



The Trademark Examining Attorney issued a final refusal to register based upon Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that if applicant's proposed mark "DENIM PLACE" were used on these retail clothing store services, it would be merely descriptive of applicant's services.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

A mark is unregistrable under Section 2(e)(1) of the Trademark Act as merely descriptive of the services with which it is used if it immediately and forthwith conveys information about the characteristics, features or functions of those services. See 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 (CCPA 1978). Accordingly, the Trademark Examining Attorney contends that inasmuch as some items of clothing sold in applicant's store will be made of denim, this word would be descriptive of retail clothing store services. Since the word "place" is defined in *Webster's II New Riverside University Dictionary, inter alia*, as "...a business establishment...", the Trademark Examining Attorney contends that this word

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too is descriptive of applicant's services. He takes the position that the combination of these two descriptive words creates nothing new or incongruous. To the contrary, the Trademark Examining Attorney contends that as applied to the services recited in the application, joining these two words actually further enhances the descriptive meaning of each word considered alone. Finally, the Trademark Examining Attorney points to numerous third-party federal registrations where the term "place" is disclaimed because it is descriptive of retail business establishments.

Applicant argues that it "... will sell a wide variety of clothing, and not just clothing made of denim material..." Applicant concedes that the word "place" is "... sometimes used to refer to a business ... but PLACE is not used in this context in the present mark." Applicant also argues without further elaboration that the "... combination of the words DENIM and PLACE juxtaposes the words to form a unique commercial impression which is not merely descriptive of a clothing store." Accordingly, applicant argues that "DENIM PLACE" is suggestive, not descriptive, of these services.

While at times it may be difficult to distinguish between descriptiveness and suggestiveness, such is not the case here. The primary criterion in making this determination is whether consumers, upon seeing this mark

on these services, will immediately understand without any need for imagination, thought, or perception, the nature and character of applicant's proposed service. See In re Omaha National, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) [composite mark "FirsTier and design" (as phonetic equivalent of "first tier") is merely descriptive of banking services since consumers includes bank's corporate customers], and In re Harvestall Industries, Incorporated, 185 USPQ 187 (TTAB 1974) ["GRAINLAMP" held merely descriptive of electrical lamps used in storage bins for drying grain]. Using this criterion, applicant's mark is merely descriptive, not suggestive. No mental leap is required of prospective consumers for them to conclude that a clothing store trading under the service mark "DENIM PLACE" is probably a *place* of business selling clothing items made of *denim*.

We also note from the third-party registrations submitted by the Trademark Examining Attorney that the U.S. Patent and Trademark Office has consistently held a generic (or even merely descriptive) term plus the word "place" to be descriptive of retail store services involving goods accurately described by the preceding generic or descriptive term.

It is not disputed that applicant intends to sell some clothing made of denim material. As noted above, applicant, in its original application papers, voluntarily disclaimed the word "denim" apart from the mark as shown. The fact that items of clothing made of materials other than denim may well also be sold in applicant's store is not legally significant. The mark need not describe all of applicant's services to be merely descriptive and unregistrable under Section 2(e)(1) of the Trademark Act. Registration is correctly refused if a mark is merely descriptive of any of the goods or services for which registration is sought. See In re American Society of Clinical Pathologists, 442 F.2d 1404, 169 USPQ 800 (CCPA 1971) [the designation "REGISTRY OF MEDICAL TECHNOLOGISTS" held merely descriptive of applicant's recited services, *inter alia*, of establishing a roster of medical technologists], and In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505 (CCPA 1980) ["QUIK-PRINT" held merely descriptive of "same day" printing services (and related publishing services)]. Therefore, the dispositive question herein is whether the mark "DENIM PLACE" is merely descriptive of any of the services with which applicant intends to use the mark.

In answering this question, we hold that applicant's prospective purchasers will likely apply the ordinary meanings to the words "denim" and "place," and that the mark will thus readily describe for them applicant's services.

Decision: We affirm the refusal of the Trademark Examining Attorney under Section 2(e)(1).

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Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board