush, face powder, concealer, eye pencils, lip pencils and mascara; personal hygiene products, namely bath gels, beauty gels, eye gels, fragrances for personal use, body, cosmetic, skin, hair and face oils and lotions, skin creams, skin lotions, skin emollients, moisturizing oils and lotions, perfumes and colognes; and household cleaning products, namely all purpose cleaners, detergents for use on dishes, laundry detergents for use on fabric and cleaning preparations for use on floors, walls, windows and bathrooms; incense and room fragrances; food additives, namely essential oils for use in the manufacture of food and beverages, namely, candy, alcoholic and non-alcoholic beverages, in Class 3;

Class 4: Candles;

Class 5: Dietary supplements; room deodorants; throat lozenges;

Class 30: Foods, namely spices, teas, candy, coffee, candy breath mints and non-medicated lozenges, natural sweeteners and granola based snack bars;

Class 32: Powders, sprays and essences for use in making soft drinks, liqueurs and mineral waters; and

---

[2] Several amendments to the identification of goods and services were proffered by applicant in its appeal brief, i.e.: "natural sweeteners" moved from Class 1 to Class 30; corrected spelling of "concealer" in Class 3; and specification of the goods and services which are the subject of the Class 35 distributorship and retail services. In her appeal brief, the Trademark Examining Attorney has accepted these amendments. The Board shall enter these amendments into the application record.

Class 35: Wholesale distributorship, retail store, on-line store and mail order services featuring food products, hair care products, skin care products, cosmetics, personal hygiene products, perfumes and colognes, household cleaning products, essential oils, dietary supplements, beverages and beverage mixes, liquors, mineral water, natural and artificial sweeteners, and candles.

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that it is merely descriptive of the identified goods and services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).[3] After careful consideration of all of the evidence of record and the arguments of counsel (including evidence and arguments not specifically discussed in this opinion), we affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay,* 820 F.2d 1216, 3 USPQ2d 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

[3] The Trademark Examining Attorney also had made a final refusal under Trademark Act Section 2(d), 15 U.S.C. §1052(d), but has expressly withdrawn that refusal in her appeal brief.

idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *See 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 those 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). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). *See also In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American*

Greetings Corporation, 226 USPQ 365 (TTAB 1985). Finally, a mark which is merely descriptive of goods is also deemed to be merely descriptive of services involving those goods. *Cf. In re A La Vielle Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001).

Applying these principles to the present case, we find as follows.

According to the dictionary definition made of record by the Trademark Examining Attorney, "flavor" is defined as "distinctive taste; savor." The American Heritage Dictionary of the English Language (4th ed. 2000). This dictionary also includes an "archaic" definition of "flavor" as "aroma; fragrance." Based on this dictionary definition, we find that the word FLAVOR in applicant's mark is directly and immediately descriptive of a feature or characteristic of certain of the identified goods. The artificial sweeteners in Class 1, the food additives in Class 3, the dietary supplements and throat lozenges in Class 5, the food products in Class 30 and the beverage products in Class 32 all are products as to which a key characteristic or feature is their flavor. The mere descriptiveness of FLAVOR is further evidenced by the ten third-party registrations made of record by the Trademark Examining Attorney, which are of marks which include FLAVOR

and in which FLAVOR is disclaimed or registered pursuant to Section 2(f), and which cover a variety of food and beverage products as well as medicinal products.

The record shows that "aromatherapy" is defined as "the use of natural essential oils in a variety of treatments to relieve symptoms, promote healing, and reduce tension." The Penguin English Dictionary (2000). Also made of record by the Trademark Examining Attorney are ten third-party registrations of marks which include AROMATHERAPY and in which the word is disclaimed or registered pursuant to Section 2(f). These registrations cover a variety of goods including personal care products such as skin care and hair care products, cosmetics, fragrances, air fresheners, candles, and food products.

There also is evidence showing that the essential oils which are used in aromatherapy are ingredients in many of the goods identified in the application, being used in such products for the aromatherapy benefits they provide. See applicant's own website (www.intelligentnutrients.com):

> Flavor-aromatherapy oils can be added to drinks and desserts, taken directly in specified dosages, or worn on the body for added nutrition and function. They can also be worn on the body for additional nutritional and aromatic benefit; An on-site chocolatier will offer "flavor aromatherapy" treats – 100% organic chocolate nutraceuticals infused with various essential

> oils and herbal extracts to address specific health requirements.

See also:

- www.kathysherbshop.com:

> Essential oils are wonderful plant concentrates that are used as fragrances, massage oils, in aromatherapy, topically, internally, and medicinally. ... Essential oils are fun to use at home because of their many uses. ... Allspice Berry Oil: this distilled oil is a natural flavor that can be used in cooking as well as aromatherapy. Basil Oil: This sweet-tasting distilled oil can be used as a flavoring and in aromatherapy. ... Grapefruit Oil: this cold-pressed oil has an uplifting, pleasant aroma that can be used in foods for flavor or in aromatherapy.

