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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Naturopathic National Council, Inc.

Serial No. 78851026

Howard M. Cohn, Esq. for Naturopathic National Council,
Inc.

Dominic Fathy, Trademark Examining Attorney, Law Office 108
(Andrew Lawrence, Managing Attorney).

Before Hairston, Holtzman and Zervas, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Naturopathic National Council, Inc. seeks to register
on the Supplemental Register the certification mark DOCTOR
OF NATUROPATHIC MEDICINE (standard character form, DOCTOR
disclaimed) for services ultimately identified as "medical
services featuring organic medicine, functional medicine
and natural healing."¹

¹ Serial No. 78851026, filed on March 31, 2006, which alleges
dates of first use of April 15, 2005. The application was
originally filed seeking registration on the Principal Register.
The examining attorney refused registration under Section 2(e)(1)
of the Trademark Act, and applicant amended to seek registration
on the Supplemental Register.

The application includes the following statement:

The certification mark, as used by persons authorized by the certifier, certifies that [the] services are provided by individuals who have successfully completed their undergraduate education and post-graduate education in the field of naturopathy from an accredited school, the individual's degree is legitimate, the individual has proven to be highly knowledgeable in the field of traditional naturopathy by successfully completing the board certification exam, the individual has successfully completed an internship of supervised practical training to further ensure public safety, the individual has successfully completed a jurisprudence exam to ensure compliance of [sic] the law as it relates to the field of traditional naturopathy, the individual is of legal immigration status, the individual has malpractice insurance, maintain[s] a standard of excellence through continuing education and that the individual maintains a good standing in the community.

The trademark examining attorney has issued a final refusal to register under Section 23 of the Trademark Act, on the ground that applicant's mark is generic for the identified services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs.

A mark is generic if it refers to the class, genus, or category of goods and/or services on or in connection with which it is used. In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001), citing H. Marvin Ginn Corp. v. Int'l. Ass'n. of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986).

The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question. Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue. Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services? (citations omitted)

H. Marvin Ginn Corp., 228 USPQ at 530.

The examining attorney has the burden of establishing by clear evidence that a mark is generic and thus unregistrable. In re Merrill Lynch, Pierce, Fenner and Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

In support of his position that the mark DOCTOR OF NATUROPATHIC MEDICINE is generic for the identified services, the examining attorney submitted the following dictionary definitions:

doctor: 1. A person, especially a physician, dentist, or veterinarian, trained in the healing arts and licensed to practice. 2a. A person who has earned the highest academic degree awarded by a college or university in a specified discipline.

b. A person awarded an honorary degree by a college or university. 3. *abbr.* Dr. Used as a title and form of address for a person holding the degree of doctor. The American Heritage Dictionary of the English Language (4th ed. 2000).

medicine: 1. The science of diagnosing, treating, or preventing disease and other damage to the body or mind. The American Heritage Dictionary of the English Language (4th ed. 2000).

naturopathy: A system of treatment of disease that avoids drugs, and surgery, and emphasizes the use of natural agents (as air, water, and herbs) and physical means (as tissue manipulation and electrotherapy).

naturopathic: adjective
Merriam-Webster Online Dictionary.

naturopath: a practitioner of naturopathy
www.mercksource.com

The examining attorney also submitted NEXIS articles showing what he views as generic uses of the term "doctor of naturopathic medicine." Examples include the following:

Aimee Gould Shunney, a *doctor of naturopathic medicine* and head of the wellness team at the hospital's Othmer Cancer Center, will conduct two hour-long seminars.... (New York Daily News, September 3, 2003);

Dr. Ellison, 35, a first assistant surgeon and a *doctor of naturopathic medicine*, said he founded the organization six years ago while at Presbyterian Hospital. (The Dallas Morning News, June 13, 2000);

By all accounts, Jane Gultinan, *doctor of naturopathic medicine*, is a competent, intelligent and personable practitioner. (The Seattle Times, December 6, 1998);

Children respond well to some herbal medicines, agrees Donald Brown, a *doctor of naturopathic medicine* in Seattle and author of *Herbal Prescriptions for Better Health* (Prima Publishing, \$16). (USA TODAY, July 13, 1998); and

But Sporn, a *doctor of naturopathic medicine*, is not licensed in Texas and can't legally practice his variety of "natural medicine" on Rachel or anyone else. (Fort Worth Star-Telegram, October 27, 1996).

