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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pure Plant Beauty, Inc.

Serial No. 78551219

Amanda V. Dwight of Dwight Law Group for Pure Plant Beauty, Inc.

John S. Yard, Trademark Examining Attorney, Law Office 115
(Tomas V. Vlcek, Managing Attorney).

Before Seeherman, Drost and Zervas, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Pure Plant Beauty, Inc., assignee of Tina Rocca
Lundstrom, has appealed from the final refusal of the
Trademark Examining Attorney to register PURE PLANT BABY
for the following goods in Class 3:

Skin care products, namely, facial
cleansers, under eye creams, facial
creams, facial emulsions, facial masks,
and facial scrubs; body care products,
namely, body creams and lotions, hand
creams and lotions, personal
deodorants, body scrubs, exfoliants for
the face and body, non-medicated foot
creams and lotions, massage oils; bath

products, namely, bath and shower gels, bath and shower foams, bubble baths, milk baths, non-medicated bath salts, bath oils, bath crystals, bath pearls, body washes, bath powder, and skin soap; color cosmetics; scented products, namely, perfumes, potpourri, essential oils for personal use, and essential oils for use in the manufacture of scented products; and hair care products, namely, hair care preparations, hair cleaning preparations, hair conditioners, hair rinses, and hair styling preparations.¹

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 its identified goods.

Applicant and the Examining Attorney have filed briefs. In its brief applicant states, at footnote 1, that "the examining attorney also references the attached pages from the applicant's website," and states that these pages show that applicant manufactures and sells candles. Applicant did not attach any pages to its brief, nor does it appear that any of the website pages submitted by the Examining Attorney are from applicant's current or previous website. In any event, to the extent that applicant had intended to submit pages from its website with its appeal

¹ Application Serial No. 78551219, filed on January 20, 2005, based on Section 1(b) of the Trademark Act (intent-to-use).

brief, such evidence would be untimely if it had not been submitted prior to the filing of the appeal. See Trademark Rule 2.142(d). On another point with respect to applicant's brief, we note that in many instances applicant failed to provide USPQ citations for the cases it cited.

"When cases are cited in a brief, the case citation should include a citation to *The United States Patent Quarterly* (USPQ), if the case has appeared in that publication."

TBMP §801.03. As for the Examining Attorney's brief, he states, at footnote 2, that applicant's mark is part of a family of PURE PLANT marks for similar goods, and this emphasizes the unitary nature of the "pure plant" component of the mark. He apparently bases this assertion on the fact that applicant claimed ownership of two applications, Serial No. 78405148 for PURE PLANT SPA and No. 78516603 for PURE PLANT BEAUTY, which had originally been cited as potential bars to the registration of the subject application. A mere claim of ownership of two applications (one of which has been published and for which a notice of allowance has issued, and the other of which has been abandoned) does not establish a family of marks, nor does it establish that PURE PLANT is a unitary term.

It is the Examining Attorney's position that PURE PLANT BABY "immediately and logically describes that

applicant's goods are cosmetic, bath and body products for babies which feature pure plant content, extracts, oils or derivatives." Brief, p. 5. Specifically, the Examining Attorney asserts that "pure plant" is a term of art which denotes something derived entirely from plants, such as pure plant extracts, oils, essential oils or other ingredients, while "baby" means a very young child, and that when these terms are combined as PURE PLANT BABY "the mark immediately and directly conveys information about the goods, namely, that the goods are pure plant based products for babies.

In support of his position the Examining Attorney has made of record definitions of the individual words in the mark,² as well as excerpts of articles taken from the NEXIS database, and from websites, including the following:³

Pure: 1. Having a homogeneous or uniform composition; not mixed: *pure oxygen*. 2. Free from adulterants or impurities: *pure chocolate*.

Plant: 1. *Botany*. a. Any of various photosynthetic, eukaryotic, multicellular organisms of the kingdom Plantae characteristically producing embryos, containing chloroplasts,

² The definitions are taken from The American Heritage Dictionary of the English Language, 3d ed. © 1992.

³ We have not given any weight to the NEXIS evidence of articles taken from foreign publications, or foreign websites, since we cannot determine to what extent customers in the United States have been exposed to them.

having cellulose cell walls, and lacking the power of locomotion.

b. A plant having no permanent woody stem; an herb.

Baby: 1. a. A very young child; an infant.

The aromatherapy collection includes scented soap, body wash, oil, lotion and bath salts, all handmade with pure plant ingredients from a farm in the small Czech village of Ostra.

"The Dallas Morning News," May 5, 2005

We suggest Aveda Tourmaline Charged Protecting Lotion SPF 15 (\$38; aveda.com), prepared with pure plant extracts plus the mineral tourmaline...

"Natural Health," February 1, 2005

The line, available at Bath & Bodyworks, offers products such as Elasticity Belly Oil, which contains pure plant extracts that aim to prepare skin for stretching.

