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Paper No. 11  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Barbara Cabott**

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Serial No. 75/370,361

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**David P. Cooper of Kolisch, Hartwell, Dickinson, McCormack & Heuser for Barbara Cabott.**

**John E. Michos**, Trademark Examining Attorney, Law Office 105 (**Thomas G. Howell**, Managing Attorney).

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Before **Simms, Hohein** and **Walters**, Administrative Trademark Judges.

Opinion by **Simms**, Administrative Trademark Judge:

Barbara Cabott (applicant), has appealed from the final refusal of the Trademark Examining Attorney to register the asserted mark MOVEMENT MEDITATION for educational services, namely, classes and workshops on movement therapy, meditation therapy and personal growth.<sup>1</sup> The Examining Attorney has refused registration under

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<sup>1</sup> Application Serial No. 75/370,361, filed October 8, 1997, claiming use since January 1, 1994.

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Section 2(e)(1) of the Act, 15 USC §1052(e)(1), and under Section 2(d), 15 USC §1052(d). The Examining Attorney and applicant's attorney submitted briefs but no oral hearing was requested.

We affirm both refusals.

The Mere Descriptiveness Refusal

The Examining Attorney argues that the mark MOVEMENT MEDITATION is merely descriptive of workshops, classes and counseling which provides instruction on meditation and movement therapy. Relying upon dictionary definitions and excerpts from the Nexis computer search system, the Examining Attorney argues that applicant's mark consists of the descriptive term "movement" added to the generic term "meditation," such that the combination describes movement and meditation training classes.<sup>2</sup>

Some of the excerpts relied upon by the Examining Attorney are set forth below:

Taoist movement/meditation classes are led by  
Lao Shih Susan Elkins of Jade Lady Meditation  
and start today...  
Anchorage Daily News, September 13, 1999

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<sup>2</sup> "Meditation" is defined in The American Heritage Dictionary of the English Language (3d ed. 1992) as '1. a. The act or process of meditating. b. A devotional exercise of or leading to contemplation. 2. A contemplative discourse, usually on a religious or philosophical subject."

These include healing movement therapy, which involves t'ai ch'i, a slow-movement meditation designed to balance thoughts; and qi-gong, a combination of movement, meditation and breath control to balance the flow of qi, or vital life energy, according to a Mind/Body Institute pamphlet.

The Jupiter Courier, June 13, 1999

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Chi-gong, movement meditation, eight-week introductory course...

The Detroit News, February 9, 1999

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...an accurate word for this presentation. As the shaikh explained, the dervishes are not performers but participants in a spiritual movement-meditation that has remained almost unchanged for centuries. The repetitive whirling is meant to be a kind of embodied cosmology...

Albuquerque Journal, October 25, 1998

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...religious community whose form of prayer and chant has drawn pilgrims of all ages from around the world. The simple, repetitive songs, augmented with movement meditations, are designed for all present to take part. The workshop will be held at...

Ventura County Star, October 3, 1998

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KAYE: A more spiritual connection is easily visible in this movement meditation class. Based on the martial art form tai chi, partners close their eyes and move with each other, coordinating their breathing...

"Saturday Morning," CBS News Transcripts, August 15, 1998

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What the author calls autokinetics is really a form of movement meditation--simple, rhythmic motions done while sitting or kneeling.. and as such, they should appeal to anyone who finds sitting still the toughest part of..

Newsday, March 10, 1998

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...whack, you have disease at which point a practitioner's response will be to use acupuncture, medicinal herbs, massage, diet and a movement meditation such as tai chi to restore balance and, consequently, health.

The Commercial Appeal, February 22, 1998

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...create imbalance, manifesting itself as disease. TCM practitioners seek to restore the balance through diet, acupuncture, massage, herbs, and movement meditation such as tai chi..

Idaho Falls Post Register, February 12, 1998

\* \* \* \* \*

Dhamma Dena Retreat Center, Joshua Tree. Retreat is held in silence and includes sitting, walking, sound and movement meditation.

The Press-Enterprise, August 6, 1997

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The Examining Attorney has also referred to the specimens of record, a brochure entitled "WHERE BODY MEETS MIND A MOVEMENT WORKSHOP for professionals in the healing arts," wherein the following description of applicant's services is set forth:

THE WORKSHOP

When body meets mind through movement, many possibilities open to you: integration, a feeling

of wholeness, a renewed sense of ease and joy. Where body meets mind through movement, you reach a level of awareness that is richer than thought alone. How body meets mind through movement is a discovery process that touches deeper dimensions of yourself, your environment and beyond.

