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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Rodale Inc.

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Serial No. 78369241

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Kevin G. Smith, Jody H. Drake and Gary D. Krugman of  
Sughrue Mion, PLLC for Rodale Inc.

Mrs. A.D. Saunders, Trademark Examining Attorney, Law  
Office 109 (Dan Vavonese, Managing Attorney).

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Before Bucher, Grendel and Holtzman, Administrative  
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Supplemental  
Register of the mark HEALTH BULLETIN (in standard character  
form) for services recited in the application (as amended)  
as "providing information in the field of fitness, exercise  
and lifestyle," in Class 41.<sup>1</sup> Applicant has disclaimed  
BULLETIN apart from the mark as shown.

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<sup>1</sup> Serial No. 78369241, filed February 17, 2004. The application  
is based on use in commerce under Trademark Act Section 1(a), 15

At issue in this appeal is the Trademark Examining Attorney's final refusal of registration on the Supplemental Register on the ground that the matter sought to be registered is generic and therefore incapable of functioning as a mark for the recited services. Trademark Act Section 23, 15 U.S.C. §1091.

The appeal is fully briefed, but no oral hearing was requested. We affirm the refusal to register.

To be registrable on the Supplemental Register, the matter sought to be registered must be "capable of distinguishing applicant's goods or services." Trademark Act Sections 23(a), 23(c). "Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold. They are by definition incapable of indicating a particular source of the goods or services." *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (citations omitted). Because they are incapable

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U.S.C. §1051(a), and January 1993 is alleged to be the date of first use of the mark anywhere and the date of first use of the mark in commerce. As originally filed, the application sought registration of the mark on the Principal Register. After the Trademark Examining Attorney issued a first Office action refusing registration on the ground of mere descriptiveness under Trademark Act Section 2(e)(1), applicant amended the application to one seeking registration on the Supplemental Register. The application also has been amended to include applicant's claim of ownership of seven prior registrations, i.e., Nos. 2974874, 2984357, 2914031, 2956178, 2920260 and 2937172, and 3022218.

of identifying source, generic terms are not registrable on the Supplemental Register.

Our primary reviewing court has stated:

The determination of whether a mark is generic is made according to a two-part inquiry: "First, what is the genus of the goods or services at issue? Second, is the term sought to be registered ... understood by the relevant purchasing public primarily to refer to that genus of goods or services?"

*In re Dial-A-Mattress Operating Corp., supra*, 57 USPQ2d at 1810, quoting from *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986). The Office bears the burden of establishing genericness based on clear evidence of generic use. *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999). "Any competent source suffices to show the relevant purchasing public's understanding of a contested term, including purchaser testimony, consumer surveys, dictionary definitions, trade journals, newspapers and other publications." *In re Dial-A-Mattress Operating Corp., supra*, 57 USPQ2d at 1810. Where (as in this case) the matter sought to be registered is a phrase (rather than a compound word), the Office must provide more than mere dictionary definitions showing the genericness of the component words; "it must conduct an

inquiry into 'the meaning of the disputed phrase as a whole.'" *Id.*, quoting from *In re American Fertility Society, supra*, 51 USPQ2d at 1836.

The evidence of record in this case includes the following. Applicant's specimen of use is a printout of a page from its menshealth.com website, under the general heading "Health." (The other available headings or pages are listed as "Fitness," "Sex," "Lifestyle," "Weight Loss," "Nutrition" and "Style.") The page bears the headline "Health Bulletin June 2003" with the subheading "Health news you can use."

Also of record is the following dictionary definition of "health":<sup>2</sup>

1. The overall condition of an organism at a given time.
2. Soundness, especially of body or mind; freedom from disease or abnormality.
3. A condition of optimal well-being: *concerned about the ecological health of the area.*
4. A wish for someone's good health, often expressed as a toast.

Also of record is the following dictionary definition of "bulletin":<sup>3</sup>

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<sup>2</sup> The American Heritage Dictionary of the English Language (3d ed. 1992).

