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THIS DISPOSITION IS NOT
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OF THE TTAB

Paper No. 9
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Salient Growth Developments Limited

Serial No. 75/772,446

Joseph R. Dreitler and Brian J. Downey of Vorys Sater
Seymour and Pease LLP for Salient Growth Developments
Limited.

Daniel P. Capshaw, Trademark Examining Attorney, Law Office
109 (Ronald R. Sussman, Managing Attorney).

Before Cissel, Hohein and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Salient Growth Developments Limited has filed an
application to register the mark CAMA SOL and design, in the
form reproduced below



for "clothing, namely, sweaters, scarves, shirts, tops, tank tops, jackets, suits, dresses, skirts, pants, shorts, pantsuits, pajamas, sleepwear, lingerie, undergarments"¹ in International Class 25.

Registration has been finally refused under Section 6 of the Trademark Act on the basis of applicant's failure to comply with a requirement to disclaim the word CAMISOLE apart from the mark as shown. According to the Trademark Examining Attorney, CAMISOLE is descriptive for goods that include pajamas, sleepwear, lingerie and undergarments, and is also the phonetic equivalent of the CAMA SOL portion of applicant's mark. As such, he maintains, the word CAMISOLE must be disclaimed.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm.

It is the position of the Trademark Examining Attorney that the term CAMISOLE is descriptive of applicant's undergarments and lingerie. As evidence in support of this position, the Trademark Examining Attorney submitted the following dictionary definition of the term CAMISOLE from

¹ Application Serial No. 75/772,446, filed on August 10, 1999, based upon an allegation of a *bona fide* intention to use the mark in commerce.

The American Heritage Dictionary of the English Language, Third Edition (1992 Electronic Version): "Camisole: (1) A woman's sleeveless undergarment, now usually worn under a sheer blouse. (2) A short negligee."

Applicant maintains that "no reasonable consumer is going to view the two words 'cama' and 'sol' with a sun design to be a misspelling of 'camisole'." (Applicant's brief, p. 5). Applicant explains that the word 'Sol' is the Spanish word for sun and that the word CAMA has no special meaning, but is derived from the first four letters of its designer's surname, Camarillo.

The Trademark Examining Attorney has clearly established that the word CAMISOLE is highly descriptive, if not generic, for applicant's undergarments and lingerie. The dispute between the Trademark Examining Attorney and applicant is whether it is reasonable to presume that consumers will see CAMA SOL in the context of applicant's mark as a mere misspelling of the word CAMISOLE.

A slight misspelling of a highly descriptive term is insufficient to avoid the proscription of Section 2(e)(1), so long as the term is likely to be perceived by the public as the equivalent of the descriptive term. See In re State Chemical Manufacturing Co., 225 USPQ 687 (TTAB 1985) and the cases cited therein.

The Trademark Examining Attorney argues as follows:

Here, the wording CAMA SOL in the mark would be perceived as CAMISOLE, especially when the mark is spoken. The wording CAMA SOL and CAMISOLE are phonetic equivalents. The wording only differs in two vowels: the existence of a silent "e" at the end of CAMISOLE and the applicant's fourth letter "a" as opposed to the descriptive wording's fourth letter "i."

(Trademark Examining Attorney's appeal brief, p. 3).

By contrast, applicant takes the position that "[w]hile the typical American consumer may not be particularly adept at spelling, it is an incredible stretch to say that any reasonable consumer would view the mark sought to be registered ... and think ... 'oh this is the word camisole.'" (Applicant's appeal brief, pp. 1-2).

According to the evidence in the instant record, the term CAMA is totally arbitrary as applied to applicant's clothing items, while applicant has stated that the term SOL is the Spanish word for "sun." Hence, in the abstract, a literal reading of the combination, CAMA SOL, would appear to have no real meaning. However, in considering descriptiveness issues, we must view the combined term sought to be registered in the context of the products on which it is used. That is, we must consider how the prospective consumer would encounter the mark in its marketplace setting.

As applicant's mark will be used on hang tags and labels attached to women's tops, tank tops, pajamas, sleepwear, lingerie and undergarments, we believe a substantial number of purchasers will readily perceive CAMA SOL as a misspelling of the highly descriptive term CAMISOLE. Certainly, when dealing with consumer goods that are frequently ordered and purchased by the spoken word, the identical sound of these two constructions is important to consider. We find that CAMA SOL is as close to "camisole" as is TINTZ to "tints," LITE to "light," ALKOL to "alcohol," or SAVON GAS to "save on gas," examples noted by the Trademark Examining Attorney in a quotation from Administrative Trademark Judge Allen in State Chemical Manufacturing Co, supra at 689.

While applicant seems to suggest it would never use a registration resulting from this application to threaten competitors using the word "camisole" in its descriptive or generic manner,² as Judge Allen also noted in State Chemical Manuf. Co, supra, at 690, that does not absolve this Board of its responsibilities:

... [W]hile applicant's statement that FOM could not interfere with anyone's right to

² "Likewise, is it reasonable to think the Applicant could obtain registration of the mark herein and use it to (try and) stop third parties from using the word "camisole." (Applicant's brief, p. 3).

use "foam" to describe the foaming characteristic of its rug shampoo may be correct, the more significant question is whether registration of FOM on the Principal Register would enable appellant to claim that another's descriptive use of the term FOAM in connection with the same type of product constituted an infringement of its rights in FOM because of the phonetic equivalence of those terms in the perception of a substantial number of purchasers. [cite omitted]. [The result in the cited case] does not absolve us from our responsibility to apply Section 2(e)(1) of the Trademark Act where not to do so would place one in a position to make or threaten to make an unwarranted claim of rights based on the presumptive right to exclude another's use which flows from the grant of a Principal Register registration.

We also agree with the Trademark Examining Attorney, as to the guidance provided by In re Grand Metropolitan Foodservice Inc., 30 USPQ2d 1974 (TTAB 1994). There the Board, finding more than merely a misspelled generic term, found a dual meaning in the mark *Muffins*, and applicant had agreed to disclaim the word "muffins" apart from the mark as shown. The Board stated as follows:

After careful consideration of the arguments of the attorneys, we believe that this case involves more than simply a misspelling of a descriptive or generic word. That is to say, the mark presented for registration will be perceived, we believe, as not just a misspelled word. As applicant has pointed out, its mark does project a dual meaning or suggestiveness -- that of muffins and of the "fun" aspect of applicant's food product. This aspect of applicant's product is

emphasized in its promotion ("What's MuffFun than one?"). We have a situation, therefore, where applicant's mark has a different commercial impression or connotation from that conveyed by a misspelled generic or descriptive term... Moreover, applicant's disclaimer makes clear that third parties will not be precluded by this registration from using the generic term "muffins."

In the instant case, even if some prospective consumers may view this misspelling as an intentional play on the word CAMISOLE, we have identified no dual meaning, and the exact phonetic equivalence of the two terms herein provides no room for emphasizing subtle differences in pronunciation found in many of the cases discussed above.

Decision: The requirement, under Section 6 of the Trademark Act, for a disclaimer of CAMISOLE is affirmed.

In accordance with Trademark Rule 2.142(g), this decision will be set aside and this application will be returned to the Trademark Examining Attorney to place in condition for publication for opposition if applicant, no later than thirty days from the mailing date of this decision, submits an appropriate disclaimer of CAMISOLE.