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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re H.H. Brown Shoe Technologies, Inc.

Serial No. 78393010

Gene S. Winter and Andy I. Corea of St. Onge Steward Johnston & Reens LLC for H.H. Brown Shoe Technologies, Inc.

S. David Sterkin, Trademark Examining Attorney, Law Office 110
(Chris A. F. Pedersen, Managing Attorney).

Before Quinn, Hohein and Rogers, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

H.H. Brown Shoe Technologies, Inc. has filed an application to register on the Principal Register in standard character form the term "LUFFA" for "personal care products, namely, cosmetics, non-medicated skin care preparations, and non-medicated toiletries" in International Class 3.¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's goods, the term "LUFFA" is merely descriptive thereof.

¹ Ser. No. 78393010, filed on March 30, 2004, which is based on an allegation of a bona fide intention to use such term in commerce.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, 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 or is intended to be 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 such use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[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 Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant, while conceding in its brief that "the mark is not devoid of all meaning in relation to the goods," argues that the term "LUFFA" is suggestive of its goods because "it does not immediately convey the nature, quality or characteristics of those goods." Specifically, applicant acknowledges that the record contains the following definition of the term "luffa," which is an alternative spelling of the term "loofa" or "loofah," as set forth in The American Heritage Dictionary of the English Language (3rd ed. 1992) (emphasis in original):

- loo·fa** or **loo·fah** ... also **luf·fa** ... *noun*
1. Any of several Old World tropical vines of the genus *Luffa*, having cylindrical fruit with a fibrous, spongelike interior.
 2. The dried, fibrous part of the loofa fruit, used as a washing sponge or as a filter. In this sense, also called *dishcloth gourd*, *vegetable sponge*.

Referring to the additional evidence of record, including references to such personal care products as "Blue Spring Salon--Body Scrub with Natural Loofah and Corn Meal," "Olay Body Scrub containing natural loofah," "La Natura scrubs containing milled loofah," "Loofah scrub soap--containing loofah" and "Rainforest soaps containing loofah pieces," applicant contends that such evidence "suggests that the term 'luffa' or 'loofah' has been used in connection with personal care products[,] but only to describe those products that contain pieces of luffa plant." In view thereof, applicant asserts that (citation omitted):

All the evidence contained in the record refers to goods that actually contain pieces of luffa plant. Indeed, the Examining Attorney states in the Final Office Action that "presumably applicant's goods also

contain loofah for exfoliation purposes." However, there is no evidence in the record to support the Examining Attorney's assumption as to the nature of Applicant's goods. Moreover, there is nothing in the evidence of record indicating that LUFFA is descriptive of all personal care products used for exfoliation. The descriptiveness of the term is dependent on the goods containing luffa particles.

Applicant further maintains that, "[w]hen applied to the identified goods, Applicant's LUFFA mark merely suggests goods that have some of the mild abrasive qualities of luffa plant particles." Applicant therefore reiterates its assertion that "[s]ince there is no evidence that Applicant's goods contain luffa particles, the mark is not merely descriptive." According to applicant, its "mark does not immediately convey the idea of exfoliating personal care products in general" because:

There are many analogous terms that might be descriptive when applied to goods that contain specific elements. For example, the wording "velvet" and "satin" would be descriptive for goods made of those materials, but the wording is also suggestive of goods having particularly smooth and soft textures. Likewise, the mark LUFFA in this context might be descriptive of exfoliating personal care products containing luffa particles, but is merely suggestive of goods that have a similar mildly abrasive texture.

We agree with the Examining Attorney, however, that applicant's arguments are without merit. As the Examining Attorney correctly points out in his brief, "[a] term that describes an ingredient of the goods is ... considered merely descriptive" thereof. See, e.g., In re Andes Candies Inc., 478 F.2d 1264, 178 USPQ 156, 157 (CCPA 1973) ["CRÈME DE MENTHE" held merely descriptive of candy]; In re Keebler Co., 479 F.2d 1405,

178 USPQ 155, 156 (CCPA 1973) ["RICH 'N CHIPS" found merely descriptive of chocolate chip cookies]; In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990) ["term OATNUT readily informs purchasers, with the required degree of particularity, of two not inconsequential ingredients in applicant's bread"]; Flowers Industries Inc. v. Interstate Brands Corp., 5 USPQ2d 1580, 1588 (TTAB 1987) ["'HONEY WHEAT' is merely descriptive of bread and related products which contain honey and wheat as ingredients"]; In re Demos, 172 USPQ 408, 409 (TTAB 1971) ["CHAMPAGNE" held merely descriptive of salad dressing containing champagne as principal ingredient]; and In re International Salt Co., 171 USPQ 832 (TTAB 1971) ["CHUNKY CHEESE" found merely descriptive of cheese flavored salad dressing]. Based upon "the legal principles set forth above," the Examining Attorney urges that "the designation LUFFA merely describes a presumed ingredient of Applicant's goods, namely, luffa, and is, therefore, merely descriptive"

In particular, although applicant does not argue to the contrary, the Examining Attorney maintains that the "[u]se of an alternative spelling, 'luffa,' [by applicant] of the descriptive terms 'loofah' or 'loofa,' does not obviate the descriptive nature of the mark." Consequently, as he also properly points out, "although these alternative spellings may be used interchangeably in the evidence provided by the ... examining attorney, the words have the same meaning." Such evidence, as the Examining Attorney accurately observes, "clearly shows that

luffa is a common and desirable ingredient of personal care products, such as those offered by Applicant."

