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Paper No. 15
Bottorff

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pallotta Teamworks

Serial No. 75/929,463

Elena Muravina of Rosenfeld, Meyer & Susman, LLP for
Pallotta Teamworks.

Linda M. Estrada, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney)

Before Hairston, Walters and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark KIDSMARCH, in typed form, for services recited
in the application as "charitable fundraising services,
namely, walk-a-thons for participation by children and

their parents benefiting foster care and adoption placement services organizations.”¹

The Trademark Examining Attorney has finally refused registration of the mark, on the ground that it is merely descriptive of the recited services and thus unregistrable under Trademark Act Section 2(e)(1). Applicant appeals that final refusal.

Applicant and the Trademark Examining Attorney filed main briefs, and applicant filed a reply brief. No oral hearing was requested. Having carefully considered all of the evidence and arguments presented by applicant and by the Trademark Examining Attorney, we find that the mark is merely descriptive, and we therefore affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section

¹ Serial No. 75/929,463, filed February 28, 2000. The application was filed on the basis of intent-to-use, but applicant filed an Amendment to Allege Use on November 9, 2001, in which April 30, 2001 is alleged to be the date of first use of the mark anywhere and the date of first use of the mark in commerce. As originally filed, the drawing page in the application depicted the mark as two words, i.e., KIDS MARCH. When applicant filed its Amendment to Allege Use, it also requested amendment of the drawing to conform the mark to the mark as used on applicant's specimens of use. The Trademark Examining Attorney approved the amendment to the drawing, finding that the amendment was not a material alteration of the mark as originally filed.

2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Finally, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not

the test." *In re American Greetings Corporation*, 226 USPQ 365, 366 (TTAB 1985).²

Although applicant's services, considered most broadly, are "charitable fundraising services," it is clear from applicant's recitation of services and from applicant's specimens of use that such fundraising is accomplished by means of, and takes the specific form of, "walk-a-thons for participation by children and their parents."³ That is, a significant characteristic, indeed a

² Citing *Stix Products, Inc. v. United Merchants and Manufacturers, Inc.*, 295 F.Supp. 479, 160 USPQ 777 (S.D.N.Y. 1968), applicant argues instead that "[t]he test for determining whether a mark is descriptive is if the term used in the mark is descriptive to one who has never seen the product and does not know what it is." (Applicant's main brief at 5.) However, that test is not the law in proceedings before the Board, having been expressly rejected by the predecessor of our primary reviewing court in *In re Abcor Development Corporation*, *supra*. Applicant's arguments based on the *Stix* test are unavailing.

³ Applicant's specimen brochure includes the following relevant text:

What is KidsMarch? It's an incredible new event for kids of all ages and their parents. A two-day walk from La Canada to Pasadena. It's to help less fortunate children in foster care find permanent happy homes. It's a chance for kids to taste the beauty of giving, and for the adults in their lives to share in that discovery. **Do I need to be a parent to participate?** No. You can do KidsMarch with any special child in your life. **Will the kids get tired?** Maybe, but don't worry. The KidsMarch is designed to be challenging, so the kids will feel like they've really accomplished something. And if the going gets too tough, there will be plenty of wagon and buggy transport for tired little feet. **How do we get ready for KidsMarch?** Soon after you register, you'll receive information on walking, fundraising, and talking to your kids about the event. Your children will receive our special KidsMarch Kit for Kids, with cool tips written just for them. And all of you will have full and unlimited access to our team

key characteristic, of applicant's services is that they feature walk-a-thons which are designed for participation by children. Applicant's argument that the walk-a-thon is not a significant feature of its services is wholly unpersuasive. That this feature might not be the only significant feature of applicant's services is immaterial to our analysis under Section 2(e)(1). See *In re H.U.D.D.L.E.*, *supra*; *In re MBAssociates*, *supra*.