<sup>3</sup> The American Heritage Dictionary of the English Language (3d ed. 1992).

1. A brief report, especially an official statement on a matter of public interest issued for immediate publication or broadcast. 2. A brief update or summary of current news, as on television or radio or in a newspaper. 3. A periodical, especially one published by an organization or society. 4. A printed program, especially one listing the order of worship for a religious service: a *church bulletin*.

The Trademark Examining Attorney also has submitted (with her October 12, 2005 Office action) printouts of seven excerpted articles obtained from the NEXIS database showing uses of "health bulletin" in the press. These are (emphasis added):

For more information about the pertussis outbreaks, read the **health bulletins** posted on the Web at: [www.akepi.org](http://www.akepi.org).  
Anchorage Daily News (November 1, 2003);

The site, updated daily, includes the latest information on recent outbreaks and recommendations, hyperlinks to other sites with information such as ministries of health, foreign medical associations, national **health bulletins**, U.S. embassies worldwide and online medical journals.  
Pittsburgh Post-Gazette (April 14, 2002);

The CDC, in its weekly **health bulletin**, listed signs and symptoms of bioterrorism-related germs and chemicals...  
Milwaukee Journal Sentinel (October 19, 2001);

Since 1970, when dietary cholesterol and blood cholesterol were considered equal threats to health, the public has been advised to end or decrease the amount of eggs in their diets. ... So what do all these new **health bulletins** mean?

I guess they mean it's OK if Rocky Balboa has an egg in his beer. As long as it's pasteurized or hard boiled.

The Seattle Post-Intelligencer (April 17, 2002);

Anthem often sends out information on their insurance products, newsletters and **health bulletins** to customers and it sometimes uses services that handle bulk mailings, he said. Portland Press Herald (Maine) (July 15, 2001);

Be sure to quiz your travel agent about any **health bulletins** or immunization requirements that may be necessary or check with reliable travel guides.

Fort Collins Coloradoan (March 21, 1999); and

So, there you are on the treadmill keeping fit, pleased because research says that glass of wine with last night's dinner will help protect your heart when the guy on TV says that according to a new health study, even moderate drinking increases a woman's risk of getting breast cancer. Confusing **health bulletins** like these are common.

Daily News (New York) (March 2, 1998).

Also of record is the following excerpt from the Internet web page of the Washington State Department of Health, showing use of "health bulletin" (emphasis added):

This **health bulletin** will provide you and your health care provider with information about the releases of radioactive materials from Hanford and their potential health effects.

As noted above (in footnote 1), applicant has submitted claims of ownership of seven prior registrations, all of them registered on the Supplemental Register. Our

review of the Office's records shows that these registrations are as follows:

- Registration No. 3022218, of the mark HEALTH BULLETIN (BULLETIN disclaimed) for "magazine columns or sections in the fields of health, fitness, diet, exercise and lifestyle," in Class 16;

- Registration No. 2914031, of the mark WEIGHT-LOSS BULLETIN (BULLETIN disclaimed) for "magazine feature and section in the fields of health, fitness, diet, exercise and lifestyle," in Class 16;

- Registration No. 2920260, of the mark SEX BULLETIN (BULLETIN disclaimed) for "magazine section featuring information in the fields of health, fitness, diet, exercise and lifestyle," in Class 16;

- Registration No. 2937172, of the mark MUSCLE BULLETIN (BULLETIN disclaimed) for "magazine columns and sections in the field of health, fitness, diet, exercise and lifestyle," in Class 16;

- Registration No. 2956178, of the mark WEIGHT LOSS BULLETIN (BULLETIN disclaimed) for "providing information in the fields of physical fitness, exercise and maintaining a healthy lifestyle; providing electronic newsletters in the field of health, fitness, diet, exercise and lifestyle," in Class 41;

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- Registration No. 2974874, of the mark MUSCLE BULLETIN (BULLETIN disclaimed) for "providing information in the field of fitness, exercise and lifestyle," in Class 41; and

- Registration No. 2984357, of the mark NUTRITION BULLETIN (BULLETIN disclaimed) for "magazine column and sections in the fields of health, fitness, diet, exercise and lifestyle," in Class 16.

