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Paper No. 9
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Commonwealth Sports Management, Inc.

Serial No. 75/198,670

David V. Radack of Eckert Seamans Cherin & Mellott for
Commonwealth Sports Management, Inc.

Alec Powers, Trademark Examining Attorney, Law Office 105
(Thomas Howell, Managing Attorney).

Before Hanak, Quinn and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Commonwealth Sports Management, Inc., a Pennsylvania corporation, has filed an application for registration of the mark "LIFE READINESS PROGRAM," (with the term "LIFE READINESS" disclaimed) for "educational services, namely, conducting classes, seminars, conferences and workshops for professional basketball players in the field of finance, health, communications and personal skills."¹

¹ Serial No. 75/198,670, in International Class 41, filed November 15, 1996, based upon an allegation of a *bona fide* intention to use the mark in commerce.

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 applicant's proposed mark, "LIFE READINESS PROGRAM," when used on these educational services, 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).

The Trademark Examining Attorney attached three separate dictionary entries to the initial Office action. These entries defining the words "life," "readiness," and "program." The Trademark Examining Attorney then argues that taking the ordinary meaning of each of these entries singly and putting them into a composite phrase, the resulting meaning is merely descriptive of the goods.

Applicant, in turn, argues that one could not necessarily discern the nature of these services from the word "program" as used within this composite mark, that the LEXIS/NEXIS stories having these three words together often refer to applicant's services, and that, indeed, the word "program" is not consistently disclaimed in third parties' federal registrations.

In analyzing the dictionary meanings of these three words, we look at those that the Trademark Examining Attorney contends describe applicant's services:

LIFE:² 6 : a way or manner of living

² Main Entry: life
1 a : the quality that distinguishes a vital and functional being from a dead body b : a principle or force that is considered to underlie the distinctive quality of animate beings -- compare VITALISM 1 c : an organismic state characterized by capacity for metabolism, growth, reaction to stimuli, and reproduction
2 a : the sequence of physical and mental experiences that make up the existence of an individual b : one or more aspects of the process of living <sex life of the frog>
3 : BIOGRAPHY 1
4 : spiritual existence transcending physical death
5 a : the period from birth to death b : a specific phase of earthly existence <adult life> c : the period from an event until death <a judge appointed for life> d : a sentence of imprisonment for the remainder of a convict's life
6 : a way or manner of living
7 : LIVELIHOOD
8 : a vital or living being; specifically : PERSON <many lives were lost in the disaster>
9 : an animating and shaping force or principle
10 : SPIRIT, ANIMATION <there was no life in her dancing>
11 : the form or pattern of something existing in reality <painted from life>
12 : the period of duration, usefulness, or popularity of something <the expected life of flashlight batteries>

READINESS:³ the noun form of the word "ready," which in turn is defined as, 1 a : prepared mentally or physically for some experience or action

PROGRAM:⁴ 4 : CURRICULUM

13 : the period of existence (as of a subatomic particle) -- compare HALF-LIFE

14 : a property (as resilience or elasticity) of an inanimate substance or object resembling the animate quality of a living being

15 : living beings (as of a particular kind or environment) <forest life>

16 a : human activities b : animate activity and movement <stirrings of life> c : the activities of a given sphere, area, or time <the political life of the country>

17 : one providing interest and vigor <life of the party>

18 : an opportunity for continued viability <gave the patient a new life>

19 capitalized, Christian Science : GOD 1b

20 : something resembling animate life <a grant saved the project's life>

³ Main Entry: ready

1 a : prepared mentally or physically for some experience or action b : prepared for immediate use <dinner is ready>

2 a : willingly disposed : INCLINED <ready to agree to his proposal> b : likely to do something indicated <a house that looks ready to collapse>

3 : displayed readily and spontaneously <a ready wit>

4 : immediately available <had ready cash>

synonym see QUICK

▪ read·i·ness noun

⁴ Main Entry: pro·gram

1 [Late Latin *programma*, from Greek] : a public notice

2 a : a brief usually printed outline of the order to be followed, of the features to be presented, and the persons participating (as in a public performance) b : the performance of a program; especially : a performance broadcast on radio or television