KIDSMARCH, the matter applicant seeks to register, immediately would be perceived as a combination of the words KIDS and MARCH.⁴ Each of those words is merely descriptive of the significant characteristic of applicant's recited services discussed above. KIDS is a readily-understood synonym of "children,"⁵ and in the context of applicant's services (which is the only context that matters in this case) it immediately and directly

of friendly expert coaches. **Where do we camp out?** Under the stars at the Rose Bowl, in a kid-friendly version of our amazing Mobile City. Imagine a huge slumber party filled with primary-colored tents, an outdoor movie theater, plenty of popcorn, marshmallows, hot chocolate, and acts of kindness everywhere.

⁴ As noted *supra* at footnote 1, the original application drawing depicted the mark as two words, i.e., KIDS MARCH. On its specimens, applicant displays the mark as KidsMarch. See *supra* at footnote 3.

⁵ The Trademark Examining Attorney has submitted dictionary evidence showing that "kid" is defined, *inter alia*, as "a child" or "a young person." The American Heritage Dictionary of the English Language (3d ed. 1992).

conveys the information that the walk-a-thons applicant produces under the mark are designed for participation by children. That the term may have other meanings in other contexts is immaterial to our analysis under Section 2(e)(1). *In re Bright-Crest, Ltd., supra.*

MARCH merely describes the walk-a-thon feature itself; in the context of applicant's charitable fundraising services, it directly and immediately conveys the information that the fundraising event produced and conducted under the mark involves walking. The dictionary evidence submitted by the Trademark Examining Attorney shows that "march" is defined, *inter alia*, as "to participate in an organized walk, as for a public cause."⁶ We take judicial notice that another dictionary defines "march," in pertinent part, as a noun meaning "an organized procession of demonstrators who are supporting or protesting something," and "marcher" as "one that marches; *esp* : one that marches for a specific cause <a peace ~>."⁷ Again, in the context of applicant's recited services, it

⁶ The American Heritage Dictionary of the English Language (3d ed. 1992).

⁷ Webster's Ninth New Collegiate Dictionary, at 726 (1990). The Board may take judicial notice of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); see also TBMP §712.01.

is these definitions which are relevant; the fact that "march" might have other meanings in other contexts is immaterial to our Section 2(e)(1) analysis. *In re Bright-Crest, Ltd., supra.*

These dictionary definitions of "march" as denoting an organized walk for a cause, or participation in such a walk, do not expressly make reference to fundraising. The more common connotation of the term in this context likely is that set forth in the second dictionary definition, i.e., an "organized procession of demonstrators who are supporting or protesting something," i.e., a "protest march."⁸ However, it is not dispositive that applicant's fundraising event is not a "march" in the sense of "an organized procession of demonstrators." The evidence of record shows that "march" also is often used descriptively in the context of fundraising events such as the walk-a-thon event applicant produces under the mark in question, and that "march" and "walk-a-thon" often are used interchangeably.

For example, the Trademark Examining Attorney has made of record the results of her search of the Lexis/Nexis

⁸ Historical examples of which we take judicial notice include the famous 1963 civil rights "March on Washington" and the recent "Million Man March" and "Million Mom March."

electronic database (NEWS library, ALLNWS file) for news articles in which the term "fundraising march" appeared. The search retrieved 196 articles, twenty-one of which were printed out and made of record by the Trademark Examining Attorney. Excerpts from some of these articles demonstrate the descriptive significance of "march" as used in connection with fundraising events (emphasis added):

Organizers from CEUS plan a **fundraising march** Sunday from 10 a.m. to 1:30 p.m. along Bergenline Avenue in West New York and Union City, with volunteers collecting donations as they walk from First Street to 48th Street. (The Record (Bergen County, NJ), January 16, 2001.)

Leslie Stoner, 36, of Reston, kept looking around amazed early yesterday as she circled the U.S. Capitol with thousands of **marchers raising money** to fight colon cancer, the disease that killed her father. ...The assistant principal of an elementary school lost her father and brother-in-law to colon cancer and said the **fundraising march** and concert made her feel less alone in her grief. (Washington Post, October 9, 2000.)

