

12/19/00

**THIS DISPOSITION
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Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Karl V. J. Fluck, III

Serial No. 75/481,602

Harris A. Wolin and Charles A. Wilkinson, Esq. for Karl V. J. Fluck, III.

Michael L. Engel, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Simms, Seeherman and Hohein, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Karl V. J. Fluck, III has appealed from the final refusal of the Trademark Examining Attorney to register CANDY BOW as a trademark for "decorative ribbon in the form of a bow having small gift-type items, in the nature of candy and other edibles, attached."¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of his identified goods.

¹ Application Serial No. 75.486,602, filed May 8, 1998.

Ser. No. 75/481,602

Applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

We affirm the refusal of registration.

Although applicant's application is based on an intent to use, applicant has described his goods as a novelty item which is

a highly decorative, ornate bow having a pair a downwardly extending trailing ribbons with edibles adhesively attached thereto. It is intended that the CANDY BOW product will be delivered as a gift, whereby the candy items would be removed and consumed by the recipient while the bow would be used to decorate an area chosen by such recipient.

Response filed June 17, 1999, p. 3.

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. The question of descriptiveness is not decided in a vacuum but in relation to the goods on which, or the services in connection with which, it is used. **In re Venture Lending Associates**, 226 USPQ 285, 286 (TTAB 1985).

There is no question that applicant's identified goods are a bow, and that a principal feature of the bow is that

candy is attached to it. Thus, the word CANDY per se describes a feature of the goods, and the word BOW is a generic term for the goods. Applicant himself recognizes the descriptive qualities of the words by his proffer of disclaimers for the individual words.²

It is applicant's position that despite the descriptive connotations of the individual elements, the combined term CANDY BOW is suggestive of applicant's goods because the purchaser must exercise some degree of imagination or thought. It appears that part of applicant's argument is that the mark is not descriptive because purchasers will assume from the mark that the product is candy that has been formed or shaped into a bow. However, as stated above, the determination of whether or not a mark is merely descriptive is not made in the abstract, and the question is not whether consumers can guess, from the mark alone, what the product is. Clearly, upon seeing the mark CANDY BOW in connection with the goods, a bow with candy attached, they will immediately

² It should be noted that an entire mark may not be disclaimed. See TMEP § 1213.07. Although the Examining Attorney indicated in the file that the offered disclaimers should not be printed, he never advised applicant that the disclaimers were unacceptable, and indeed his references to the disclaimers in a subsequent Office action and his brief led applicant to believe that the disclaimers had been made of record.

understand from the mark exactly what the characteristics of the goods are.

Applicant also notes that consumers are familiar with other candy products, such as candy canes and candy corn, which are candy in the form of such objects. As a result, applicant argues that consumers would assume that CANDY BOW would refer to candy in the shape of a bow, and that the use of this term for a bow with candy attached creates an unconventional meaning for the words.

We need not decide whether CANDY BOW would be a generic term for candy in the shape of a bow, in the way that "candy cane" is a generic term for candy having a cane shape. The question before us is whether, as applied to a bow having candy attached, the mark CANDY BOW would immediately convey to consumers information about the characteristics of such a product. We have no doubt that purchasers would immediately understand, upon seeing the mark CANDY BOW used in connection with the identified goods, that it is a bow having candy on it. Accordingly, we find that the mark is merely descriptive of "decorative ribbon in the form of a bow having small gift-type items, in the nature of candy and other edibles, attached."

Decision: The refusal of registration is affirmed.