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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re D.C.D. Global, Inc.

Serial No. 75/111,165

Charles M. Kaplan for D.C.D. Global, Inc.

Linda E. Blohm, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Bucher, Bottorff and McLeod, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

D.C.D. Global, Inc., a Minnesota corporation, has applied to register the term "FISHIN' GEAR" for six specifically-enumerated fishing tools.¹ While applicant originally sought registration on the Principal Register, after receiving repeated refusals under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), applicant amended this application to seek registration on the Supplemental

¹ Ser. No. 75/111,165, filed on May 28, 1996 based upon a *bona fide* intention to use the mark in commerce. On June 30, 1997, applicant filed an Amendment to Allege Use under 37 C.F.R. §2.76 alleging use in commerce on November 12, 1996.

Register. At that time, the Trademark Examining Attorney refused registration on the ground that the asserted mark was generic for applicant's goods and was therefore incapable of distinguishing applicant's goods from those of others. The second issue before us has to do with the inability of applicant and the Trademark Examining Attorney to agree upon an acceptable identification of goods.

When the refusals were made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney have submitted main briefs, and applicant has filed a reply brief. Applicant did not request an oral hearing. We affirm as to both grounds of refusal to register.

It is the Trademark Examining Attorney's position that the term "Fishin' Gear" will be seen as equivalent to "fishing gear" - the genus of goods that covers these fishing tools. On the other hand, applicant argues that "fishin'" is a whimsical expression culled from the colloquialism "gone fishin'," and is not the equivalent of the word "fishing" for purposes of our analysis.

As our principal reviewing court has stated:

...[d]etermining whether a mark is generic ... involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?

H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 990, 228 USPQ 528, 530 (Fed. Cir. 1986).

The Trademark Examining Attorney has submitted for the record a variety of instances in which the term "fishing gear" is definitely the genus of fishing tackle, fishing tools and fishing accessories. For example, several 1995 issues of "*Fishing World*" contained feature stories or advertisements on products ranging from "fly fishing gear" and "ice fishing gear" to more generalized "fishing gear." The Trademark Examining Attorney has also placed in the record a number of dictionary definitions of the word "gear." She notes that in one case, the definition of the word "gear" actually uses "fishing gear" as a lone example to define the term: "Gear: equipment, such as tools or clothing, used for a particular activity; paraphernalia: *fishing gear*."² In fact, applicant seems to have conceded that at least the "gear" portion of this term is generic, having voluntarily disclaimed the word "gear" upon amending to the Supplemental Register. Accordingly, we find that under the first part of the Marvin Ginn test, these precision fishing tools are indeed known as "fishing gear."

² *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company.

The Trademark Examining Attorney argues that applicant's "fishin' gear" is the legal equivalent of the generic wording, "fishing gear." She argues that the apostrophe (') is nothing more than a superscript sign used to indicate the omission of the final letter "g" from the word "fishing." She also included several excerpts from the LEXIS/NEXIS database where the writer or speaker actually uses the exact formulation adopted by applicant:

As with all new ideas, Mercedes' latest automotive entry drew some criticism from people who took one look and said "Forget it." "You can't haul no lumber, bricks or fishin' gear in that thing," said Charles Snider.

"Mercedes shows off all-activity vehicle,"
The Montgomery Advertiser, July 21, 1996.

"I'll tell you what campin' is," the guy said. "Campin' is when your daddy gets the fishin' gear and you and him gets in the car and goes out to the lake and fish awhile and have lunch and go home..."

"No place in their hearts for the homeless,"
The Los Angeles Times, April 22, 1993.

By contrast, applicant argues from several e-mail entries found on the Internet that "gone fishin'" is a popular expression for "playing hooky" and has nothing to do with actually going fishing. We do note that while some of the entries highlighted by applicant are used in this manner, in fact, the majority of the examples in applicant's own submission were about someone actually going fishing!

In any case, the term at issue herein is not "Gone Fishin'" but rather, "Fishin' Gear."

As to the term "Fishin' Gear," we agree with the articulation of the Trademark Examining Attorney that this misspelled or contracted term does not serve a trademark function any more than would the term if spelled correctly. See In re Hubbard Milling Co., 6 USPQ2d 1239 (TTAB 1987) [The term "MINERAL-LYX," a misspelling of the term "mineral licks," is the generic name for these goods even though minerals do not comprise the primary ingredients of these blocks]; and, In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982) [the designation "TOOBS" used for applicant's household fixtures in the shape of tubes is generic for applicant's goods]. Clearly, a generic term is not made any less so by misspelling it. See Weiss Noodle Company v. Golden Cracknel and Specialty Company, 290 F2d 845, 129 USPQ 411 (CCPA 1961) [Because "haluska" is the Hungarian name for noodles, the term "HA-LUSH-KA" is unregistrable for egg noodles]. Accordingly, under the second part of the Marvin Ginn test, we conclude that "fishin' gear" would be understood by the relevant public primarily to refer to the genus of applicant's goods.

In the interest of completeness, we turn next to the requirement for an acceptable identification of goods. The

original application listed the goods as "fishing tackle and tools." While this placed the goods directly into the world of fishing, the Trademark Examining Attorney correctly found the designation "fishing...tools" to be indefinite and required a more definitive listing. Applicant then suggested replacing the initial identification of goods with "tools, namely pliers, forceps, clippers, hones, flies and spoolers." This time, the Trademark Examining Attorney refused to accept the amended identification of goods because applicant apparently wanted to delete the language of "fishing tackle and [fishing] tools." In doing so, applicant broadened the identification of goods in an impermissible fashion. As suggested by applicant, it would have then encompassed all kinds of hand tools - not just the specialty tools one uses when fishing. Accordingly, the Trademark Examining Attorney suggested: "Fishing tackle and tools, namely pliers, forceps, clippers, hones, flies and spoolers used specifically for fishing." Undoubtedly, several of these items (e.g., "pliers," "forceps," "clippers"), nominated alone or merely preceded by the word "tools," would be transformed into quite different products, moving in entirely different channels of trade, and would be subject to different classes under the Nice International Classification system, than if they were appropriately

restricted to "fishing tools, namely..." Whatever the exact language of the final identification of goods, to permit applicant to drop the "fishing tools" restriction would be a clear expansion of the identification of goods, and hence would be violative of 37 C.F.R. §2.71(b). See In re M.V Et Associes, 21 USPQ2d 1628 (Comm'r Pats. 1991).

Decision: Both grounds for refusal of registration are hereby affirmed.

D. E. Bucher

C. M. Bottorff

L. K. McLeod
Administrative Trademark
Judges, Trademark Trial
and Appeal Board