A **fund-raising march** is held every September for the nonprofit program... (Chicago Sun-Times, October 27, 2000.)

The Public School Foundation is seeking pledges for its third annual Walk for Education **fund-raising march** down Franklin Street on Sept. 18. (The News and Observer (Raleigh, NC), September 6, 1999.)

The Walk for Education **fund-raising march** starts at 3 p.m. today... Students have been collecting donations since the end of August.

Last year, the walk attracted more than 3,000 people and raised more than \$45,000. (Chapel Hill Herald, September 18, 1999.)

I am writing to express my disappointment in your lack of coverage of the recent three-day Avon **fund-raising march** for breast cancer awareness... But there was no story about the **breast cancer march**. Over the weekend, approximately 1,900 men and women walked 55 miles from Bear Mountain to Central Park to raise money for breast cancer awareness. (The Record (Bergen County, NJ), September 2, 1999.)

HEADLINE: 300 walk for Simi Crisis Pregnancy Center; Annual **fund-raising march** usually brings in more than \$16,000 to continue services...

BODY: About 300 people went for a walk Saturday in Simi Valley... Their purpose was to walk three miles to raise money for the Crisis Pregnancy Center... New to the event this year were food, child-oriented games and musical entertainment at the end of the walk. (Ventura County Star, March 28, 1999.)

Tomorrow: Annual **fund-raising march** for Gettysburg. (The Washington Times, April 24, 1999.)

The charity contingent, calling itself the River Rats, has been preparing since March for a three-day, 60-mile **fund-raising march** against breast cancer sponsored by Avon Products Inc. (The Orange County Register, October 11, 1998.)

Like many Americans, Carol Becker believes in charitable giving. She contributes to groups that have helped members of her family and participates regularly in **fund-raising marches**. (Pittsburgh Post-Gazette, October 4, 1998.)

HEADLINE: Earth Day **fund-raising march** part of national event to raise money for recreation areas. (The Morning Call (Allentown, PA) April 13, 1998.)

Inspired by a national march two years ago, Sharon Green has decided to take a stand for Carroll County's children with a **fund-raising march** tomorrow to Westminster's City Hall Park. ...Green hopes the mile-long **march** through downtown Westminster will focus attention on children's issues and **raise money** for two local organizations. Participants are asked to seek pledges. ...The **march**, sponsored by Westminster United Methodist Church, will begin at 11 a.m., rain or shine. (The Baltimore Sun, May 22, 1998.)

Millin adds that the recent non-profit **fund-raising marches** and local service projects by area colleges and the recent Make A Difference Day emphasize the rising interest and participation in volunteerism and service. (Asheville Citizen-Times (Asheville, NC), November 23, 1997.)

That commitment to his parents - and to the fight against AIDS - will continue Sunday, when Mr. Morrison participates in the Dallas AIDS LifeWalk. It's the second consecutive year that he will join the annual **fund-raising march**. (The Dallas Morning News, October 5, 1997.)

The Trademark Examining Attorney also made of record one of the fifty articles retrieved by the search "children's march":

Leah Grady is 12 years old and until recently didn't know homeless people existed. Yesterday, however, she and 125 of her classmates at the Connelly School of the Holy Child in Potomac became social activists for an afternoon, holding a three-mile **march to raise \$3,500** to fight homelessness. The Potomac **walk** was one of dozens this month involving a small army of children in the Washington region. ...The **children's marches** are meant to complement

today's main event: the 11th annual Help the Homeless **Walkathon**... This year, organizers have set a combined fund-raising goal of \$3 million for **the walkathon and the related children's marches**... (The Washington Post, November 2, 1998).

Finally, the Trademark Examining Attorney also searched for articles in which the word "march" is used descriptively in connection with walk-a-thon events specifically. The search retrieved 579 such articles, fourteen of which were made of record. Excerpts from some of these articles are:

Encourage your employees to volunteer. ...At Charter, we encourage volunteers to participate in the political campaigns of their choice, **march in AIDS and breast cancer walk-a-thons**, and generally involve themselves in the communities we serve. (Multichannel News, November 27, 2000.)

