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10/18/02

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pedia Pals, LLC

Serial No. 76/037,531

David R. Fairbairn of Kinney & Lange PA for Pedia Pals, LLC

Amy Lohr, Trademark Examining Attorney, Law Office 107 (Kim Krehely, Managing Attorney).

Before Cissel, Hanak and Chapman, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Pedia Pals, LLC (applicant) seeks to register in typed drawing form FACE GEAR for "toy novelty items, namely, disguises in the nature of segmented, decorative adhesive foam masks made up of multiple individually applicable and removable, face-conformable, decorative, adhesive foam mask segments." The intent-to-use application was filed on May 1, 2000.

Citing Section 2(e)(1) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark is merely descriptive of applicant's

goods. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

As has been stated repeatedly, "a term is merely descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (emphasis added). Moreover, the immediate idea must be conveyed forthwith with a "degree of particularity." In re TMS Corp of the Americas, 200 USPQ 57, 59 (TTAB 1978); In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd 90-1495 (Fed. Cir. February 13, 1991).

At pages 3 and 4 of her brief, the Examining Attorney condensed the rather lengthy identification of goods as follows: "The applicant's goods are equipment for creating a facial disguise. More specifically, the applicant's goods are segmented, decorative adhesive foam masks intended to be applied to the face as a disguise." Referencing The American Heritage Dictionary of the English Language (3 ed. 1992), the Examining Attorney notes that the third definition of the word "gear" is "clothing and accessories." Continuing at page 4 of her brief, the

Examining Attorney argues that "the applicant's mark is merely descriptive because it immediately identifies the exact nature of the goods that the applicant intends to provide, namely, gear or accessories for the face in the form of a mask."

In response, applicant points out that as reflected by numerous news stories made of record from the Nexis database, the term "face gear" is used primarily to refer to various types of devices which protect the face or head. Basically, there are two types of face gear, those related to sports and those related to other activities. An example of the former would be a mask worn by a hockey goalie. An example of the latter would be plastic shields worn by police officers in riot or possible riot situations. Applicant argues that its toy adhesive foam segments applied in a decorative manner to the face simply are not described by the term "face gear." In this regard, applicant has properly made of record a certified status and title copy of Registration No. 2,309,664 where the identical mark FACE GEAR was registered in typed drawing form for "makeup, namely, blushes." This registration issued without a claim of acquired distinctiveness pursuant to Section 2(f) of the Trademark Act. Applicant argues that its decorative toy novelty items applied individually

to the face are more akin to makeup than to the protective equipment for which the term "face gear" is generic.

Finally, applicant notes that the Examining Attorney has made of record only five news stories where the term "face gear" is used to refer to non-protective devices. These five news stories were attached to the first Office Action. In each of the five stories, the term "face gear" is used as a synonym for a traditional one-piece mask. For example, in the October 29, 1998 edition of the Washington Post, there appears the following sentence: "Party-bound adult revelers who are wearing masks as part of their costumes should make sure the masks do not limit their visibility if they are driving or should remove the face gear, Piringer said." It is applicant's contention that the term "face gear" is rarely used as a synonym for traditional one-piece costume masks, and that in any event, its goods, as described in its application, are simply not one-piece masks, but instead are "made up of multiple individually applicable and removable ... segments."

Based upon this particular record, we find that as applied to applicant's goods, the mark FACE GEAR simply does not describe with the required "degree of particularity" any significant characteristic or feature of applicant's goods. Moreover, to the extent that there are

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any doubts on the issue of mere descriptiveness, it is the practice of the Board to resolve such doubts in favor of the applicant. In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

Decision: The refusal to register is reversed.