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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cleaner's Supply, Inc.

Serial No. 75/582,044

Stephen B. Salai and Marc W. Brown of Harter, Secrest & Emery LLP for Cleaner's Supply, Inc.

John Dwyer, Trademark Examining Attorney, Law Office 116 (Meryl Hershkowitz, Managing Attorney).

Before Seeherman, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Cleaner's Supply, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register on the Principal Register BRIDAL KEEPSAFE as a trademark for "cardboard and paper boxes for storing gowns after dry

cleaning."¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified goods.

Applicant has filed an appeal brief and a supplemental brief,² and the Examining Attorney has filed a brief. An oral hearing was not requested.

We reverse the refusal of registration.

It is the Examining Attorney's position that BRIDAL KEEPSAFE immediately conveys information about the function or purpose of applicant's boxes, namely, that they are used to keep bridal gowns safe by preserving them. In support of this refusal the Examining Attorney has submitted dictionary definitions of the words "bridal," "keep" and "safe"; NEXIS database evidence; and Internet material.

The term "bridal" is defined as "of or relating to a bride or a marriage ceremony; nuptial" and "designed for a bride of a newly married couple; *a bridal shop; the hotel's*

¹ Application Serial No. 75/582,044, filed November 3, 1998, and asserting a bona fide intention to use the mark in commerce.

² In response to the first Office action applicant offered a disclaimer of KEEPSAFE, but because this was not sufficient to avoid a final refusal, in its appeal brief applicant withdrew the disclaimer. The Examining Attorney then requested remand so that he could submit evidence of the descriptiveness of KEEPSAFE, following which applicant was given the opportunity to file a supplemental brief.

bridal suite.”³ The evidence from the NEXIS database shows that “bridal gowns” is another term for “wedding gowns,” the objects that applicant’s boxes are designed to hold.

“Keep” is defined, inter alia, as “to cause to continue in a state, condition, or course of action” and “safe” is defined, inter alia, as “secure from danger, harm or evil” and “free from danger or injury; unhurt.”⁴ The Examining Attorney has submitted a number of excerpts retrieved from the NEXIS database in which the words “keep” and “safe” are used as part of a phrase in connection with the safekeeping of objects, including the following:

Pay attention to your negatives. If you keep them safe, in acid-free sleeves in an acid-free box, you can always have another print made.
“House Beautiful,” April 1, 2001

Today, Rhea owns her mother’s special watch, which she keeps safe in her jewelry box.
“The Wichita Eagle,” December 25, 2000

It’s tricky putting Christmas tree lights back into their original boxes to keep them safe until next year...
“The Sentinel” (Stoke), November 4, 2001

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

⁴ The American Heritage Dictionary of the English Language (4th ed. 2000). These particular definitions are those quoted by the Examining Attorney in his brief, and are presumably those which he believed to be most apt.

Although, as applicant points out, none of these articles shows use of the terms "keep" and "safe" in connection with boxes for holding wedding gowns after cleaning, we think they are useful to show that the term "safe" would be understood, in the context of such boxes, to indicate that they are used to protect wedding gowns, and that the boxes will keep them safe from damage. The fact that "safe" has other meanings, including the meaning of a metal container usually having a lock for storing valuables, is irrelevant. The question of descriptiveness must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters goods bearing the mark in the marketplace. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986). It is in the sense of the protection of the wedding gown, rather than that of a locked box, that consumers would view the term "safe" in applicant's mark.

However, although these individual elements "bridal," "keep" and "safe" have some descriptive significance, we cannot say, based on the meanings of the individual words, that the combination BRIDAL KEEPSAFE is merely descriptive

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of applicant's goods. A mark is merely descriptive if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used, while a mark is considered suggestive, and therefore registrable without resort to the provisions of Section 2(f) of the Act, if imagination, thought, or perception is required to reach a conclusion on the nature of the goods. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). In this case, some degree of thought or imagination must be used to get from BRIDAL KEEPSAFE to the concept "keeps bridal gowns safe," a phrase which would, of course, be merely descriptive of applicant's boxes. That is, there is an element of incompleteness which we believe an individual encountering the mark must interpret in order to arrive at the conclusion that applicant's boxes are used for holding wedding gowns after cleaning. See **In re Southern National Bank of North Carolina**, 219 USPQ 1231 (TTAB 1983) (MONEY 24 suggestive, not merely descriptive of banking services, namely, automatic teller machine services).