"Omaha World-Herald," September 9, 2004

The addition of pure plant essential oils transforms Gautreau's recipe into body bars that offer both rich lather and natural herbal properties.

"Daily World," August 1, 2004

Boots Botanics--plant-based skin, hair, cosmetics, bath, body and aromatherapy products merging high technology with pure plant extracts.

"Chain Drug Review," April 12, 2004

Services include Swedish and deep tissue massage; body wraps such as salt glow, seaweed and pure plant extract;...

"Ventura County Star," February 29, 2004

...a list of fragrances to hunt for, which usually fluctuates around 30 items—anything from inexpensive sprays thinly diluted with water or alcohol to rare perfumes with high concentrations of pure plant extract.

"Orlando Sentinel," September 3, 2003

Total Double Serum, an extra-firming potion by Clarins, has been souped up with more pure plant extracts to hydrate and revitalize skin.

"Pittsburgh Post-Gazette," June 8, 2003

Create an at-home facial with the June Jacobs Spa collection. The new line, made from pure plant extracts...

"Chicago Tribune," January 29, 2003

[Listing for product on which "australian organics" appears as trademark, and "pure plant soap" appears as name of product]

Drugstore.com

www.drugstore.com

[Listing for products on which "Grampa's Garden" appears as trademark, and "100% Pure Plant Essential Oil" appears as product name, below the scent for each bottle, e.g.,

"Lavender," "Eucalyptus," "Peppermint"]
Grampa's Garden

www.grampasgarden.com

Pure Plant Spa Lotion

[This heading appears on the website for what appears to be a spa called Ten Thousand Waves, and is part of the "Shopping" webpage, under the subgroups "Bath" and "Aroma Natural."

The text on the webpage that describes the products is "Made with organic botanicals, plant-derived ingredients and pure essential oils. Four fragrances: Ginger vanilla, Grapefruit

& Mandarin, Mint & Rosemary, Lavender &
Tangerine."]
www.tenthousandwaves.com

Baby Blossoms specializes in safe,
gentle, organic aromatherapy skin care
products for babies, children and
anyone with sensitive skin.
Our products are hand-crafted and
formulated with 100% pure essential
oils and pure plant ingredients.
Baby Blossoms
Aroma therapy nectars
www.babyblossoms.com

Weleda Calendula Baby Soap 3.5 oz.
Weleda Calendula Baby Soap gently
cleanses and soothes even the most
delicate skin. With pure plant
ingredients, the beneficial
properties...
Yahoo! Shopping
<http://shopping.yahoo.com>

A mark is merely descriptive, and therefore prohibited from registration under the provisions of Section 2(e)(1), if it immediately conveys knowledge of the ingredients, qualities or characteristics of the goods or services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). On the other hand, if a mark is suggestive, it is registrable. A suggestive mark is one for which imagination, thought or perception is required to reach a conclusion as to the nature of the goods or services. Id. Further, there is but a thin line of distinction between a suggestive and a merely descriptive term, and it is often difficult to determine when a term

moves from the realm of suggestiveness into the sphere of impermissible descriptiveness. In re Recovery, Inc., 196 USPQ 830 (TTAB 1977).

With respect to the Examining Attorney's position that applicant's mark is merely descriptive of goods for babies, we note that many of the goods listed in the identification are not products that would be sold for use on babies, e.g., under eye creams, facial masks, facial scrubs, personal deodorants, exfoliants for the face and body, and color cosmetics. However, if a mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class. In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff'd without pub. op., 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989). Thus, we consider the question of descriptiveness in connection with those goods that are appropriate for use on babies, including soap, body lotion and hair cleaning preparations (shampoo).

In general, the evidence shows that the words "pure plant" are used in connection with "extract" or another term, and modify that term as part of a phrase. In applicant's mark, however, because there is no clear term for PURE PLANT to modify, this can give consumers a mental pause as they may either wonder what a PURE PLANT is or

does in connection with, for example, BABY lotion or, if they see PURE as modifying PLANT BABY, the incongruity of that combination is likely to give them pause. In either case, this "mental hiccup" is sufficient for us to conclude that the mark falls on the suggestive side of the suggestive/descriptive line.

As the case law recognizes, it is often difficult to determine when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness. In *re Recovery, Inc.*, supra. We acknowledge that our decision herein is not free from doubt, but it is well established that such doubt must be resolved in favor of the applicant. See *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987), citing *In re Aid Laboratories, Inc.*, 221 USPQ 1215, 1216 (TTAB 1983) (in deciding whether PEST PRUF for animal shampoo with insecticide is suggestive or merely descriptive, doubt is resolved in favor of applicant in holding the term merely suggestive of a possible end result of the use of applicant's goods); *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972) (any doubt in determining the registrability of THE LONG ONE for bread is resolved in favor of applicant "on the theory that any person who

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believes that he would be damaged by the registration will have an opportunity ... to oppose the registration of the mark and to present evidence, usually not present in the ex parte application, to that effect").

Decision: The refusal of registration is reversed.