

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MAY 31, 2000
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lifemasters Supported Selfcare, Inc.

Serial No. 75/378,636

Lisa T. Simpson and Peter Bucci of Orrick, Herrington &
Sutcliffe for applicant.

Ann E. Sappenfield, Trademark Examining Attorney, Law
Office 113 (Meryl Hershkowitz, Managing Attorney).

Before Simms, Quinn and Rogers, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Lifemasters Supported
Selfcare, Inc., by change of name from HiLife Incorporated,
to register the mark SUPPORTED SELFCARE for "health
information and monitoring services by which health care
professionals can monitor and track through remote and non-

remote means the current status of patients."¹

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Act on the ground that applicant's mark, when applied to applicant's services, is merely descriptive thereof.

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

Applicant "does not dispute the Examiner's conclusion, which is supported by citations to various excerpted articles, that the separate terms 'supported care' and 'selfcare' are individually descriptive of two different types of health care services." (response, October 2, 1998) In urging that the refusal be reversed, applicant argues, however, that its mark is just suggestive. More specifically, applicant contends that there is an inherent contradiction in the terms comprising its mark which renders the mark incongruous. Applicant argues that "[w]hile supported care suggests a controlled and dependent health care environment, selfcare implies autonomy and independent decision-making." Applicant goes on to assert

¹ Application Serial No. 75/378,636, filed October 24, 1997, alleging first use in December 1994. Applicant's change of name has been recorded in the Assignment Branch records of the Office.

that given the "contradictory" nature of these terms as combined, "the exercise of imagination or mental perception is certainly necessary to make any connection between the fully assisted and constantly-in-touch, yet independent, health monitoring services offered by Applicant." (brief, p. 6) Applicant also points to the fact that the NEXIS evidence of record does not include any references to the term "supported selfcare." Applicant finally asserts that any doubt as to the mere descriptiveness of its mark must be resolved in applicant's favor.

The Examining Attorney maintains that applicant's services support the selfcare of patients, that is, the purpose of applicant's services is supported selfcare. In connection with the refusal, the Examining Attorney submitted dictionary definitions of the terms "support" and "selfcare"; excerpts retrieved from the NEXIS database showing uses of the terms "supported care" and "selfcare"; a NEXIS article about applicant's services; and two third-party registrations of marks (THE SELF-CARE ADVISOR and SELF-MANAGED CARE) issued on the Supplemental Register.

It is well settled that a term is considered to be merely descriptive of services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes a quality, characteristic or feature thereof or

if it directly conveys information regarding the nature, function, purpose or use of the services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the services for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

In order to better understand the specific nature of applicant's services, we turn to the following description (brief, p. 2):

Applicant has been using the mark to identify its technologically advanced health monitoring system whereby chronically ill patients who need constant medical care can avoid repeated daily trips to their health care providers by accessing and using Applicant's services. Through beepers, pagers, computers, telephone question and answering services and other methods of communication, Applicant's services allow patients to in essence monitor and care for their own health, but to do so with the full involvement of a physician or other health care provider. Applicant's system reminds patients to take medication and monitor their vital signs and also allows the patient to report back those vital

signs for review by health care professionals. The system, therefore, not only allows patients some autonomy in their health care plan, it also frees time on physicians' and health clinics' schedules for appointments with those who actually must come in for a personal visit, as opposed to those who simply need to check vital statistics, and gives physicians more assurance of constant contact with their chronically ill patients. Through these services, patients also can be confident that they are being monitored as necessary without the constant and intrusive hassle of having to make and keep appointments for routine tests.

A NEXIS excerpt introduced by the Examining Attorney states that applicant's "telephone-based system relies on a series of question prompts that patients answer at home" and that the "patients' answers are input into the system and situations requiring action are immediately flagged."

(Healthcare PR & Marketing News, October 16, 1997)

As shown by the dictionary evidence, the term "support" means "to provide for, by supplying with money or necessities." *Webster's II New College Dictionary* (1995)

The term "selfcare" is defined as follows:

A concept central to Dorothea Orem's theory of nursing, self-care includes actions directed toward the self and toward the environment with the specific purpose of regulating one's functioning and well-being. The nurse's central function is to enhance the self-care of patients through the

nursing process of assessment,
planning, intervention, and evaluation.
Taber's Cyclopedic Medical Dictionary
(1993)

The NEXIS articles show that the terms "supported care" and "selfcare" are descriptive terms used in the field of health care.

The terms comprising applicant's mark have readily understood meanings as shown by the dictionary listings and the NEXIS articles. Based on the evidence of record, we find that the mark SUPPORTED SELFCARE, when used in connection with applicant's services, immediately describes the essence of the services, namely, that applicant's services support the selfcare of patients.

We fail to see the incongruity in the mark emphasized by applicant in its arguments. As shown by the dictionary listing of "selfcare," the regulation of one's functioning and well-being may be enhanced (i.e., supported) by others in the health care field (nurses being given as an example in the dictionary listing). Indeed, by using applicant's services, patients are able to care for themselves while being supported with medical attention. Patients, upon encountering applicant's mark and the services rendered thereunder, would immediately understand that applicant's services provide support for their selfcare.

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The cases relied upon by applicant simply are distinguishable from the case at hand where nothing is left for speculation or conjecture when applicant's mark is applied to applicant's services.

With respect to the absence of any third-party uses of the term "supported selfcare," the fact that applicant may be the first and/or only user of the term is not determinative where the term sought to be registered has a merely descriptive connotation. In re Eden Foods Inc., 24 USPQ2d 1757, 1761 (TTAB 1992).

Decision: The refusal to register is affirmed.

R. L. Simms

T. J. Quinn

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

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