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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lynda Guber

Serial No. 76469246

Anthony M. Keats of Keats McFarland & Wilson for Lynda Guber.

Lourdes D. Ayala, Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Hanak, Hohein and Rogers, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Lynda Guber (applicant) seeks to register in typed drawing form CONTACT YOGA for "personal exercise mats, exercise blocks and exercise straps." The intent-to-use application was filed on November 22, 2002. Applicant disclaimed the exclusive right to use YOGA apart from the mark in its entirety.

Citing Section 2(e)(1) of the Trademark Act, the Examining Attorney 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 [or services]." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (emphasis added); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976). 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).

In support of her refusal, the Examining Attorney has made of record just two articles and one advertisement taken from the Internet wherein the term "contact yoga" is used. One article reads as follows: "Contact yoga brings people together. If you've considered taking up yoga, but crowded classes and lack of personal attention chase away all thoughts of melding mind and body into one, you should check out 'contact yoga.' True to its name, this

relatively new practice is yoga done with a partner. The partner aids and assists the other person in the postures, helping ensure proper form." Another Internet article speaks of "contact yoga" in the following terms: "Contact Yoga is an emerging form of partner yoga. ... Contact yoga can be adapted to every level of practice, so that students who are new to yoga can benefit as much as experienced yogis." Finally, an Internet advertisement for "contact yoga" was placed by Circus Minimus.

Based upon the foregoing Internet articles and advertisement, it appears that "contact yoga" is a term which describes a relatively new form of yoga where one practices with a partner. However, this does not mean that applicant's mark CONTACT YOGA is merely descriptive of "personal exercise mats, exercise blocks and exercise straps." The Examining Attorney's rather meager Internet evidence (just two articles and one advertisement) simply demonstrates that there has been limited use of the term "contact yoga" by others to describe a new form of yoga where one practices with a partner. The Examining Attorney has simply not presented any evidence showing that the term "contact yoga" is used to describe any goods that persons may utilize when they practice contact yoga, including exercise mats, blocks or straps.

Moreover, the Examining Attorney has never disputed applicant's contention articulated at page 5 of applicant's brief that applicant's goods (personal exercise mats, exercise blocks and exercise straps) can be and indeed are utilized for a wide array of different types of sports and exercise routines. To be blunt, the Examining Attorney has never even articulated, much less demonstrated, how applicant's mark CONTACT YOGA conveys any information about the qualities or characteristics of exercise mats, exercise blocks or exercise straps with the required "degree of particularity." We cannot assume that prospective purchasers of the identified goods will, when facing CONTACT YOGA used on or in conjunction with these goods, immediately conclude that the goods can be utilized in the emerging form of yoga known by that term. Accordingly, we find that the Examining Attorney has not borne the burden of proving that applicant's mark CONTACT YOGA is merely descriptive of "personal exercise mats, exercise blocks and exercise straps." In addition, it must be remembered that to the extent that there are any doubts on the issue of mere descriptiveness, it is the practice of this 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.