We have also considered the Examining Attorney's evidence regarding the term "keepsafe." Although this term is not found in the dictionary, the NEXIS and Internet materials show use of this word, including the following:

That prompted Swanson to start Girl Tech, a company devoted to cutting-edge toys built around girls' play patterns: communication, journaling, privacy. There's a password-protected telephone, a keepsafe box with a remote-controlled lock, even a wireless bugging device that chirps innocently.
"The Hartford Courant," April 8, 2001

Headline: Kit with Kids' Activities Can Help [in section Hurricane 2000]
A favorite stuffed animal or puppet
A favorite blanket or pillow
Pictures of the family and pet
A "keep safe" box with a few treasures.
"The Jupiter Courier (Jupiter, FL),
May 28, 2000

subhead: "Keep Safe Box"
Available as a diary or a keep-safe box, these colorful plastic units use voice recognition to replace an easily broken clasp.
"Herald Sun," April 12, 2000

If money is no object, consider the magnificent limited edition gentleman's "keep-safe" humidors/jewelry boxes in the new David Linley for Alfred Dunhill collection. A master cabinetmaker's tribute to the English "folly" (originally a structure that did not conform to typical rules of architecture), these pieces include boxes....
"Chicago Tribune," November 27, 1996.

The use of this term in connection with jewelry boxes or children's treasure boxes does not persuade us that KEEPSAFE is a recognized term used to describe large boxes that would be used for storing clothing. Indeed, the fact that many of these articles show "keep-safe" in quotation

marks indicates that the term is not one that the general public is expected to recognize.

The Examining Attorney has submitted some evidence of the use of "keep safe" in connection with gown preservation, but this evidence does not clearly show descriptive use of the term. There is a listing for Gilman's Cleaners in Middletown, New York which states, "Gilman's exclusive KEEPSAFE process to preserve your wedding gown and to preserve your memories forever." This reference to KEEPSAFE is as a trademark or proprietary term for the process, and does not evidence descriptive use. An Internet submission from www.gowncare.com, discussing gown preservation, mentions that its sister company, Keepsafe Systems, custom fabricates enclosures for conservation professionals. Keepsafe Systems, as used in this excerpt, appears to be a trade name. A third Internet excerpt, from www.aformalaffairbridal.com, advertises "NEW Bridal Keepsafe Gown Boxes," with the text "We know you are going to be amazed with the beauty of our wedding gown boxes, but wait until you see the quality." The fourth, and final excerpt, is taken from applicant's own website, www.cleanersupply.com, and includes the copy, "Our Bridal Keepsafe Wedding Gown Boxes are superbly constructed, well-designed...." The use of capital letters for the words

"Bridal Keepsafe" in the latter two submissions is consistent with trademark use. The only equivocal use of "Bridal Keepsafe" is in the third submission, where it is possible that the capital letters are not to designate a trademark, but are merely meant to be eye-catching and/or are in this form because the phrase is a title. However, we cannot conclude, on the basis of this single use, that the trade and/or customers regard either "keepsafe" or "bridal keepsafe" as a descriptive term for boxes for holding wedding gowns.

The last type of evidence submitted by the Examining Attorney is a registration owned by applicant for the mark BRIDAL KEEPSAFE TO HAVE & TO HOLD and design, [in stylized lettering], for cardboard and paper boxes for storing wedding gowns.⁵ Because in this registration applicant has disclaimed exclusive rights to the words BRIDAL KEEPSAKE, and because the goods are virtually identical to those at issue herein, the Examining Attorney asserts that applicant has acknowledged that the term is merely descriptive.

Although unregistrable components of marks which are otherwise registrable may be required to be disclaimed, we cannot treat the disclaimer in applicant's registration as

⁵ Registration No. 2,523,058, issued December 25, 2001.

an acknowledgment of mere descriptiveness. Section 6(a) of the Trademark Act provides that an applicant may voluntarily disclaim a component of a mark sought to be registered, and it is now Office policy to allow an applicant to disclaim matter even if the Office would consider it to be registrable. See TMEP §1213.01(c) and **In re MCI Communications Corp.**, 21 USPQ2d 1534 (Comm'r 1991). Thus, because we do not have the file of the registration before us, but only a copy of the registration itself, as taken from the electronic records of the U.S. Patent and Trademark Office, we have no way of knowing whether applicant voluntarily disclaimed the term without a finding by the Examining Attorney that it was merely descriptive or an acknowledgement by applicant of such descriptiveness. Compare effect of registration on the Supplemental Register; see **Quaker State Oil Refining Corp. v. Quaker Oil Corp.**, 453 F.2d 1296, 172 USPQ 361 (CCPA 1972) (when appellant sought registration of SUPER BLEND on the Supplemental Register, it admitted that the term was merely descriptive of its goods).

We must confess that the evidence of use of the term "keepsafe" in connection with other products, as well as the one equivocal Internet use in connection with wedding gown storage boxes, gives us some pause. However, it is

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well established that if there is doubt about the merely descriptive character of a mark, that doubt must be resolved in applicant's behalf. See **In re Atavio**, 25 USPQ2d 1361 (TTAB 1992). Accordingly, we resolve our doubts in favor of publication of the mark, thereby allowing any third party who believes he will be damaged to file an opposition.

Decision: The refusal of registration is reversed.