In this workshop we will follow the elusive, respect the subtle and welcome the power of body-mind union--using movement as our bridge...

#### THE METHOD

You will be guided into Movement Meditation. Movement Meditation embraces gentle, guided movements that connect Body, Mind and Environment. Movement Meditation invites authentic connections through quiet attention and acceptance. It is a discovery process that goes deep into the dimensions of your essence to encourage self-care and heightened awareness.

Free movement, art and collage, percussion and sound will help your Integration Process and provide opportunities for fun and creativity. Some theoretical concepts will be presented. There will be a time for group sharing, to express and to learn from each other. No prior movement or art experience is necessary.

The brochure further indicates that applicant is a licensed psychologist and licensed massage therapist with experience as a movement therapist, who is "dedicated to restoring the relationship between body, mind and spirit--through movement."

Applicant, on the other hand, argues that her mark is suggestive because thought is needed to understand the relationship between the mark and applicant's services, which include movement therapy and meditation. Applicant maintains that she coined this alliterative phrase and that

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she is unaware of others who may use this same phrase. Concerning the Nexis evidence, applicant's states that there is no evidence that consumers use applicant's mark to describe her therapy services.

Upon careful consideration of this record, we believe that the Examining Attorney has established that applicant's mark is merely descriptive of her classes and workshops dealing with movement therapy, meditation therapy and personal growth. Purchasers and potential purchasers of applicant's services are likely to view applicant's mark as describing or naming the particular type of meditation services which applicant offers. The evidence and applicant's own brochure convey this merely descriptive significance.

The Likelihood-of-Confusion Refusal

The Examining Attorney has refused registration on the basis of Registration No. 1,918,419, issued September 12, 1995, for the mark MOVING MEDITATION ("MEDITATION" disclaimed) for "educational services, namely conducting aerobic exercise classes incorporating mediative [sic, should be "meditative"] techniques with various styles of aerobic movement; conducting seminars and workshops in the field of mind/body fitness." The Examining Attorney argues that the marks MOVEMENT MEDITATION and MOVING MEDITATION

refer to motion and meditation and that they are similar in sound and commercial impression. With respect to the services, the Examining Attorney argues that applicant's services involving movement therapy and meditation therapy are closely related to registrant's services involving exercise with meditative techniques and mind/body fitness. Both services involve movement and meditation classes, seminars and workshops, according to the Examining Attorney. These are the same or similar types of instruction, the Examining Attorney maintains. Further, because there is a no limitation in the respective descriptions as to classes of purchasers or channels of trade, these services may be offered to the same potential purchasers, according to the Examining Attorney.

Applicant, on the other hand, argues that the cited mark is "weak" and "descriptive" of registrant's classes, because participants in respondent's services meditate while aerobically moving, and because of certain third-party registrations which contain either the word "MOVING" or the word "MEDITATION."<sup>3</sup> Because registrant's mark is

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<sup>3</sup> Applicant lists such registrations as those covering the marks "TRANSCENDENTAL MEDITATION," "SIDDHA MEDITATION," "HIGH-TECH MEDITATION" and "MOVING TOWARDS RECOVERY." It should be noted that an applicant, who has not filed a petition to cancel a cited registration, may not attack that registered mark on the basis that it is merely descriptive. See *In re White Swan Ltd.*, 8 USPQ2d 1534 (TTAB 1988).

assertedly descriptive, applicant maintains that her mark may come closer without causing confusion. Applicant also maintains that the marks differ in sight, sound and meaning, with the word "MOVING" being used as an adjective in the registered mark, whereas in applicant's mark "MOVEMENT" is a noun that identifies the activity in which clients engage.

Concerning the services, applicant argues that registrant's services involve instruction in aerobic exercise but not in therapeutic meditation, whereas applicant's services are psychotherapy services which combine movement therapy and meditation. Applicant also argues that these services are offered in different channels of trade.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that confusion is likely. The marks "MOVING MEDITATION" and "MOVEMENT MEDITATION" are obviously very similar in sound, appearance and meaning. Also, registrant's exercise services involving meditative techniques and applicant's services involving movement and meditation therapy are closely related services. Concerning any alleged weakness in the registered mark, we observe that even weak marks are entitled to protection

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from confusingly similar marks. In sum, we believe that persons familiar with registrant's MOVING MEDITATION meditative exercises who then encounter applicant's MOVEMENT MEDITATION educational services involving movement and meditation therapy are likely to believe that these services come from or are sponsored by the same entity.

Decision: The refusals of registration are affirmed.