- www.leydet.com: "Cooks all over the world are discovering the wonderful qualities of essential oils extracted from herbs and plants ... and many other fragrant essences can be taken orally and used to enhance the flavor and healing properties of your food. Aromatherapy in your daily life...";

- www.uncommonscents.com: "Filled with all natural essential oils, salts, minerals, scents and flowers, Bath Ice Cream is designed to fizz when it comes in contact with water. Each Bath Ice Cream Flavor creates a carbonating reaction that releases its oils, minerals and scents into

the tub and air ... The aromatherapy based flavors will last beyond your bathroom walls...";

- www.wqn.tolshop.com: offering a gift basket which includes "a set of two fruit flavor aromatherapy soaps";

- www.aroma-massage.com: "Aromatherapy Self Care Products ... Aroma Natural Aromatherapy Candles: These are the best, most authentic aromatherapy candles on the market. Each 'flavor' features aromatherapy-grade essential oils in sumptuous combinations and beautiful natural colors." Choices include "peppermint and eucalyptus," "orange and lemongrass," and "grapefruit and petitgrain."

Based on this evidence, we find that AROMATHERAPY is merely descriptive of the goods identified in the application, all of which present or feature their pleasant scent as an important characteristic.

Applicant argues that although the words FLAVOR and AROMATHERAPY, considered separately, might have descriptive significance as applied to the goods, the combination of the two words into FLAVOR-AROMATHERAPY results in a composite mark which is incongruous and thus inherently distinctive. Applicant argues: "In this case, the word combination of "FLAVOR-AROMATHERAPY" is incongruous in that the sense of taste or flavor is not related to

aromatherapy, which is defined as 'the use of essential oils in a variety of treatments to promote healing and reduce tension.'" We are not persuaded by this argument.

First, "flavor" and "aromatherapy" are not an incongruous combination because the record is replete with examples showing that aromatherapy scents and varieties are called "flavors." In addition to the websites quoted above which use "flavors" to describe aromatherapy scents (www.uncommonscents.com - "the aromatherapy based flavors will last beyond your bathroom walls..."; www.wqn.tolshop.com - "a set of two fruit flavor aromatherapy soaps"; and www.aroma-massage.com - "each 'flavor' features aromatherapy-grade essential oils in sumptuous combinations") see also the other websites of record which do likewise, including:

- www.drugpolicy.org: "The device is to be used in conjunction with an aromatherapy flavor delivery device such as an aromatherapy hookah waterpipe";

- www.all-candles.com: "The light lemon flavor of this lemongrass aromatherapy candle blends well with other herbs"; and

- Packaging Digest (Feb. 1998): "ANR can attest, there's been a profusion of aromatherapy products in every conceivable flavor and form."

Second, and more significantly, the evidence of record shows merely descriptive use of the very term sought to be registered by applicant. From the websites cited above, see, e.g., www.wqn.tolshop.com: "a set of two fruit flavor aromatherapy soaps"; and www.aroma-massage.com: "each 'flavor' features aromatherapy-grade essential oils..." Applicant's own website (www.intelligentnutrients.com) includes the following merely descriptive usage of the term:

> The IN will also feature flavor-aromatherapy essential oils and highly nutritional oils...; Flavor-aromatherapy oils can be added to drinks and desserts, taken directly in specified dosages, or worn on the body for added nutrition and function. They can also be worn on the body for additional nutritional and aromatic benefit; An on-site chocolatier will offer "flavor aromatherapy" treats – 100% organic chocolate nutraceuticals infused with various essential oils and herbal extracts to address specific health requirements.

Based on all of the evidence as discussed above, we find that FLAVOR and AROMATHERAPY each are merely descriptive of applicant's goods and services, and that the combination of the two words does not create an incongruous or otherwise inherently distinctive composite.

We note applicant's argument that there is a third-party registration of record of the mark FLAVOR THERAPY

(FLAVOR disclaimed) for essential oils used in connection with food and beverages, medicinal products, personal care products, and vitamin/mineral supplements. Applicant argues that this registered mark is more descriptive than applicant's mark is, yet it is registered. We are not persuaded. Each case must be decided on its own record, and the presence of other arguably similar marks on the register does not justify registration of an applicant's mark where the evidence of record clearly establishes the mere descriptiveness of that mark. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

In summary, we conclude without doubt that FLAVOR-AROMATHERAPY is merely descriptive of the goods (in Classes 1, 3, 4, 5, 30, and 32) identified in applicant's application. We also find that the mark is merely descriptive of the recited Class 35 services which involve or consist of the wholesale and retail selling of such goods. *Cf. In re A La Vielle Russie, Inc., supra*. The mark therefore is unregistrable pursuant to Trademark Act Section 2(e)(1).

Decision: The refusal to register is affirmed.