Applicant relies on these registrations, and in particular on Registration No. 3022218 (HEALTH BULLETIN for class 16 goods), as evidence in support of its claim that HEALTH BULLETIN likewise is registrable on the Supplemental Register for the recited Class 41 services in the present application. The Trademark Examining Attorney contends, in response, that the marks and the goods or services depicted in the prior registrations are distinguishable from the mark and services of the present application and that, in any event, the decisions of previous Trademark Examining Attorneys are not binding on the Board, and the present application must be decided on its own merits.

Our analysis begins with a determination of the genus of the services at issue. *See H. Marvin Ginn, supra.* We find in this case that the genus of services is commensurate with applicant's recitation of services in the

application, i.e., "providing information in the field of fitness, exercise and lifestyle."

We next must determine whether the purchasing public understands HEALTH BULLETIN to refer to the genus of services at issue. See *H. Marvin Ginn, supra*. We note, first, that the dictionary definition of "health" quoted above includes "soundness, especially of body or mind; freedom from disease or abnormality." We find that this definition of "health" directly applies to and is a name for "the field of fitness, exercise and lifestyle" to which applicant's recitation of services refers. We also note the usage on applicant's own website specimen of the phrase "Health news you can use," as well as the generic usages of the word "health" in the identifications of goods and services in five of the seven prior registrations claimed by applicant. Based on this evidence, we find that HEALTH is the generic name of the subject matter of applicant's information services.

We further note that the dictionary definition of "bulletin" quoted above includes "a brief update or summary of current news, as on television or radio or in a newspaper." We find that this definition of "bulletin" directly applies to and names the "providing information" aspect of applicant's recited services. We find that

BULLETIN is a generic name for this aspect of the services. Indeed, in this Supplemental Register application applicant already has disclaimed BULLETIN apart from the mark as shown.

In addition to finding that each of the words HEALTH and BULLETIN are generic as applied to the genus of services at issue, we also find, as we must under *American Fertility, supra*, that the phrase HEALTH BULLETIN as a whole is generic for the services. The seven NEXIS excerpts and the one Internet page quoted above show that informational reports on the subject of health are referred to generically as "health bulletins." We find that the quoted excerpts suffice to establish that HEALTH BULLETIN, as a whole, is and would be understood by purchasers to refer to the genus of services at issue here, i.e., the service of "providing information in the field of fitness, exercise and lifestyle."

Although we note that applicant already has obtained various Supplemental Register registrations of BULLETIN marks, including HEALTH BULLETIN (BULLETIN disclaimed) in Class 16, we nonetheless find, based on the clear evidence of genericness which is present in this case, that HEALTH BULLETIN is generic for the services recited in applicant's application. Although consistency in examination is a goal

of the Office, the decisions of previous Trademark Examining Attorneys are not binding on us, and we must decide each case based on the evidence presented in the record before us. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).<sup>4</sup>

In this case, the evidence of record clearly establishes the genericness of HEALTH BULLETIN as applied to applicant's services. We therefore find that HEALTH BULLETIN is incapable of distinguishing applicant's services, and that it therefore is not registrable on the Supplemental Register.

Decision: The refusal to register on the Supplemental Register is affirmed.

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<sup>4</sup> We note that in a recent decision published as citable precedent of the Board, we affirmed the Trademark Examining Attorney's refusal to register NUTRITION BULLETIN on the Supplemental Register for "providing information in the field of health and diet via a web site on the Internet," on the ground of genericness. *In re Rodale Inc.*, \_\_\_ USPQ2d \_\_\_, (TTAB 2006) (Serial No. 78369245, July 25, 2006.)