3 : a plan or system under which action may be taken toward a goal

4 : CURRICULUM

5 : PROSPECTUS, SYLLABUS

6 a : a plan for the programming of a mechanism (as a computer) b : a sequence of coded instructions that can be inserted into a mechanism (as a computer); also : such a sequence that is part of an organism's genotype or behavioral repertoire

To the extent applicant has designed a "work readiness curriculum," we find that designation totally interchangeable with "work readiness program." Merely stringing these three definitions together, one derives the following: a curriculum for preparing individuals mentally or physically for a way or manner of living. In the context of applicant's educational services, this seems to describe the conducting of classes, seminars, conferences and workshops (a "program" or "curriculum") for professional basketball players in the field of finance, health, communications and personal skills (life readiness).

As discussed above, we are convinced that the dictionary definition of the constituent terms of this mark support a conclusion that the meaning of the disputed phrase as a whole is descriptive. However, our decision does not rest solely on this conclusion, since as the Trademark Examining Attorney also points out, by disclaiming "LIFE READINESS," applicant has conceded that this component of the mark is descriptive. While applicant argues that placing this term before the word "PROGRAM" creates a valid source identifier, the Trademark Examining Attorney claims that this designation in its entirety is merely descriptive of these services. In support of this conclusion, the Trademark Examining Attorney also argues that many similar registrations on both the Principal Register and on

the Supplemental Register having the word "Program" as the terminal word also have a disclaimer of the word "Program."

Given that applicant has voluntarily disclaimed the term "life readiness," there does not seem to be any disagreement that this term is descriptive of the goal of the curriculum - a goal obviously shared by applicant and the program participants. Applicant's argument is that when the term "life readiness" is combined with the word "program," it "...would take some imagination to connect with educational services directed toward professional basketball players." (Applicant's brief, p. 3). For example, one might think the word program was being used in the sense of "a brief printed outline of the order" of a public presentation or "a performance broadcast by radio or television."

We should note that the question of whether a mark is merely descriptive is not determined in the abstract -- i.e., the Trademark Examining Attorney does not need to be able to guess, based solely upon the mark itself, what the services might be. Rather, we ask in relation to specific services for which registration is sought whether the mark immediately conveys information about the nature of the services. See *In re Abcor Development Corp.*, *supra* ["GASBADGE" is merely descriptive of device to determine and monitor personal exposure to gaseous pollutants]; *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992)

["DOUBLE CERTIFIED ORGANIC," for pasta, is merely descriptive]; and In re American Screen Process Equipment Co., 175 USPQ 561 (TTAB 1972) ["CAM-LOK" is merely descriptive as applied to screen printing frames].

Furthermore, in addition to the fourth entry under the word "program," namely "4. CURRICULUM," as referenced by the Trademark Examining Attorney, an earlier definition entry also supports the conclusion that the word "program" is descriptive, namely, "3. a plan or system under which action may be taken toward a goal." Either definition would seem to fit the mission and activities of applicant. As noted, one does not need to be able to identify in a vacuum which dictionary entry for the word "program" applicant is to be judged by.

In terms of general English language construction and modern usage, the words "life readiness" often seems to modify another noun. For example, we would not be surprised to read about "life readiness skills," "life readiness issues," a "life readiness project," etc.

Similarly, the last two words of this composite mark, "readiness program," also provide a natural combination of words. Logically, any goal involving "readiness" usually requires on-going activity, or a "program." Linguistically, we are accustomed to seeing "readiness program" in phrases like

"Y2K Readiness Program," "Job Readiness Program," "Work Readiness Program," "Math Readiness Program," etc.

Therefore, the mark "LIFE READINESS PROGRAM," as applied to "educational services, namely, conducting classes, seminars, conferences and workshops for professional basketball players in the field of finance, health, communications and personal skills," would immediately convey to potential clients that the service involves a pre-planned curriculum for professional athletes whose goal is to excel in real life beyond basketball.

Decision: The refusal of registration is affirmed inasmuch as the term, "LIFE READINESS PROGRAM," is held to be merely descriptive of the identified services under Section 2(e)(1) of the Trademark Act.

E. W. Hanak

T. J. Quinn

D. E. Bucher

Administrative Trademark Judges,
Trademark Trial and Appeal Board