3/21/02

Paper No. 24
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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 Daniel Dayan

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Serial No. 75/358,966

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Philip A. Kantor for applicant.

Amos T. Matthews, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

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Before Simms, Hairston and Wendel, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Daniel Dayan has filed an application to register the mark BABY GOLF for "clothing, namely newborn, infant and toddler shirts, one-piece outfits, coveralls, pants and dresses."[1]

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on

[1] Serial No. 75/358,966, filed September 18, 1997; based on an allegation of a bona fide intention to use the mark in commerce. The word BABY has been disclaimed apart from the mark as shown.

the ground that applicant's mark, if used in connection with the identified goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney contends that the mark BABY GOLF immediately conveys information about the nature of applicant's goods, namely, that it is clothing for very young children with a golf theme or motif. In support of the refusal, the Examining Attorney submitted dictionary entries for the words "baby" and "golf". In addition, he submitted, inter alia, six excerpts of articles retrieved from the NEXIS database that refer to "baby golf clubs" or "baby golf shoes." Following are examples of the excerpts:

> One company, Wee Golf, has gone as far as manufacturing baby golf clubs. (*The Arizona Republic*, October 10, 1997);
>
> . . .provincial bassinet, a Burberry baby carriage (worth $4,250) and a wardrobe stocked with everything from blue-and-white onesies to baby golf shoes. (*People*, February 12, 2001); and
>
> There are golf-ball display cases for collectors, desk sets, tapestries, pictures of famous courses, baby golf shoes, barbeque utensils with a golf-grip handle . . . (*The Kansas City Star* November 11, 1998).

Applicant, on the other hand, contends that its mark is at most suggestive of its goods. According to applicant, none of its clothing possesses the usual attributes of golf clothing, namely, cuffed trousers or high, overlapping socks, and that the only "nexus between [a}pplicant's clothing and golf is a style and attitude suggestive of a 'country club' theme." With respect to the NEXIS excerpts relied on by the Examining Attorney, applicant maintains that the uses of "baby golf shoes" therein are not references to apparel at all, but rather to miniature replicas of adult golf shoes which are used for display purposes only. In addition, applicant argues that it cannot be discerned whether the uses of "baby golf clubs" are references to golf clubs for older children, or to miniature replicas of golf clubs. Further, applicant argues that the mark has a certain incongruity in that newborns, infants and toddlers cannot and do not play golf.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). A term may be descriptive even

if it only describes one of the qualities or characteristics of the goods or services. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Moreover, whether the term is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

There is no dispute that the word BABY is descriptive of applicant's clothing. In this regard, we note that applicant has disclaimed the word apart from the mark as shown. Moreover, although applicant contends that none of its actual clothing "possesses the usual attributes of golf clothing," the identification of goods in applicant's application is not restricted so as to exclude this type of clothing. In other words, the identification of goods is broad enough to include clothing of a type that resembles golf clothing and, in particular, may include what are commonly referred to as "golf shirts." In fact, golf shirts in newborn and infant sizes are among the items

featured in applicant's catalog sheet.[2] Thus, the word GOLF is equally descriptive of applicant's clothing.

The combination of the words BABY GOLF does not result in an incongruity. Rather, the combination simply conveys the merely descriptive meaning of its parts. See e.g., In re International Game Technology Inc., 1 USPQ2d 1587 (TTAB 1986) where ON-LINE, ON-DEMAND was held merely descriptive of computer lottery terminals, which operate on-line and provide tickets on demand; and In re Nash-Fitch Co., 160 USPQ 210 (TTAB 1968) where TENDER FRESH was held unregistrable on the Supplemental Register for fresh cut chickens.

Under the circumstances, we agree with the Examining Attorney that the term BABY GOLF immediately describes a significant characteristic of applicant's clothing, namely, that it is golf-style clothing for babies.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

[2] Although applicant based its application on an intent-to-use the mark, during the course of prosecution, applicant submitted a catalog sheet. We note, however, that applicant has not filed an amendment to allege use.