

THIS DISPOSITION IS CITABLE AS
PRECEDENT OF THE TTAB MAY 16,00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Nickent Golf Equipment, Inc.**

Serial No. 75/306,532

Scott A. McCollister of Fay, Sharpe, Beall, Fagan, Minnich &
McKee for **Nickent Golf Equipment, Inc.**

Caroline S. West, Trademark Examining Attorney, Law Office 107
(**Thomas Lamone**, Managing Attorney).

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

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

Nickent Golf Equipment, Inc. has filed an application
to register the mark "WE BRING YOU QUALITY FOR LESS" for "golf
clubs".¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis
that, when used in connection with applicant's goods, the mark
"WE BRING YOU QUALITY FOR LESS" is merely descriptive of them.
In particular, as stated in the final refusal, "the ... mark

¹ Ser. No. 75/306,532, filed on June 10, 1997, based upon an allegation
of a bona fide intention to use the mark in commerce. Applicant has
offered a disclaimer of the term "QUALITY".

describes, in a laudatory fashion, a superior quality of the goods and a characteristic of the goods: that they are less [in cost] than the goods of others of comparable quality."

Applicant has appealed. Briefs have been filed,² but an oral hearing was not requested. We reverse the refusal to register.

The Examining Attorney, relying upon dictionary definitions of the words "quality" and "less";³ various "third-

² The Examining Attorney, noting that "[i]n its appeal brief, the applicant also refers to various allegedly registered marks 'identified earlier in the prosecution' bearing the word 'QUALITY' for the proposition that 'otherwise merely descriptive terms [may] be registrable in the form of a unique tag line'," states in her brief that she "once again objects to the use of these purported registrations--copied from the private subscription-based database, Thomson & Thomson--as they are not properly of record." Specifically, the Examining Attorney maintains that:

It has long been held that lists of registrations unsupported by official copies of the registrations are not properly of record and cannot be considered. *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 1974). Furthermore, trademark search reports from private databases are not credible evidence of the existence of the registrations listed in the report. *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1231 (TTAB 1992).

While, as the Examining Attorney further points out, applicant was specifically advised, in the final refusal, that "such lists and private search reports were not only improperly of record, but were not credible evidence," the same objection was not reiterated with respect to the additional third-party registrations submitted by applicant with its request for reconsideration of the final refusal. Thus, while the Examining Attorney's objection is well taken with respect to the list of third-party registrations retrieved and submitted by applicant prior to the final refusal, the objection was not timely raised with respect to those offered with the request for reconsideration and is therefore considered to have been waived. Nevertheless, even though the latter have been treated as forming part of the record herein, in essence they are of no probative value due to the absence of any indication as to whether such registrations include a disclaimer of any terms or issued pursuant to a claim of acquired distinctiveness.

³ Among other things, the electronic version of The American Heritage Dictionary of the English Language (3rd ed. 1992) defines "quality" as

party registrations from the Office database [which assertedly] demonstrate that the term QUALITY, when used in combination with other matter, imposes a laudatory connotation to the overall mark, which would be readily understood by the consuming public";⁴ and printouts of excerpts from "Internet search engine lists and web sites showing the [purportedly] wide use in business of very similar descriptive phrases to tout one's goods or services";⁵ argues in light thereof that:

[T]o the average [member of the] consuming public, the ... mark--as a whole--immediately conveys, without conjecture or speculation, the idea that the Applicant provides a "quality" product, for less than those of others. There is nothing about the phrase "WE BRING YOU QUALITY FOR LESS" which is incongruous, indefinite or susceptible to multiple connotations.

The Examining Attorney also contends that the fact that the term "GOLF CLUBS," which is the name for applicant's goods, is not set forth in applicant's mark does not preclude such mark from being considered to be merely descriptive, since the descriptiveness of

a noun meaning, *inter alia*, "3. a. Superiority of kind b. Degree or grade of excellence ..." and as an adjective which connotes "[h]aving a high degree of excellence ...," while "less" is defined in pertinent part as a noun signifying "[a] smaller amount" and as an adverb meaning "[t]o a smaller extent, degree, or frequency"

⁴ Such registrations include, for example, the marks "\$10 AND LESS FIRST QUALITY FASHIONS" and design, which issued on the Supplemental Register in connection with "retail clothing store services"; "ENDURANCE COMMERCIAL QUALITY STAINLESS STEEL" and design, which issued on the Principal Register, with a disclaimer of the words "COMMERCIAL QUALITY STAINLESS STEEL," in connection with "stainless steel kitchenware"; and "QUALITY LONG DISTANCE...FOR LESS!," which issued on the Supplemental Register in connection with "telecommunication services".

⁵ Examples thereof include such phrases as "Quality for less"; "We sell quality for less"; "Quality for less money!"; "Building Quality For Less"; "We provide quality for less!"; "Top quality for less"; and "Better Quality For Less".

a mark must in any event be determined in relation to the goods for which registration thereof is sought and not in the abstract.

