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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re North Carolina State University

Serial No. 76/108,752

Richard E. Jenkins of Jenkins & Wilson PA for North Carolina State University.

Richard A. Strasser, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Hanak, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

North Carolina State University has applied to register MASTER GARDENER EXTENSION VOLUNTEER as a trademark for the following goods and services:

Brochures and newsletters concerning horticultural educational programs provided under the guidance and supervision of the cooperative extension service to train and certify volunteers who provide information to the gardening public in class 16; and

Horticultural educational programs in the form of workshops provided under the guidance and

supervision of the cooperative extension service to train and certify volunteers who provide information to the gardening public in class 41.¹

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the mark is merely descriptive of the identified goods and services.

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

According to the Examining Attorney, the term "Master Gardener Extension Volunteer" is the name for a master gardener who volunteers with an extension program. The Examining Attorney maintains that colleges/universities and localities offer extension programs, which educate the public in agriculture and horticulture. Thus, the Examining Attorney argues that the mark MASTER GARDENER EXTENSION VOLUNTEER is merely descriptive of the identified goods and services because it describes "who will be trained and who will be the end user" of the identified brochures and newsletters and educational programs. (Brief, page 3).

¹ Serial No. 76/108,752, filed on August 14, 2000, which alleges a bona fide intention to use the mark in commerce.

In support of the refusal to register, the Examining Attorney submitted excerpts of articles taken from the NEXIS database, which refer to "master gardener(s)" and/or "extension volunteer(s)." The following are representative samples:

This free program will demonstrate the use of Florida plants, seeds and cones for holiday decorating and gift-giving. It will be led by **master gardeners** and extension agent Linda Landrum.

(The Orlando Sentinel, November 26, 2000);

The 3,600-square-foot garden is ablaze in color from this year's annuals and perennials. **Master gardeners** from the Extension office for Douglas and Sarpy counties will be on hand to answer questions.

(Omaha World-Herald, September 3, 2000);

Speakers will include local nursery owners, garden designers, book authors, **master gardeners** and Extension educators.

(The Times Union, March 5, 2000);

The conference, which is held each year in late September or early October, is a major mechanism by which the horticultural staff of KSU educates its **extension volunteers**.

(Topeka Capital Journal, November, 18, 2000);

East has been an **extension volunteer** since the late 1980's, when she first started as a 4-H leader, and has since become a **master gardener** through the extension service's program.

(The Tampa Tribune, November 5, 2000); and

Assisting Nellie were two other Cooperative **Extension volunteers** - a resource coordinator and a chrysanthemum specialist. . .

(Daily Press, September 14, 2000).

In addition, the Examining Attorney submitted three excerpts of articles taken from the NEXIS database, which refer to the combined term "master gardener extension volunteer(s)." These excerpts are taken from the Sunday Advocate published in Baton Rouge, Louisiana and are set forth below:

Master Gardener Extension volunteers will provide advice about all of the labeled plants and answer questions.
(October 22, 2000);

Interested in learning about the **Master Gardener Extension Volunteer** Program?
(October 8, 2000); and

Master Gardener Extension Volunteers will be manning a booth on both days to assist with general gardening questions.
(October 1, 2000).

Applicant, in urging reversal of the refusal to register, argues that at most, MASTER GARDENER EXTENSION VOLUNTEER is suggestive of applicant's periodicals and training services. Applicant states that:

The MASTER GARDENER EXTENSION VOLUNTEER PROGRAM is an educational program designed to enhance public education in consumer horticulture. It provides educational assistance to the citizens of a county concerning horticultural matters by training a volunteer staff. Under the guidance and support of state extension agents, selected residents of a county enter a specially designed training program in horticulture and subsequently volunteer to serve through a local Cooperative Education Service Center. The program allows the extension of education to a large gardening audience and assists with the public demand for

horticultural information. The program's goods and services, as indicated by the description thereof in the application are distinctly different from the participants who will be trained and who will be the end user of the books and classes described herein. (Brief, page 5; underlining in original).

Further, applicant maintains that at least fifteen marks have been registered which include the term VOLUNTEER and cover periodicals and/or educational programs.

It is well settled that a term is merely descriptive if it serves merely to identify a class of users to which the goods or services are directed. International Ass'n. of Fire Chiefs, Inc. v. H. Marvin Ginn Corp., 225 USPQ 940 (TTAB 1985) [FIRE CHIEF held generic for magazine targeted for fire chiefs and other senior fire fighting officials]; In re Camel Manufacturing Co., 222 USPQ 1031 (TTAB 1984)[MOUNTAIN CAMPER held merely descriptive of retail and mail order services in the field of outdoor equipment and apparel]; see also Yankee, Inc. v. Geiger, 216 USPQ 996 (TTAB 1982)[FARMER'S ALMANAC held generic for an almanac published primarily for the benefit of farmers]; In re Gentex Corp., 151 USPQ 435 (TTAB 1966)[PARADER merely descriptive of helmet liners sold for use by persons who parade, e.g. members of a band or drill team].

Turning to the term MASTER GARDENER EXTENSION VOLUNTEER, it is clear from the evidence submitted by the

Examining Attorney that this term would be understood to refer to a master gardener who serves as an extension volunteer. Further, there is no question from applicant's own description of its goods and services that its periodicals and educational programs are designed to train persons in the field of horticulture or gardening to serve as extension volunteers. Thus, the term MASTER GARDENER EXTENSION VOLUNTEER merely describes the class of users to which applicant's periodicals and educational programs are directed.

We note that there is evidence of use of MASTER GARDENER EXTENSION VOLUNTEER in a descriptive manner, that is, to describe a master gardener who serves as an extension volunteer. Thus, it would appear that other extension programs may well need to use the term MASTER GARDENER EXTENSION VOLUNTEER to describe their similar goods and services.

Finally, the third-party registrations relied upon by applicant, which include the term VOLUNTEER, are not persuasive of a contrary result in this case. While, of course, uniform treatment under the Trademark Act is essential, our task on this appeal, based upon the factual record before use, is to determine whether applicant's mark is merely descriptive. As it has often been stated, the

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Board must decide each case on its own set of facts. See In re Nett Designs Inc., 263 F.3d 1379, 57 USPQ2d 1564 (Fed. Cir. 2001). We are not privy to the file records of the third-party registrations relied upon by applicant and have no way of knowing the reasons for their allowance.

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