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THE TTAB

Paper No. 8  
AFD

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Nonu, Inc.

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Serial No. 75/650,281

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Curtis V. Harr for Nonu, Inc.

Danielle I. Mattessich, Trademark Examining Attorney, Law  
Office 101 (Jerry Price, Managing Attorney).

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Before Cissel, Hohein and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

Nonu, Inc. (applicant) filed an application to  
register the mark shown below for goods ultimately  
identified as "herbal tea for medicinal purposes and herbal  
supplements" in International Class 5. The application  
(Serial No. 75/650,281) was filed on February 26, 1999, and  
applicant claimed a date of first use and a date of first  
use in commerce of January 1, 1999.

In her first Office Action, the Examining Attorney refused to register applicant's mark, inter alia, on the ground that the term is merely descriptive of the goods under Section 2(e)(1) of the Trademark Act. 15 U.S.C. § 1052(e)(1). Applicant responded by submitting a disclaimer of the term "nonu" and arguing that the mark as a whole is registrable. Subsequently, the Examining Attorney made the descriptive refusal final and applicant filed a notice of appeal. Applicant and the Examining Attorney have filed briefs. No oral hearing was requested.

Applicant's mark consists of the term "nonu," which has been disclaimed, in stylized letters, a pictorial representation of leaves and a background design. Viewed as whole, the mark is merely descriptive of the goods identified as "herbal tea for medicinal purposes and herbal supplements."

Applicant acknowledges that:

Upon review of the examiner's office action as well as further research, it has been found that NONU is a Samoan word for Morinda Citrifolia, a plant cultivated in Polynesian cultures [and] in the Caribbean for centuries and used as a source of food and herbal medicines. Nonu is the Samoan word for Morinda Citrifolia, which has also been used for centuries.

In accordance with this finding, the applicant has amended the registration in order to disclaim any exclusive right to the use of NONU apart from the mark as shown.

Response dated December 10, 1999, p.2.

Inasmuch as applicant's specimens indicate that its goods are Morinda Citrifolia, the term is merely descriptive of herbal tea for medicinal purposes and herbal supplements containing Morinda Citrifolia or nonu.

Despite the descriptiveness of the term "nonu," applicant's mark can still be registered on the Principal Register with a disclaimer of "nonu" if the mark as a whole is not merely descriptive. Therefore, the next question is whether the pictorial representation of the leaves is merely descriptive of the goods. A mark is merely descriptive if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 525, 205 USPQ 505, 507 (CCPA 1980). To be

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"merely descriptive," a term need only describe a single significant quality or property of the goods. Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959). The descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Development Corp., 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978).

"It is, of course, true that a design consisting merely or essentially of a pictorial representation of the goods on which it is used is descriptive, and is not a valid trademark, but such a representation may be a good trademark if combined with arbitrary features capable of indicating origin." In re Singer Mfg. Co., 225 F.2d 939, 118 USPQ 310, 311-12 (CCPA 1958). "[T]o the extent that applicant's mark is, in fact, a substantially accurate representation of any of the involved goods, it may be descriptive thereof." In re Henry N. Abrams, Inc., 223 USPQ 832, 835 (TTAB 1984) (Representation of gnomes descriptive of gnome pendants and earrings). See also In re Underwater Connections, Inc., 221 USPQ 95 (TTAB 1983) (Scuba tank descriptive of travel services involving underwater diving); In re Eight Ball, Inc., 217 USPQ 1183

(TTAB 1983) (eight ball and cue stick descriptive of billiard parlor services).

If, however, a mark is fanciful or highly stylized, the picture is not descriptive of the goods. Planters Nut & Chocolate Co. v. Crown Nut Co., 305 F.2d 916, 134 USPQ 504, 508 (CCPA 1962) ("Of course, no one can be restrained in the recognized right to *illustrate* his goods, because *pictures* of the goods are purely descriptive of them. The right to "humanize a peanut in the form of a little man, used as a trademark, is an entirely different matter") (emphasis in original). See also In re Laitram Corp., 194 USPQ 206, 209 (TTAB 1977) ("[W]e are persuaded that what applicant seeks to register is not an actual representation of the goods but is rather a fanciful zig-zag design which seems to suggest and not merely describe the goods themselves").

In this case, the Examining Attorney notes that "applicant does not dispute that the actual leaves in the design are an accurate representation of nonu leaves." Brief at 6. A review of the specimens confirms that the leaves appear to be a pictorial representation of the leaves used in making the herbal tea. As such, the leaves immediately convey a characteristic of the product, i.e., that it is herbal tea made from nonu leaves. While

applicant argues that "the leaves are situated in a unique, five-leaf pattern" (Brief at 7), the Examining Attorney points out that applicant has not submitted any evidence to demonstrate that the pattern is unique. Nothing in the record suggests that the leaf pattern is anything other than what it appears to be, a pictorial representation of the goods. See Second Office Action, Attachment 1 (Picture of nonu leaf).

Applicant also argues that the word "nonu" is depicted in stylized form, however, the stylization is even less distinctive than the stylization of the mark "BALSAM," which was found registrable on the Supplemental Register. In re Wella Corp., 565 F.2d 143, 196 USPQ 7, 8 (CCPA 1977) (BALSAM, disclaimed, in stylized letters capable of indicating origin of appellant's goods). Here, applicant seeks registration on the Principal Register. The minor stylization of the mark does not convert a descriptive term into a suggestive term.

Finally, applicant's mark also includes a background design of a curved arch and dark inlay region. Again, this minor addition of a background design does not change descriptive terms into inherently distinctive marks. See In re Vernors, Inc., 153 USPQ 371 (TTAB 1967) (Scroll

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design and coloration of mark did not convert unregistrable term into a registrable term).

To determine whether a mark is merely descriptive, we must view the mark as a whole. Here, the mark contains the term "nonu," which is admittedly descriptive, along with a pictorial representation of the goods, which is not arbitrary or stylized. These features immediately convey to prospective purchasers a feature of the goods in that they inform purchasers that this herbal tea is made from nonu leaves. The background design and stylization of the letters does not change this impression.

Decision: The refusal to register is affirmed.