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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **American Fiber & Finishing, Inc.**

Serial No. 75/315,876

Linda M. Buckley of Dike, Bronstein, Roberts & Cushman for
applicant.

Jill C. Alt, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Quinn, **Bucher** and McLeod, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by American Fiber &
Finishing, Inc. to register the mark BABY BURPERS for
"cloths having multiple uses, namely burp cloths, lap pads,
changing pads, bibs, wash cloths, and baby wipes."¹

The Trademark Examining Attorney has refused
registration under Section 2(e)(1) on the ground that

applicant's mark, if applied to the goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have submitted briefs.² An oral hearing was not requested.

Applicant contends, in urging that the refusal be reversed, that the applied-for mark is, at worst, just suggestive of the goods. Applicant points to the absence of a dictionary listing for either "burper" or "baby burper," and contends that the Examining Attorney has engaged in a multi-stage reasoning process in refusing registration on the ground of mere descriptiveness. Applicant argues that competitors neither have used nor need to use the term in connection with similar products. Applicant also questions the probative value of the four NEXIS excerpts relied upon by the Examining Attorney, asserting that the articles show that the "term 'baby burpers' is not in general use to describe persons taking care of a baby and do not show that the term is used by such persons to describe themselves or that such persons would recognize the term as descriptive of themselves or of

¹ Application Serial No. 75/315,876, filed June 27, 1997, alleging a bona fide intention to use the mark in commerce.

² The evidence attached to applicant's reply brief is untimely. Trademark Rule 2.142(d). Accordingly, it has not been considered in reaching a decision in this appeal.

cloth goods." (brief, p. 10) Applicant has submitted packaging for its product, a photocopy of the actual product, and an advertisement for the product.

The Examining Attorney maintains that the mark is merely descriptive. The Examining Attorney contends that "a 'burper' may be inferred from English usage to be an agent performing or helping to perform the burping activity" and that "[o]nce the phrase 'BABY BURPERS' is analyzed in the proper context, i.e., in the context of cloth goods, it is impossible not to perceive that these particular cloths are used in burping babies. 'BURPER' becomes, not a person who performs the burping, but a cloth that is the performer in the burping." (brief, pp. 3-4) The Examining Attorney concludes that "'BABY BURPERS' says it all--it names the small person for whom the cloth is made and the use to which the cloth will be put...it is the short way to say 'baby burp cloths.'" (brief, pp. 6-7) In support of her position, the Examining Attorney submitted dictionary definitions of the terms "baby" and "burp," and four excerpts retrieved from the NEXIS database.

The Examining Attorney bears the burden of showing that a mark is merely descriptive of the relevant goods. In re Merrill, Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). A mark is

descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976) (emphasis added). See also: *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981). See also: *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949, 952 (TTAB 1981); and *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978).

We find that the applied-for mark, when applied to applicant's goods, is just suggestive. Although the individual words comprising applicant's mark have meanings, the specific combination of these two words results in an alliterative designation which is not merely descriptive of applicant's goods. That is to say, applicant's mark does not convey an immediate idea about the goods with any degree of particularity. As pointed out by applicant, the cloth does not burp a baby. Further, the NEXIS evidence falls short in establishing that the term "baby burper(s)"

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is in common use for either baby care providers (that is, persons responsible for burping a baby) or, more especially, for goods of the type intended to be sold by applicant. See: In re The Stroh Brewery Co., 34 USPQ2d 1796 (TTAB 1994).

The prohibition against registration of merely descriptive designations is intended to prevent one party from precluding all others from fair use of descriptive terminology in connection with goods which are described thereby. Nothing in the record suggests that others in the trade have used or would need to use the two-word combination BABY BURPERS to describe their goods.

The Board has noted on a number of prior occasions that there is a thin line of demarcation between a suggestive and a merely descriptive designation. Although we find that the mark sought to be registered falls squarely in the suggestive category, to the extent that the Examining Attorney's arguments cast doubt on our finding, such doubts are to be resolved in applicant's favor. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992); In re Morton-Norwich Products, Inc., 209 USPQ 791 (TTAB 1981); and In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

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Decision: The refusal to register is reversed.

T. J. Quinn

D. E. Bucher

L. K. McLeod
Administrative Trademark
Judges, Trademark Trial
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