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OF THE TTAB

Mailed:
October 27, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dugger

Serial No. 78207954

Scott J. Stevens of Woodard, Emhardt, Moriarty, McNett & Henry LLP for Timothy P. Dugger.

Carrie Achen, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).¹

Before Hairston, Kuhlke and Walsh, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

On January 28, 2003, Timothy P. Dugger (applicant) filed an intent-to-use application to register CAREER CAFÉ, in standard character form, on the Principal Register for:

providing an internet web site featuring information in the field of job placement; resume creation and preparation services; personality testing for job selection and placement; providing a database featuring resumes and job listings; employment outplacement services; job placement services; organizing and conducting job fairs; providing

¹ Examining Attorney R. Brett Golden acted on this application initially. Examining Attorney Carrie Achen filed the USPTO brief.

facilities for business meetings by clubs and other organizations; business consultation; employment recruiting services; testing to determine employment job skills, in International Clas 35, and

restaurant and bar services; catering services, in International Class 43.

The examining attorney refused registration on the ground that the mark merely described the services under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

§ 1051(e)(1). Applicant responded; the examining attorney made the refusal final; and applicant appealed. For the reasons set forth below, we affirm.

Section 2(e)(1) of the Trademark Act prohibits registration of a mark that is "merely descriptive" of the goods or services identified in the application. A term is merely descriptive if it immediately describes a characteristic or feature of the goods or services. In re Guylay, 820 F.2d 1216, 3 USPQ2d 1009, 1009-1010 (Fed. Cir. 1987). To determine whether a mark is merely descriptive, we must consider the significance of the mark as applied to the goods or services identified in the application, not in the abstract. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). Words may be combined to form phrases or terms which take on a descriptive meaning to the relevant public for specific products or services. In re Copytele Inc., 31 USPQ2d 1540, 1542 (TTAB

1994); In re Digital Research Inc., 4 USPQ2d 1242, 1244 (TTAB 1987).

In his response to the first refusal, Applicant provided the following explanation regarding the services he intends to provide:

Applicant has not fully developed the details concerning the nature of the services, but initially applicant would expect the services would include, in a comfortable, casual establishment in which food and beverages may be served, the opportunity for job seekers to receive job placement counseling, search for jobs, meet with prospective employers, and discuss job hunting issues with other similarly situated people.

In his request for reconsideration, applicant adds:

In the area of career development services, Applicant proposes to offer services, either via the Internet or by visiting a bricks and mortar facility, namely, psychological testing, personality profiling and career aptitude. Examples would include Myers-Briggs, Strong and DISC tests, skill testing, such as, software proficiency, programming skills, typing speed, grammar usage, and knowledge of medical terminology; training skills, as it is not enough to just find out what someone's skills are; people need to be able to have ready access to a means to improve their skills, and thus their marketability. In addition to on-line training in various areas mentioned above, also offered will be interview skills training, resume creation (both paper and video resumes). Marketing training programs and the providing of company databases will also be part of the services. Career counseling and coaching with small groups and one-on-one help will also be offered.²

² In the request for reconsideration applicant also describes a range of services not covered in the application, such as, the operation of a book store and video conference facilities. Services not identified in the application are not relevant for purposes of our determination regarding mere descriptiveness.

Applicant argues that CAREER CAFÉ is not merely descriptive for the identified services. Specifically, applicant argues:

Applicant's mark CAREER CAFÉ, through the combination of two unrelated words, evokes numerous, equally plausible meanings and connotations, i.e., commercial impressions, when applied to applicant's services, and no single meaning or commercial impression predominates. As such, some thought or investigation is necessary to determine the nature and characteristics of the services when first presented with the mark . . ."

Applicant also argues more generally that the mark is an "incongruous combination" of terms with a "synergistic meaning" which is suggestive. For example, applicant posits that "'café' is a shortened form of 'cafeteria'" and that "career cafeteria" could suggest "a service that provides a wide choice of individual career or job opportunities or ideas."

The examining attorney correctly observes, as we have noted above, that we must view the significance of the mark in relation to the services identified in the application.

The Board has explained:

. . . the question of whether a mark is merely descriptive must be determined, not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether when the mark is seen on the goods or services, it immediately conveys the information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998). See In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

The examining attorney has presented evidence of the meaning of the individual terms, CAREER and CAFÉ, as well as evidence of the use of the entire mark, CAREER CAFÉ, in conjunction with services identical to or closely related to those identified in the application.

The dictionary definition of "career" provided by the examining attorney defines "career" as "a. a chosen pursuit; a profession. b. the general course or progression of one's working life or one's professional achievements." The definition of "café" specifies "a coffeehouse, restaurant or bar." These definitions alone point to the conclusion that CAREER CAFÉ is merely descriptive of the services identified in the application, that is, "a coffeehouse, bar or restaurant" or equivalent setting where one will find a variety of services which are career-related, that is, services related to one's "profession" or "the general course or progress of one's working life."

The evidence of third-party use of CAREER CAFÉ removes all doubt, if any existed, as to the descriptive nature of the mark.

First, the examining attorney provides a web page from the University of Connecticut web site which states the following under the heading "Career Cafe": "Drop in, relax, have a cup of coffee. These topical sessions will provide career development and planning information, topics change each semester." The site then sets out a schedule of dates when specific professions or careers will be featured, such as, teaching. The page indicates that help is available with matters, such as, "Job Searching," "Creating a Career Design," "ABC's of Resumes," "Interviews" and other career-related topics.