The Examining Attorney, furthermore, correctly points out in this regard that applicant not only "broadly defines its personal care products to include 'cosmetics, non-medicated skin care preparations, and non-medicated toiletries'" of all kinds, but reiterates that the evidence of record "shows a great deal of products of these types tout luffa as a featured ingredient." The following examples (with emphasis added), from searches of the Internet, are representative and are in addition to those mentioned by applicant, as noted previously, in its brief:

"[Zirh] Body Bar Scrub Edition
Luffa particles suspended in the bar exfoliate while alpha hydroxy acids wash away dirt and oil to leave skin feeling soft and clean. Key Ingredients: Triple Alpha Hydroxy Acids, **Luffa** Particles, Menthol, Grape Seed Extract" -- www.zirh.com;

"'The Ugly Soap for Beautiful Feet'.
Loofah (also spelled **luffa**) is a member of the curcubit family (squashes). But the inside structure is the very best for gently scrubbing away dead skin. We fill the cleaned **loofah** with our best cleansing soap, then slice it so each round slice is filled with soap in all the nooks and crannies of the **loofah**." -- www.natureswildchild.com;

"[Orysi] **Loofah** scrubs are great for exfoliating skin These round, glycerin soaps contain a natural **loofah** sponge and pure essential oils" -- www.orysi.com; and

"**Loofah** Scrub The **loofah** is inside the Glycerin Soap!!! This is a wonderful all natural scrub!! Using the all natural **loofah** to exfoliate your skin and the wonderful selection of fragrances available. This is the soap for you!!" -- www.valeries-candles.com.

Based upon the fact that the evidence of record establishes that there are "a variety of body scrubs and soaps which contain luffa as a featured ingredient," and given that applicant "may offer these exact types of products" inasmuch as its "personal care products" are broadly identified as "cosmetics, non-medicated skin care preparations, and non-medicated toiletries," the Examining Attorney concludes that "the evidence demonstrates that the goods offered by Applicant are of a type commonly sold with the featured ingredient of luffa" and, hence, the term "LUFFA" is merely descriptive of applicant's goods. Moreover, as to applicant's assertions that there is no evidence in the record that Applicant's goods contain luffa particles or to support the Examining Attorney's assumption that they will, the Examining Attorney counters by noting that "no where in the record does Applicant deny the presence of luffa as an ingredient in its goods" and, thus, "the record clearly supports the presumption that the goods offered by Applicant [will] contain luffa."

Upon consideration of the arguments and evidence presented, we agree with the Examining Attorney that the term "LUFFA" is merely descriptive of applicant's goods. The fact that applicant, in broadly identifying its goods as "personal care products, namely, cosmetics, non-medicated skin care preparations, and non-medicated toiletries," has not explicitly stated that such products feature or otherwise may contain luffa as an ingredient does not mean that the term "LUFFA" is suggestive rather than merely descriptive of its goods. The

dictionary definition, including the alternative spellings of "loofa" and "loofah," along with the various Internet excerpts which are of record, plainly establish that certain kinds of cosmetics, non-medicated skin care preparations and non-medicated toiletries do in fact contain luffa as a principal ingredient, and applicant's identification of goods plainly encompasses such products. Applicant, in fact, concedes that "the mark LUFFA in this context might be descriptive of exfoliating personal care products containing luffa particles" and admits that "[t]he descriptiveness of the term is dependent on the goods containing luffa particles." It is well established, moreover, that registration must be denied if a term is merely descriptive of any of the goods for which registration is sought. See, e.g., In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). In this case, it is plain that the term "LUFFA" immediately conveys, without the need for speculation, imagination or conjecture, that a significant ingredient of applicant's goods is that they contain luffa as a principal ingredient thereof. Clearly, when viewed in the context of applicant's goods, there is nothing in the term "LUFFA" which would be incongruous, ambiguous or even suggestive, nor is there anything which would necessitate the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to consumers of applicant's goods. Accordingly, based on the evidence of record herein, the term "LUFFA" has been shown to be merely descriptive of applicant's goods within the meaning of the statute.

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Decision: The refusal under Section 2(e)(1) is affirmed.