Applicant, on the other hand, basically asserts that because its mark must be considered in its entirety, "the Examiner's inclusion of Internet sources linking the words 'QUALITY FOR LESS' is not evidence of a lack of trademark significance of the present slogan." Applicant consequently insists that the mark "WE BRING YOU QUALITY FOR LESS" is not merely descriptive of its goods due to the "more extensive tag line" of such mark.

It is well settled that a term or phrase is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *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, 217-18 (CCPA 1978). It is not necessary that a term or phrase describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute or idea about them. Moreover, whether a term or phrase is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services

and the possible significance that the term or phrase would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

As has been further noted by the Board in, for example, *In re Consolidated Cigar Corp.*, 35 USPQ2d 1290, 1293 (TTAB 1995):

Classified within the category of merely descriptive designations set forth above are those which Professor McCarthy refers to as "self-laudatory terms". As explained in ... J. McCarthy, *McCarthy on Trademarks & Unfair Competition* ... (footnotes omitted):

Marks that are merely "laudatory" and descriptive of the alleged merit of a product are also regarded as being "descriptive." This includes such terms as SPEEDY, FRIENDLY, DEPENDABLE, PREFERRED, DELUXE, GOLD MEDAL, BLUE RIBBON, and the like.

Since each tangible product carries with it a "psychic load" of intangible consumer psychological expectations about the product, a mark could be "descriptive" of the product itself or those intangible expectations, or both. Self-laudatory or "puffing" marks are regarded as a condensed form of describing the character or quality of the goods.

However, a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of

the goods or services the mark indicates. See, e.g., In re Abcor Development Corp., supra at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347, 1349 (TTAB 1984). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985).

In the present case, we are constrained to agree with applicant that, when considered in its entirety, the phrase "WE BRING YOU QUALITY FOR LESS" is only suggestive of applicant's goods. While, for example, the record fully supports a finding that, if used in connection with golf clubs, the expression "QUALITY FOR LESS" is, like the phrase "SUPER BUY" for tobacco products in In re Consolidated Cigar Corp., supra at 1295, a laudatory expression which merely describes the superior value or worth of the products for their price, the addition of the phrase "WE BRING YOU" to the expression "QUALITY FOR LESS" results in a slogan which as a whole has does not have a merely descriptive significance in relation to applicant's goods. Literally, as the Examining Attorney's argument acknowledges, the mark "WE BRING YOU QUALITY FOR LESS" signifies to the average customer for golf clubs that it is the *applicant*, rather than its product, which

provides the consumer with quality goods at less cost than its competitors' golf clubs. In consequence thereof, applicant's mark is at most suggestive, rather than merely descriptive, of its goods because a multi-stage reasoning process, or the utilization of imagination, thought or perception, must be employed in order to determine the specific attribute(s) of the goods such mark, in its entirety, assertedly conveys. See, e.g., In re Marriott Corp., 517 F.2d 1364, 186 USPQ 218, 222 (CCPA 1975) [slogan "WE SMILE MORE" held not merely descriptive of hotel, restaurant or convention services because, while "the individual words are common and ordinary" and "each is descriptive of something," marks must be considered in their entireties and, when "[s]o considered, the slogan mark ... would at most suggest the facial expression of persons performing the services" but "[i]t does not describe the services themselves"].

Moreover, unlike the situation in, for example, In re Consolidated Cigar Corp., supra at 1294, in which the record contained evidence of widespread usage of the designation at issue, thereby "decisively tipping the balance in favor of ... holding that 'SUPER BUY' is a laudatory expression which is merely descriptive as applied to applicant's goods," there is an absence in this case of any evidence showing that the phrase "WE BRING YOU QUALITY FOR LESS" has been widely adopted in common language as referring to products of superior value or worth for their price. Here, the Examining Attorney has simply failed to introduce any evidence of third-party use of such phrase, as opposed to the expression "QUALITY FOR LESS," which would tend to

show, for instance, that there is a competitive need by others, whether in the golf equipment industry or among manufacturers or sellers of products in general, to use the phrase "WE BRING YOU QUALITY FOR LESS" to describe their goods in a laudatory manner.

Finally, to the extent that there may nevertheless be any doubt as to whether applicant's mark is merely descriptive or suggestive of its goods, we resolve such doubt on this record, in accordance with the Board's practice in this regard, in favor of the publication of applicant's mark for opposition. See, e.g., *In re Morton-Norwich Products, Inc.*, 209 USPQ 791 (TTAB 1981) and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

Decision: The refusal under Section 2(e)(1) is reversed.

G. D. Hohein

C. E. Walters

G. F. Rogers
Administrative Trademark Judges,
Trademark Trial and Appeal Board