In addition, the examining attorney submitted Internet printouts showing that a number of educational institutions offer "Doctor of Naturopathic Medicine" degrees or programs of study. Examples include the following:

The Naturopathic College's *Doctor of Naturopathic Medicine* is a four-year program that trains holistic primary care physicians.
<http://ww.ncnm.edu>;

The University of Bridgeport College of Naturopathic Medicine is a non-profit, co-educational professional institution which grants the *Doctor of Naturopathic Medicine* (N.D.) degree to graduates who successfully complete four academic years of study including clinical training.
<http://www.bridgeport.edu>;

For 100 years, National University of Health Sciences has been a leader in the field of complementary and alternative medical education. National's *Doctor of Naturopathic Medicine* program provides you with a rigorous curriculum that blends a thorough scientific foundation with comprehensive training in naturopathic treatments.
<http://www.naturalhealers.com>; and

The Southwest College *Doctor of Naturopathic Medicine* Program is completed in four years of year-round attendance.

<http://www.scnm.edu>

Applicant, in urging reversal of the refusal to register, presented no evidence to rebut the examining attorney's showing. Rather, applicant makes three arguments. First, applicant maintains that prior to issuance of the final refusal to register herein, the examining attorney originally approved the involved application for registration on the Supplemental Register, that the application was subsequently withdrawn, and that the examining attorney's decision to withdraw the application was improper. The decision by the examining attorney to withdraw the involved application, after it was approved for registration, is not appropriate subject matter for consideration by the Board in this appeal. Rather, this is a procedural matter and reviewable only by petition to the Director. Thus, we can give no consideration to applicant's arguments in this regard in reaching our decision herein.

Second, applicant argues that it is the only entity authorized to license medical professionals in the field of naturopathic medicine, and thus, legally entitled to use the mark DOCTOR OF NATUROPATHIC MEDICINE; that third-party

uses of the designation "Doctor of Naturopathic Medicine" are illegal; and that such illegal uses cannot serve as the basis for finding that applicant's involved mark is generic. Suffice it to say that applicant offered no evidence to support its contention that third-party uses of this designation are illegal, and we will not disregard the evidence of such uses in determining whether applicant's mark is a generic term.

Third, applicant argues that its mark "is not descriptive or generic but is a suggestive mark that has acquired secondary meaning" (Brief at 6). Because applicant amended its application to seek registration on the Supplemental Register, without condition, applicant has conceded that the mark is descriptive and secondary meaning is simply irrelevant. Thus, applicant cannot be heard to argue at the briefing stage of the proceeding that its mark is suggestive and/or has acquired secondary meaning.

We begin our analysis with a determination of the genus of the services at issue. The services which applicant certifies are identified as "medical services featuring organic medicine, functional medicine and natural healing." Thus, in this case, the genus or class of services is essentially naturopathic medical services. See *In re Council on Certification of Nurse Anesthetists*, 85

USPQ2d 1403 (TTAB 2007); and In re American Institute of Certified Public Accountants, 65 USPQ2d 1972 (TTAB 2003) [Genus of services is that described by applicant's chosen identification of services]. Next, the relevant public for these services consists of persons responsible for hiring medical professionals with training in the field of naturopathic medicine, e.g., hospital administrators, and the general public seeking naturopathic medical services.

This brings us to the question of whether the relevant public would understand the phrase DOCTOR OF NATUROPATHIC MEDICINE primarily to refer to naturopathic medical services. See H. Marvin Ginn, *supra*. The Nexis articles show uses by others of the term "doctor of naturopathic medicine" in a generic manner. By referring to the name of a specific medical professional in small letters, the authors use "doctor of naturopathic medicine" as a generic noun. In addition, the Internet printouts show uses of the phrase "Doctor of Naturopathic Medicine" in a generic manner to refer to a program of study and/or degree awarded in the field of naturopathic medicine.

We find that the evidence of record clearly and convincingly establishes that the mark DOCTOR OF NATUROPATHIC MEDICINE names a specific type of medical professional and that the phrase is recognized and

understood as such. Specifically, it identifies a medical professional in the field of naturopathic medicine.

A review of the specimen of record reveals that applicant's services consist of an examination and supervised internship for naturopaths, the successful completion of which certifies that he or she has achieved a level of competency in the field of naturopathic medicine. In our view, applicant's mark DOCTOR OF NATUROPATHIC MEDICINE is generic for applicant's services, which essentially are the providing of a certification program for naturopaths.

The designation "doctor of naturopathic medicine" should not be subject to exclusive appropriation, but rather should remain free for others in the naturopathy profession to use in connection with their medical services. In re Boston Beer Co. L.P., 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999).

Decision: The refusal to register is affirmed.