Likewise, another web page entitled "Introducing The Career Café" associated with Villanova University solicits professionals to assist students in their career development by stating: "Meet individually or in small groups with students regarding your field/industry and/or company while enjoying a cup of coffee and the informal atmosphere of the Career Café."

Yet another web page associated with Penn State University (New Kensington) includes a group of photos under the heading "Career Café Night Photos" showing people meeting and sharing literature in a lounge-type setting.

Still another web page from www.valleyworkforce.com states the following, again under the heading "Career

Café": "Re-employment and training services for eligible adults and dislocated workers in the Rockbridge-Bath County Area." The site provides a phone number and address.

This evidence indicates that CAREER CAFÉ has been used by others to identify services identical to those identified in the application. The evidence contradicts applicant's claim that the combination of CAREER and CAFÉ is somehow incongruous.

Also, NetLingo - The Internet Dictionary (2002), includes a definition of "cyber café" which states, "a.k.a. 'Internet café' . . . a public eating and drinking establishment, in the real world where the principal form of entertainment is on-line access to the Net via computer terminals at individual tables."³ This definition is further evidence that "café" has taken on an expansive meaning with respect to the range of activities which may be available in a "café" setting. Consequently, consistent with the evidence of record, terms like "career" and "café" can be and are combined to designate a "café" setting where

³ We take judicial notice of this dictionary definition under the authorities cited in TBMP § 1208.04 n. 187 (2d ed. rev. 2004), e.g., University of Notre Dame du Lac v. J.C. Gourmet Food Imports, Inc., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). We have not considered the definition of "cybercafe" which the examining attorney included with her brief. It appears to come from a dictionary which is available in electronic form only. See Raccioppi v. Apogee, Inc., 47 USPQ2d 1368, 1370-71 (TTAB 1998).

career-related activities occur. Furthermore, this definition indicates that the public is conditioned to understand the descriptive import of this combination - without perceiving any incongruity. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

Applicant dismisses the examining attorney's evidence of third-party use by asserting that "such references relate only to the issue of priority of use." We cannot so readily dismiss the pattern which is evident in these uses by a number of parties using CAREER CAFÉ to identify and describe services identical to or closely related to those identified in the application. Furthermore, the implication in applicant's argument that priority and descriptiveness issues are mutually exclusive is mistaken. Cf. In re Microsoft Corp., 68 USPQ2d 1195 (TTAB 2003)(refusals affirmed on the grounds of both likelihood of confusion and descriptiveness). Furthermore, the mere fact that someone is the first to use, as the applicant apparently alleges here, does not establish that the designation in question is distinctive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983).

Also, applicant's argument that CAREER CAFÉ may possess other meanings which are not merely descriptive of

the services is not persuasive. In fact, applicant has not identified any "other meanings" which are not descriptive.

First, applicant's "career cafeteria" example is based on a dubious premise. Applicant provides no evidence to support his contention that "café" is a shortened form of "cafeteria." The definition the examining attorney provided for the record indicates that "café" is derived from the French or Italian words for "coffee" and that one meaning growing out of that etymology is "coffeehouse." There is no mention of any etymology related to "cafeteria." Even if we could accept applicant's premise, the alternative meaning applicant suggests would result from "career cafeteria," specifically, "a service that provides a wide choice of individual career or job opportunities or ideas" also points to the conclusion that the mark is merely descriptive of the identified services.

Applicant provided alternative meanings for "career" for the first time in his brief, specifically, "job, trade, occupation, mission, calling, specialty, profession and life's work." The definitions appear to come from an online dictionary, www.dictionary.com, which appears to exist in electronic form only. Consequently, we have not considered them. See Raccioppi v. Apogee, Inc., 47 USPQ2d 1368, 1370-71 (TTAB 1998). If we had, it would not advance

applicant's argument. These "alternative meanings" likewise point to the conclusion that the mark is merely descriptive of the identified services.

In any event, as the Board observed in another case, "It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive." In re Chopper Industries, 222 USPQ 258, 259 (TTAB 1984).

Likewise, we find applicant's argument that the mark may not describe all aspects of the services it intends to offer unpersuasive. It is axiomatic that a mark may be merely descriptive even if it does not describe the full scope of the applicant's goods and services. In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004).⁴ "Career" is a broad term; all of the Class 35 services identified by applicant with the possible exception of "providing facilities for business meetings by clubs and other organizations" and "business consultation" are "career-related." "Café" is also a term which is broad

⁴ Even Quik-Print, the principal case applicant cites in support of registration observes that, "Registration will be denied if a mark is merely descriptive of any of the goods or services for which registration is sought." In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980)(emphasis in the original). In fact, in Quik-Print, the Court affirmed the Board's holding that QUIK-PRINT was merely descriptive in circumstances very much like those present here.

enough to include virtually any "coffeehouse, bar or restaurant" setting where a variety of other activities may occur.

Accordingly, we conclude that CAREER CAFÉ is merely descriptive of applicant's services. More particularly, CAREER CAFÉ is merely descriptive of the Class 35 career-related services offered in a "café-type" setting, and CAREER CAFÉ is merely descriptive of the Class 43 "restaurant, bar and catering services" offered in conjunction with "career-related" services.

Decision: The refusal to register applicant's mark on the ground that it is merely descriptive of the services in Classes 35 and 43 is affirmed.