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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mana-Tee Concepts USA, LLC.

Serial No. 76518416

Myron Amer of Myron Amer, P.C. for Mana-Tee Concepts USA, LLC.

Josette M. Beverly, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Bucher, Drost, and Walsh, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On May 21, 2003, Mana-Tee Concepts USA, LLC (applicant) applied to register on the Principal Register the mark SING-A-LONG in standard character form for karaoke players in Class 9. The application (Serial No. 76518416) alleges a date of first use and first use in commerce of March 1, 2003.

The examining attorney initially refused registration on the ground that the mark SING-A-LONG is merely

descriptive of applicant's goods. 15 U.S.C. § 1052(e)(1). In its response of November 5, 2003, to the examining attorney's refusal, applicant amended the application to seek registration on the Supplemental Register. After this amendment, the examining attorney refused registration on the ground that the mark was generic for the goods under Section 23 of the Trademark Act. 15 U.S.C. § 1091.

After the refusal was made final, applicant filed a notice of appeal.

In order for a mark to be generic, the Court of Appeals for the Federal Circuit has held that: "The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." H. Marvin Ginn Corp. v. Int'l Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). Ginn goes on to explain that:

Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?

Id.

The examining attorney argues that the "proposed mark SING-A-LONG is used by others to commonly refer to a device

that is designed for sing alongs" (Brief at 5) and that the "sing-a-long feature" refers to "a type of musical device." Brief at 3. We will review the evidence of record (emphasis added) to determine what is the genus of the goods and whether the relevant public would understand the term "Sing-A-Long" to refer to the genus of the goods.

We begin by looking at applicant's specimen. The specimen contains the following statements: "SING-A-LONG & RECORD WITH TWO DETACHABLE MICROPHONES" and "Sing-A-Long & record." The specimens indicate that the karaoke player "includes 4 Cassette tapes - 48 songs!" and "Lyric sheets included." In another place, the specimen also contains the notation "sing-a-long® karaoke" (stylized) and applicant has explained that the use of the registration symbol was inadvertent. Response dated November 5, 2003 at 2. We note that even the use of the letters "TM" would not by itself convert a term that does not function as a trademark into one that does. In re A La Veille Russie Inc., 60 USPQ2d 1895, 1901 (TTAB 2001); In re Caserta, 46 USPQ2d 1088, 1090 (TTAB 1998).

The examining attorney also submitted the following evidence from the Internet.

The "Singing Machine" webpage describes itself as "The Leader in Home Karaoke." Among the products listed on the page are the following:

Care Bears **Sing-Along** Player/Recorder - Sharing is caring and with your own personal Care Bears **sing-along** cassette player/recorder you and your friends can cherish the memories. Record your performance in your **sing-along** recorder and playback your songs for hours of fun. Includes **sing-along** microphone and 48 songs with lyric sheets...

Dual Cassette **Sing-Along** Player/Recorder - Singing Machine's dual cassette **sing-along** player/recorder is what the kids are looking for to be the next shining star.

Sing-Along Cassette Player/Recorder - **Sing-along** to your favorite songs with Singing Machine's cassette player with record functions. Includes **sing-along** microphone and 48 songs with lyric sheets.

Nickelodeon **Sing-Along** Cassette Player - Join Dora, Little Bill and Blue with Singing Machine's **sing-along** cassette player with record functions.

Cassette **Sing-Along** Player/Recorder - Cassette **Sing-Along** Player/Recorder w/ AM/FM Radio.

The website www.bizrate.com contains a category "**Sing Along** Karaoke Equipment" listed under "Musical Instruments >Karaoke Equipment >**Sing Along**." Examples under this listing include:

MTV Karaoke Nick Jr. **Sing-Along** Karaoke

MTV Karaoke Nickelodeon **Sing-Along** Karaoke

Ace Karaoke - Magic **Singalong** Song Chip - Children Songs

Ace Karaoke - Magic **Singalong** Microphone I

The Palos Sports webpage shows a product identified as a "VHS - Video Karaoke Party Machine with **Sing Along** Microphone now with a compact CD Player. **Sing along** with recorded music and tape your performance... Includes prerecorded VHS-video karaoke **sing-a-long** tape and VCR connecting cord."

The examining attorney also submitted excerpts from the NEXIS database that show other uses of the term "sing-a-long."

Aaron's Own to Rent, like many of the major chains, rents VCRs, camcorders, microwaves, air conditioners, sofas, cocktail tables and office furniture. It also rent[s] stoves, refrigerators, vacuums, Nintendo games, radar detectors and **sing-a-long** Karaoke machines.

Houston Chronicle, February 7, 1992.

The toddler: That Fisher-Price **singalong** recorder is great.

Daily Town Talk (Alexandria, LA), November 30, 2001.

Craven was in and out of Kay Bee by 5:05 a.m., with ... a **singalong** cassette recorder in hand.

News & Record (Greensboro, NC), November 24, 2001.

Somehow, even those who cannot carry a tune cannot resist the scrolling words and microphone of the **sing-a-long** device. There are karaoke parlors throughout Orange County...

Orange County Register, May 2, 2000.

