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Paper No. 19
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Conga Investments, Inc.

Serial No. 75/305,675

Carl L. Johnson of Jacobson and Johnson for Conga Investments, Inc.

Brian A. Rupp, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before **Cissel**, Wendel and Rogers, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On June 9, 1997, applicant filed the above-referenced application to register the mark "STRESS MINTS" on the Principal Register for "homeopathic medicine in lozenge form," in Class 5. The application was based on applicant's assertion that it intended to use the mark in commerce in connection with these goods.

The Examining Attorney refused registration under Section 2(e)(1) of the Lanham Act on the ground that the

proposed mark is merely descriptive of the goods set forth in the application. The Examining Attorney concluded that applicant's product is a mint intended to relieve stress, and held that the term sought to be registered immediately conveys this significant information about applicant's goods.

Attached in support of the refusal to register were copies of excerpts from two published articles retrieved from the Nexis automated database. One refers to "New York stress mints" and the other refers to "STRESS MINTS" as a product of "Historical Remedies, St. Paul, MN." Also attached to the refusal to register were a number of third-party federal trademark registrations. Some show that some homeopathic preparations are intended to be used for the treatment of stress. Others demonstrate that some registrants have disclaimed the words "STRESS" or "MINTS" in registrations of marks used in connection with homeopathic preparations.

Additionally, the Examining Attorney characterized the identification-of-goods clause as indefinite and required applicant to amend the clause to specify the common commercial name of the goods. "Homeopathic pharmaceutical lozenges for the treatment of stress" was suggested as an acceptable amendment.

Responsive to the first Office Action, applicant amended the identification-of-goods clause to read "homeopathic lozenges." Applicant argued that "STRESS MINTS" is not merely descriptive of homeopathic lozenges, but rather is a "nonsense type combination that if anything suggest[s] a nonsense type action." Applicant contended that the excerpts retrieved from the Nexis database are in fact references to applicant's own products. As to the third-party registrations made of record by the Examining Attorney, applicant argued that because the Office has granted numerous registrations wherein either "STRESS" or "MINTS" is a part of a composite mark, the instant application to register the combination of these terms should be passed to publication.

The Examining Attorney was not persuaded by applicant's arguments, and with the second Office Action, made final the refusal to register under Section 2(e)(1) of the Act. The Examining Attorney also found applicant's amendment to the identification-of-goods clause to be unacceptably indefinite, and suggested the following wording: "homeopathic lozenges for the treatment of stress." The requirement for an acceptable identification-of-goods clause was repeated and made final.

Applicant responded by amending the application to specify the goods as "homeopathic tablets to care for common day stresses on energy, digestion, nerves and emotions." Additionally, applicant disclaimed the exclusive right to use the word "STRESS" apart from the mark as shown, and argued that the composite term "STRESS MINTS" is not merely descriptive of the goods as identified in the amended application. Attached to applicant's response was an example of a label for applicant's product. The label identifies the contents of the package as "30 Homeopathic Stress Tablets," and lists "oil of peppermint" as an ingredient.

The Examining Attorney accepted the amendment to the identification-of-goods clause, but maintained the final refusal to register under Section 2(e)(1). Applicant responded by withdrawing the disclaimer of the word "STRESS" and timely filed a Notice of Appeal. Both applicant and the Examining Attorney filed briefs.¹ Applicant timely requested an oral hearing before the Board, but subsequently withdrew its request. Accordingly, we have resolved this appeal based on consideration of the

¹ The Examining Attorney properly objected to the Board's consideration of the additional evidence submitted by applicant with its appeal brief. The record closed with the filing of the Notice of Appeal, and applicant did not comply with the

written record and arguments in light of the established legal precedents.

After careful consideration, we find that the refusal to register is well taken.

A mark is merely descriptive under Section 2(e)(1) of the Lanham Act if it immediately and forthwith describes an ingredient, quality, characteristic, function, feature, purpose or use of the goods with which it is used, or is intended to be used. In re MetPath Inc., 223 USPQ 88 (TTAB 1984); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Whether a mark is merely descriptive is not determined in the abstract, but rather in relation to the goods set forth in the application, the context in which the mark is or will be used in connection with those goods, and the possible significance which the mark would have, because of the context in which it is used, to the average purchaser of the goods in the marketplace where such goods are typically sold. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

Dictionary definitions made of record by the Examining Attorney establish that "stress" is a common term used to refer to "mental, emotional, or physical tension, strain,

provisions of Trademark Rule 2.142(d) in order to make the additional evidence of record, so we have not considered it.

or distress," that "mint" is used in reference to a common flavoring, and that pharmaceutical and homeopathic tablets which include such flavoring are commonly referred to as "mints." In fact, applicant's own label refers to the product as "a Soothing Mint." The plain meaning of the term "STRESS MINTS" immediately conveys to consumers the nature of applicant's goods, that they are mints intended to be used for the relief of stress. Even accepting applicant's contention that the two excerpts retrieved from the Nexis database are references to applicant's product, the mere fact that applicant may be the first or the only user of a term is not determinative of the question of registrability when the term sought to be registered has a merely descriptive connotation. In re Eden Foods, Inc., 24 USOPQ2d 1757, 1761 (TTAB 1992).

It is well settled that a combination of individually descriptive terms may be registrable if the combination of them creates a unitary mark with a separate, nondescriptive meaning in connection with the particular goods with which the combined term is used. In the case at hand, however, contrary to applicant's contentions, the combination of the descriptive words "STRESS" and "MINTS" does not create an unusual or incongruous mark. Rather, the combination results in nothing more than a term which readily describes

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applicant's products. No imagination is required in order to understand the nature of the goods from consideration of the proposed trademark for them. See: In re Volvo Cars of North America, Inc., 46 USPQ2d 1455, 1460 (TTAB 1998).

Decision: The refusal to register under Section 2(e)(1) of the Lanham Act is affirmed.