Preschoolers, teachers, and parents **marched** around the Berkeley College campus on Garret Mountain in West Paterson on Friday **to raise money** and awareness for the fight against cystic fibrosis. ...As part of the **march**, the children, joined by staff, parents, and faculty, walked around the campus three times to reach three-quarters of a mile. The **walk-a-thon** ended with a picnic. (The Record (Bergen County, NJ), June 17, 2000.)

Amy Eckelmann's auburn hair dripped from yesterday morning's persistent rain, but the 12-year-old **marched** on against breast cancer with the struggle of loved ones guiding her steps. ...Amy joined a rain-soaked troop of about 300 people yesterday in the fifth annual Mother's Day **walk-a-thon** for breast cancer

awareness and research... (Newsday (New York, NY), May 11, 1998.)

Fifteen members of the Marines' Detachment 2, Allentown Communication company, **march** with others through Lehigh Parkway during a **walk-a-thon** for diabetes yesterday. (The Morning Call (Allentown, PA), October 7, 1996.)

Students Who Care, which formed to sponsor the **march**, plans to make the **walk-a-thon** an annual event, but expects to walk for other causes next year. (Sun-Sentinel (Fort Lauderdale), September 3, 1996.)

We find that this evidence suffices to establish that "march" is a merely descriptive term in the context of fundraising services, especially in the context of fundraising walk-a-thons such as applicant's.

We also find that the two merely descriptive words which comprise applicant's mark, i.e., KIDS and MARCH, are likewise merely descriptive when considered together. As applicant notes, it is possible that two terms which in themselves are merely descriptive may be combined into a composite term which is not merely descriptive because it is more than the sum of its parts; in such cases, combining or juxtaposing the two descriptive terms may result in an inventive, incongruous or otherwise inherently distinctive new composite. However, this is not such a case. Applicant argues that its combining of KIDS and MARCH into KIDSMARCH creates a mark with a new, different, and

incongruous commercial impression, but applicant never explains specifically what that new commercial impression is, or why the composite is any less merely descriptive than the two words are when considered separately. We find that there is nothing incongruous, inventive or distinctive about combining KIDS and MARCH into KIDSMARCH, where that composite is used in connection with fundraising services featuring a walk-a-thon in which kids march.

Nor are we persuaded by applicant's argument that KIDSMARCH is an inherently distinctive "coined term." Instead, we find that KIDSMARCH is the legal equivalent of the merely descriptive phrase KIDS MARCH; applicant's compression of the two words into a single word does not change the commercial impression or create any new or different meaning. It is not dispositive that the term does not appear in the dictionary, or that applicant may be the first or only user of the term. *See, e.g., In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).⁹

⁹ Thus, we accord little probative value to the declaration of applicant's counsel's paralegal Bryan J. Armstrong, in which he avers that he searched the Lexis/Nexis database for references to "kidsmarch" and retrieved only two articles, both of which were about applicant's services. Likewise immaterial is his contention that his search of the Lexis/Nexis database for references to "kids march" retrieved ninety-seven articles, only fifteen of which "made reference to the searched terms in the context of a march for a cause," with the remainder of the

In summary, and for the reasons discussed above, we find that the evidence of record suffices to establish that KIDSMARCH is merely descriptive of the services recited in the application, and that refusal of registration under Trademark Act Section 2(e)(1) is proper. In reaching this conclusion, we have carefully considered all of applicant's arguments to the contrary (including those not specifically mentioned in this opinion), but we find them unpersuasive.

Decision: The refusal to register is affirmed.

articles displaying "kids march" either as an incidental juxtaposition of the two words or referring to the two words "in terms of their common meanings." Uses of the words in contexts unrelated to applicant's recited services is immaterial to our analysis. *In re Bright-Crest Corp., supra*. Moreover, none of the retrieved articles was attached to his declaration or otherwise made of record, further diminishing or negating the probative value of the declaration.