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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Big American Man

Serial No. 76200528

Kit M. Stetina of Stetina, Brunda, Garred & Brucker for Big American Man.

Jeri Fickes, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Hanak, Hairston and Holtzman, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Big American Man (applicant) seeks to register ALL AMERICAN WOMAN in typed drawing form for "wearing apparel, namely, shirts, t-shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes and belts." The intent-to-use application was filed on January 26, 2001. At the request of the Examining Attorney, applicant disclaimed the exclusive right to use WOMAN apart from the mark in its entirety.

Thereafter, the Office issued a Notice of Allowance and a Notice of Publication. Subsequently, applicant submitted its specimen of use which is a t-shirt bearing the mark ALL AMERICAN WOMAN. On the specimen, the mark ALL AMERICAN WOMAN appears in a very small manner on the upper left corner of the front of the t-shirt (i.e. above the breast pocket). On the specimen, applicant's mark is depicted in a very "ordinary" fashion. To be more specific, applicant's mark appears in essentially block letters with just the initial letter of each word capitalized.

After applicant submitted its specimen of use, the Examining Attorney -- citing Sections 1, 2 and 45 of the Trademark Act -- refused registration on the basis that "the specimen shows the proposed mark used as mere ornamentation." (Examining Attorney's brief page 1). 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.

At the outset, we note that the Examining Attorney concedes that as used on the specimen, applicant's mark ALL AMERICAN WOMAN "is small and discreet and positioned over the left breast pocket." (Examining Attorney's brief page 3). We are in complete agreement with the foregoing

statement of the Examining Attorney. Not only is applicant's mark positioned on the t-shirt in a place where it is common to find trademarks positioned, but in addition, applicant's mark is indeed presented in a "small and discreet" fashion as are many trademarks affixed to t-shirts. In short, we fail to understand the Examining Attorney's argument that consumers would perceive applicant's mark ALL AMERICAN WOMAN, as used on applicant's specimen, as anything other than a trademark. Applicant's mark is not presented in an extremely large fashion such that it might be perceived as a statement about the wearer, and thus serve as mere ornamentation. Likewise, applicant's mark is not repeated over and over on the specimen such that it might appear as mere ornamentation. Rather, applicant's mark appears but once on the specimen.

In sum, we find that the Examining Attorney has failed to demonstrate how applicant's mark, appearing over the left breast pocket of the t-shirt in a small and discreet manner, would be perceived as anything other than a trademark. Accordingly, we reverse the refusal to register.

Decision: The refusal to register is reversed.