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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Vintage Wine Biscuits, Inc.

Serial No. 78559508

Arthur G. Schaier of Carmody & Torrance LLP for American Vintage Wine Biscuits, Inc.

Linda M. Estrada, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Quinn, Hairston and Cataldo, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

American Vintage Wine Biscuits, Inc. has filed an application to register on the Principal Register the mark THE ADULT DESSERT SNACK for cookies in International Class 30.[1]

The trademark examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark

[1] Serial No. 78559508, filed on July February 3, 2005, based on an allegation of a bona fide intention to use the mark in commerce. The words DESSERT SNACK have been disclaimed apart from the mark as shown.

Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified goods.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We reverse the refusal to register.

The examining attorney contends that applicant's mark is merely descriptive because it "merely describes the nature of the goods as well as the consumers to whom the goods are directed." (Examining attorney's brief at unnumbered at 3). In support of the refusal, the examining attorney submitted three Internet printouts; two of the printouts contain references to "adult dessert," and the third printout contains a reference to "dessert snack":

> The bread pudding is served warm and nicely complimented with a bourbon sauce that makes this a very adult dessert.
> (Memphis Magazine, September 2003);
>
> Yuzu cheesecake made a more adult dessert.
> (Westchester Magazine, April 2006);
>
> Dessert Snack Ideas
> -Fruit juice bar
> -Jello with fruit
> -Fruit Newton Cookies (2)
> (http://www.texaschildrenpediatrics.org)

In addition, the examining attorney submitted definitions from The American Heritage Dictionary of the English Language (3rd ed. 1992) of "dessert" as "[a] usually

sweet course or dish, as of fruit, ice cream, or pastry, served at the end of a meal;" "snack" as "[a] hurried or light meal" and "[f]ood eaten between meals;" and "adult" as "[o]ne who has attained maturity or legal age" and "[i]ntended for or benefiting adults: *adult education*."

Applicant, in urging reversal of the refusal to register, does not dispute the descriptive significance of the term "DESSERT SNACK." Rather, applicant contends that:

> … the "adult" portion of Applicant's mark is a broad term that does not merely describe that Applicant's goods are to be consumed by adults. Rather, the "adult" portion of the Mark is intended to suggest that Applicant's goods are "sophisticated." Accordingly, Applicant respectfully submits that the mark "The Adult Dessert Snack," taken in its entirety, does not merely describe Applicant's goods, namely cookies.

(Applicant's brief, at 4-5).

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the goods in connection with which it is used, or intended to be used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Abcor Dev. 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. Furthermore, descriptiveness is not determined in the abstract, but in relation to the goods identified in the application, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods. In re Polo International Inc., 51 USPQ2d 1061, 1062 (TTAB 1999); and In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). In other words, the issue is whether someone who knows what the goods 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); In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

If, however, reasoning or imagination is required to determine the attributes or characteristics of the products associated with a mark, that mark is suggestive rather than descriptive. See In re Atavio, 25 USPQ2d 1361, 1362 (TTAB 1992). Even where individual terms are descriptive, combining them together may evoke a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods,

without the combination of terms creating a unique or incongruous meaning, then the resulting combination is also merely descriptive. See, e.g., In re Tower Tech., Inc., 64 USPQ2d 1314, 1317-18 (TTAB 2002). There is a narrow line between terms that are merely descriptive and those that are only suggestive. Id. (citing In re TMS Corp. of America, 200 USPQ 57 (TTAB 1978). Any doubt as to whether a mark is descriptive or suggestive is resolved in favor of publication of the mark for opposition. In re Conductive Systems, Inc., 220 USPQ 84, 86 (TTAB 1983); In re Morton-Norwich Prods., Inc., 209 USPQ 791 (TTAB 1981).

In this case, we find that the mark is registrable on the Principal Register, with a disclaimer of the words "DESSERT SNACK," inasmuch as we view applicant's mark THE ADULT DESSERT SNACK, in its entirety, as only suggestive. We are not persuaded by this record that there is a connection between adults and cookies such that the term "adult" would be viewed by prospective purchasers as designating a category of customers for cookies. For example, there is nothing in the record to indicate that there are types of cookies that are marketed primarily to adults. Further, it is not clear from this record what, if any, feature, characteristic or ingredient of cookies would appeal especially to adults as opposed to persons of

another age group. Thus, we are unable to conclude that the term "adult" would be perceived as describing the class of individuals to whom the goods were directed.

We find, therefore, that the mark THE ADULT DESSERT SNACK, when applied to applicant's goods, is suggestive and not merely descriptive. There is a certain ambiguity about the mark, and no information about any feature or characteristic of the goods is conveyed with a degree of particularity. Additional thought or imagination would be required on the part of prospective purchasers in order to perceive any significance of the mark THE ADULT DESSERT SNACK as it relates to applicant's goods, namely cookies.

To the extent that there is any doubt in this case, we have resolved that doubt, as we must, in applicant's favor.

Decision: The refusal to register is reversed.