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Paper No. 16

DEB

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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

Serial No. 75/352,257

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 Wendel, Bucher and Bottorff, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

D.C.D. Global, Inc. has applied to register the term "HUNTIN' GEAR" for safety glasses.¹ While applicant originally sought registration on the Principal Register, after receiving the initial refusal under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), applicant amended this application to seek registration on the Supplemental Register. The Trademark Examining Attorney then refused registration on the ground that the asserted mark is generic as applied to applicant's safety glasses and therefore it is incapable of identifying these glasses and distinguishing them from similar products of others.

¹ Ser. No. 75/352,257 filed on September 5, 1997. The application is based on asserted dates of first use and first use in commerce on August 8, 1997.

When the refusal was made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney have submitted main briefs. Applicant did not request an oral hearing.

We affirm the refusal to register.

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).

In order to answer the first question of the Marvin Ginn test, the Trademark Examining Attorney has submitted from the Internet a variety of instances in which the term hunting gear is identified as a category of equipment and accessories that might be used by a hunter. The record shows that hunting gear includes a wide variety of items from knives to binoculars, from caps to pouches, from camouflage to fire starter kits, and from lanyards to duck calls or owl hooters:

TURKEY HUNTING GEAR: ... Binoculars are a worthwhile piece of turkey hunting gear ... pouches for every purpose ... The Remington "Turkey Hunter" R7 is ... a practical hunting knife for turkey hunters ... Southland Callers Original Owl Hooter is a very loud and realistic sounding owl

hooter that is great for making an old gobbler sound off in the morning...

BACK COUNTRY INC. - Quality Gear for the Serious Hunter - Founded around our PitchWitch Fire starter kits, BackCountry, Inc. is dedicated to providing hunters with quality equipment necessary for hunting the backcountry safely and comfortably...

RAY RHODES CHAMPIONSHIP CALLS: Duck Calls | HUNTIN' ACCESSORIES: Embroidered Caps, Lanyards (above underlining supplied)

Further, the Trademark Examining Attorney has placed a number of LEXIS-NEXIS® articles into the record demonstrating that safety glasses are recommended as protective gear for shooters' eyes.

Maschino uses a Krieghoff shotgun that he custom-fit with his father, who says there are few gun fitters in Maine that provide the service. Competitors wear safety glasses and ear plugs.

Young shooters must be supervised and learn the basics of gun safety before handling an air rifle. Safety glasses should be worn inside and out.

A few points to remember ... Wear impact resistant glasses, even safety glasses. They'll protect your eyes from the inexperienced hunter ... who fires at doves passing by at belt-buckle level.

Measures has developed a self-help kit: BB gun, workbook, an 80-minute training film, two pairs of safety glasses and 1,500 BBs. (above underlining supplied)

Accordingly, we find that under the first part of the Marvin Ginn test, the genus of goods at issue here is hunting equipment, hunting accessories or hunting gear. The relevant

goods herein are not just any safety glasses, but rather safety glasses sold specifically for use by hunters. Accordingly, we conclude that such goods would indeed be included within the broader category of hunting gear.

In order to answer the second question of the Marvin Ginn test, the Trademark Examining Attorney has placed in the record dictionary entries for the words "hunting" and "gear."² In fact, applicant seems to have conceded that at least the "gear" portion of this term is generic, having disclaimed the word "gear" apart from the mark as shown, and that after having amended to the Supplemental Register.

As noted above, the Trademark Examining Attorney has placed into the record evidence that the term "hunting gear" is understood to refer to this genus of goods.

TURKEY HUNTING GEAR: ... Binoculars are a worthwhile piece of turkey **hunting gear** ... pouches for every purpose ... The Remington "Turkey Hunter" R7 is ... a practical hunting knife for turkey hunters ...

BASS PRO SHOPS ONLINE - fishing, **hunting** and camping **gear**.

BACK COUNTRY INC. - Quality **Gear** for the Serious **Hunter** - Backcountry is dedicated to providing hunters with quality equipment necessary for hunting the backcountry safely and comfortably... (above emphasis supplied)

² "Hunting" as "[t]he sport or activity of pursuing game," and "Gear" as "equipment, such as tools or clothing, used for a particular activity; paraphernalia." Webster's II New Riverside University Dictionary ©1988.

Nonetheless, applicant argues that because "huntin' gear" does not look or sound the same as "hunting gear," consumers would be put on notice that the applied for term is being used as a source indicator. However, the Trademark Examining Attorney contends that applicant's alleged mark, "huntin' gear," is the legal equivalent of the generic wording, "hunting gear." She points out that the apostrophe (') is nothing more than a superscript sign used to indicate the omission of the final letter "g" from the word "hunting." She also included several excerpts from the Internet where the writer actually uses the abbreviated form "huntin'" as adopted by applicant as a replacement for the word "hunting":

Texas **Huntin'** and Fishin' Online -- Your guide to **hunting** and fishing ...

Look for **Huntin' gear** in this site - Bass Pro Shops Online - fishing, **hunting** and camping **gear**.

Coyote Huntin' with "Varmint Al" - Al shares with you some of his experiences with **coyote hunting** from over the years ...
(above emphasis supplied)

We agree with the position taken by the Trademark Examining Attorney, namely that the term "Huntin' Gear" will be perceived as "Hunting Gear," and functions herein as its legal equivalent. 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]; and 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].

Finally, applicant argues that among the stories collected by the Trademark Examining Attorney using the term "hunting gear," none makes specific reference to shooters' safety glasses. Applicant is correct that the record is devoid of any examples of third party uses of the term "huntin' gear," or even "hunting gear," referring specifically to safety glasses. However, under the second prong of the Marvin Ginn test, we have seen that "hunting gear" is understood to refer to the genus of goods at issue, namely, hunting equipment and accessories, including safety glasses sold specifically for the protection of hunters. Hence, "HUNTIN' GEAR," the legal equivalent of "hunting gear," is deemed to be generic for applicant's goods.

Decision: The refusal to register is affirmed.