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PRECEDENT OF THE T.T.A.B

Mailed: July 8, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Curtis A. Brubaker Jr.

Serial No. 78797601

William H. Holt of the Law Office of William H. Holt for
Curtis A. Brubaker Jr.

Steven Foster, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Drost, Kuhlke and Cataldo, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Curtis A. Brubaker Jr., applicant, has filed an application to register the mark LOCAL LABEL in standard characters on the Principal Register for "hats; polo shirts; shirts; short-sleeved or long-sleeved t-shirts" in International Class 25. The application was filed on January 23, 2006, under Section 1(b) of the Trademark Act, 15 U.S.C. §1052(b), alleging a bona fide intention to use the proposed mark in commerce.

The examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

§1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

"A mark is merely descriptive if it 'consist[s] merely of words descriptive of the qualities, ingredients or characteristics of' the goods or services related to the mark." In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, Estate of P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 543 (1920).

See also In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant ingredient,

quality, characteristic, function, feature, purpose or use of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

Finally, while a combination of descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. *In re Oppedahl & Larson LLP*, *supra*.

The examining attorney argues that "when viewed in connection with the applicant's goods, the words 'LOCAL

LABEL' merely describe clothing items sold near their location of manufacture or design." Br. p. 4. Applicant does not dispute that a portion of its goods "may be close to the location of the manufacturer." Applicant's September 21, 2007 Response. Moreover, the unrestricted identification of goods encompasses locally manufactured clothing.

In support of his position, the examining attorney submitted the following dictionary definitions:

LABEL: the brand name of a retail store selling clothing, a clothing manufacturer, or a fashion designer. (Merriam-Webster Online (2006) www.m-w.com) ;

LABEL: a brand name of some items of fashion. (Encarta World English Dictionary (2007) encarta.msn.com) ;

LOCAL: 1a. of, relating to, or characteristic of a particular place: a local custom; the local slang. b. Of or relating to a city, town, or district rather than a larger area: state and local government. (The American Heritage Dictionary of the English Language (4th ed. 2000) retrieved at www.bartleby.com) ;

LOCAL: 1. in nearby area: relating to, situated in, or providing a service for a particular area, especially the area near home or work 2. characteristic of particular area: characteristic of, or only found in, a particular area. (Encarta World English Dictionary (2007) encarta.msn.com) .

In addition, the examining attorney submitted excerpts from newspaper articles downloaded from the NEXIS database

and excerpts from webpages retrieved from the Internet wherein the phrase "LOCAL LABEL" is used to describe locally manufactured or designed clothing. A few examples are set forth below:

Those that prefer to suit up in something more exclusive can choose local labels such as Hakson, Spoonfed Clothing, and Carolina Brazil. "The Miami Herald" (April 20, 2005);

A black, buckle-bedecked, punk-rock purse is only \$45, and an orange silk skirt with flower embroidery on the front and back by local label Eclectica is \$200. "Chicago Tribune" (December 1, 2004);

The Reason8 shirts have been selling well at the Garment District, a vintage clothing store that also carries the handiwork of other local labels. "The Boston Globe" (February 26, 2004);

Clothing and accessory collections came from local labels such as Renee Atkinson's Rocket Science, Michelle Baum, Brooks, Gabriel Conroy, Kathy Ilian, Rochelle Jay, Naomi Macstras ... "Rocky Mountain News" (June 25, 2003);

Girls Gone Wilde ... Olson and D'Apice encourage shoppers to personalize their look by mixing their line with jewelry made by New York's SuperFox, T-shirts by local label Pink Spike, handbags from local designer A Good Girl, and Laura Legs' line of tights, scarves, and berets. orangemagazine.com;

The clothes here probably appeal most to girls who like to look pretty but not too precious, although their racks do hold plenty of satin (Courtesy of local label Suzabelle) and tulle. judysbook.com;

Not exactly a household name, but hip young adults are flocking to the clothing maker's

stores. For one thing, they appreciate the local label. retailtrafficmag.com; and

Highlights will include tunics and leggings from local label Prairie Underground, menswear-inspired accessories from Portland artist Erin MacLeod, brightly colored stone and glass cocktail rings from Cintli and sweet frocks and coats from Seattle designer Suzabelle. nwsource.com.

We find this evidence highly persuasive. Not only does each element have a descriptive significance as shown by the dictionary definitions, the record establishes that the combination of words "LOCAL LABEL" is used in the clothing industry to describe locally produced clothing.

Applicant's argument that "the average consumer would be hard-pressed to name what goods, or types of goods, etc., are described by the mark 'LOCAL LABEL'" is misplaced in that it does not analyze the issue within the proper parameters. "The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). Further, applicant's argument that the third-party registration for the mark LOCAL BRAND, that had been cited against his application prior to its cancellation under Section 8 of the Trademark

Act, supports registration of his mark, is unpersuasive.¹

Specifically, applicant argues:

It is applicant's position that, because LOCAL BRAND qualified for registration on the Principal Register, and applicant's mark has, in the Examiner's words, "a nearly identical meaning", applicant's mark likewise should qualify for registration on the Principal Register in view of the cancellation of the registration for LOCAL BRAND. It follows, a fortiori, if LOCAL BRAND was not "merely descriptive", than [sic] LOCAL LABEL is not "merely descriptive".

Br. pp. 2-3.

However, it is well settled that each case must be considered on its own merits and the Board is not bound by decisions of examining attorneys in other applications. In re Nett Design Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). See also In re Scholastic Testing Service, Inc., 196 USPQ 517 (TTAB 1977).

Viewing LOCAL LABEL as a whole, we find the evidence of record sets forth a *prima facie* case that such phrase is merely descriptive for clothing. Thus, we are persuaded that when applied to applicant's "hats; polo shirts; shirts; short-sleeved or long-sleeved t-shirts," LOCAL LABEL immediately describes, without need for conjecture or

¹ The evidence attached to applicant's reply brief, consisting of a search result from the Trademark Electronic Search System (TESS) of third-party applications and registrations with the word LOCAL in the marks, is untimely and has not been considered. Trademark Rule 2.142(d). We note, however, that consideration of this evidence would not change the decision.

speculation, a significant feature of the goods, namely that they are locally produced.

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