The evidence above convinces us that karaoke players are also known as "sing-a-long" karaoke or cassette players. "Sing-A-Long" karaoke players include tapes or CDs of music for participants to use to sing along with the

song. We add that "Karaoke" is defined as a Japanese word meaning "a device that plays instrumental accompaniments for a selection of songs to which the user **sings along** and that records the user's singing with the music." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003).¹

Therefore, applicant's term emphasizes to purchasers not familiar with the Japanese word that "Karaoke" is a sing-a-long device. "Sing-a-long" is an alternative English generic term that makes clear what a "karaoke" player is.

Next, we look at whether the term is understood by the relevant public to refer to the product included in the genus of the goods. Ginn, 228 USPQ at 530. "Evidence of the public's understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications." In re Merrill Lynch, Fenner and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). "The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." Ginn, 228 USPQ at

¹ We take judicial notice of this definition. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

530. In this case, we have evidence that distributors and purchasers would understand the term as referring to a genus of karaoke players. Shoppers at bizrate.com are directed to: "Karaoke Equipment >Sing Along." At the Singing Machine website, purchasers of karaoke-type products would encounter numerous "sing-along" products including a "Care Bears Sing-Along Player/Recorder." This sing-along recorder clearly uses the term generically as it goes on to refer to "your own personal Care Bears sing-along cassette player/recorder," to record "your performance in your sing-along recorder." It includes a "sing-along microphone."

Articles in newspapers indicate that Aaron's Rent to Own rents "sing-a-long Karaoke machines" and that Fischer Price has a "great sing-along recorder." We also add that applicant's own specimens use the term in the same manner: "Sing-A-Long & Record with two Detachable Microphones." Applicant's goods seem similar to the Singing Machines' "Dual Cassette Sing-Along Player/Recorder," which is described as: "This recording studio includes two microphone inputs for duets." The evidence set out above clearly supports the conclusion that purchasers would understand the term "Sing-A-Long" to primarily refer to the genus of the goods.

In response to the examining attorney's evidence and arguments that its mark is generic, applicant maintains (Brief at 1-2) that:

The trademark attorney argues that the term "sing-a-long" is a well-known term used to describe karaoke products and services and, as proof that it is well known, attaches web excerpts, not of the term in issue but of sing-along, which it passes off as a "spelling variation."

It is therefore inarguable on the record that what applicant seeks to register is a "spelling variation" of a non-registrable generic term, but in the conversion from generic to a "spelling variation" thereof, there is thus the modicum of differences necessary to qualify as a source identifier registrable on the Supplemental Register.

In its Reply Brief (p. 1) (emphasis omitted) clarifies this argument as follows:

The Examining Attorney has made of record use of SING-ALONG (seven times at page 4, paragraphs 3, 4 and 5); use of SING-A-LONG (one at page 5, last paragraph); SINGALONG (once at page 6, middle paragraph); and SINGALONG (once at page 7, top paragraph).

Thus, the single use of SING-A-LONG is outnumbered 7 to 1 by SING-ALONG and 2 to 1 by SINGALONG.

In response to applicant's arguments, we note, as set out above, that applicant admits that the underlying term "sing-along" is "a non-registrable generic term" and that applicant is seeking to register a "spelling variation" of that term. However, even misspellings of generic terms have been held to be generic. See Nupla Corp. v. IXL Manufacturing Co., 114 F.3d 191, 42 USPQ2d 1711, 1716 (Fed.

Cir. 1997) ("Based on overwhelming documentary evidence of record showing widespread and long-time prior use of the CUSHION-GRIP mark in the hand tool industry, we agree with the district court's conclusion that there is no genuine issue of material fact that Nupla's mark [CUSH-N-GRIP], which is merely a misspelling of CUSHION-GRIP, is also generic as a matter of law, and the registrations are therefore invalid"); In re Yardney Electric Corp., 145 USPQ 404, 405 (TTAB 1965) ("'NICEL' is merely a misspelling and phonetic equivalent of 'nickel' and means the same thing. As such the subject matter identifies applicant's product as to kind and not source. It is therefore not registrable within the purview of the statute") (citation omitted).

Second, the evidence demonstrates that there are several accepted alternative spellings such as "sing along" and even "singalong," and applicant's spelling "sing-a-long" is equally generic. Applicant's spelling is no different than using the alternative spellings "judgment" or "judgement."

Third, the evidence shows that the exact term "sing-a-long" is used in the evidence. See Houston Chronicle, February 7, 1992 ("sing-a-long Karaoke machines"); and Orange County Register, May 2, 2000 ("the sing-a-long device"). Indeed, the spelling variations are found in the

same advertisements. See Palos Sports webpage, "VHS-Video Karaoke Party Machine with Sing Along Microphone" and "VHS-video karaoke sing-a-long tape."

Therefore, applicant's chosen spelling is just as generic as the other spellings.

The record clearly shows that the English term "sing-a-long" is used in association with the Japanese term "karaoke" to inform purchasers what karaoke means in English and that karaoke players are "sing-a-long" devices. Furthermore, the evidence shows that purchasers or users of karaoke players would recognize that the term refers to the genus of the goods. Therefore, applicant's mark SING-A-LONG for karaoke players is generic.

Decision: The refusal to register is affirmed.