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OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Maria C. LaMon

Serial No. 76709973

Matthew S. Swyers of The Trademark Company PLLC, for Maria C. LaMon.

Amy Alfieri, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

Before Ritchie, Adlin, and Hightower, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Maria C. LaMon, applicant herein (“Applicant”), seeks registration on the Principal Register of the mark VISUAL MUSIC CONCEPTS,¹ in standard character format, for goods identified as “printed music books containing songs from the public domain printed in an oversized layout for visual learning; flash cards featuring music notes to reinforce note

¹ Serial No. 76709973, filed on December 13, 2011, amended to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on a bona fide intent to use the mark in commerce.

recognition, printed in a oversized layout for visual learning; stickers for piano keys made out vinyl static cling sheets and printed in an oversized layout for visual learning,” in International Class 16.

The trademark examining attorney refused registration on the ground that Applicant’s applied-for mark is merely descriptive of the identified goods under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Both Applicant and the Examining Attorney filed briefs. After considering all of the evidence and arguments, we affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). If, on the other hand, a mark requires imagination,

thought, and perception to arrive at the qualities or characteristics of the goods or services, then the mark is suggestive. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

We consider a composite mark in its entirety. A composite of descriptive terms is registrable only if as a unitary mark it has a separate, non-descriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (holding SUGAR & SPICE not merely descriptive of bakery products). Accordingly, we look to the plain meaning of the words. The Examining Attorney submitted definitions, of which we note the following relevant portions:²

“Visual”: 6. “of or relating to a method of instruction involving sight.”

“Music”: 2. “vocal or instrumental sounds possessing a degree of melody, harmony, or rhythm.”; 3a. “a musical composition;” b. “the written or printed score for such a composition”

“Concept”: 1. “a general idea derived or inferred from specific instances or occurrences; 3. “a scheme; a plan.”

The examining attorney argues that the term “visual music concepts” as a whole is descriptive of the goods in the application, specifically, that the evidence shows that the term “visual music concepts” refers to the fact that Applicant’s books and flash cards teach music using visual cues. As such, the term provides information about the goods. Applicant admits that “visual” and “music” are descriptive of its goods but asserts that “concepts” is not,

² From YAHOO! Education. Submitted with March 30, 2012 Office Action, pp. 2-4. Applicant did not object to these definitions or counter with definitions from other sources.

thereby rendering the applied-for mark as a whole inherently distinctive. In particular, Applicant asserts:

As a preliminary matter, the Applicant concedes that the terms VISUAL and MUSIC are descriptive of her products. As such, rather than arguing that these terms are inherently distinctive it is requested that these terms be disclaimed apart from the mark as shown. However, as set forth below, the term CONCEPTS for the identified goods is inherently distinctive and, as such, should carry the instant mark on the Principal Register with the disclaimer set forth herein.
(Applicant's Brief at 13)

The Examining Attorney, however, asserts to the contrary that the term "music concepts" is used descriptively by third-parties to refer to their music books and flash cards. To this end, the Examining Attorney submitted evidence of numerous such third-party uses of the term, as well as a few uses of the term "visual" in reference to music teaching, including on Applicant's own website, which touts a "Visual & Auditory Approach."³ Some examples of the third-party uses include the following:

KiddyKeys® Preschool Music Classes Make Learning **Music Concepts** and Life Skills Fun for Children: . . . this original music program enables young children to explore the piano through improvisation, and easily learn **music concepts**. It's a great way to prepare children for school or for future instrumental lessons.
Attached to March 30, 2012 Office Action, p.7.⁴

³ Submitted by Applicant as p. 8 of her April 30, 2012 Response to Office Action.

⁴ Web evidence was submitted by the Examining Attorney without URLs and dates shown. Although the rules of evidence are more relaxed in *ex parte* proceedings, and Applicant did not object that she was unable to verify any of the submissions, it is preferable to include this information. *See In re International Business Machines Corp.*, 81 USPQ2d 1677, 1682 n.9 (TTAB 2006) (Board considered web pages that did not include web addresses because applicant did not object to them); *In re White*, 73 USPQ2d 1713, 1716 n.5 (TTAB 2004).

Monte Vista Baptist Church: Preschool Choir: The music experience choir meet at 6pm on Sundays. These children learn foundational **music concepts** such as the difference between long and short tones, high and low pitches, soft and loud sounds, fast and slow tempos.

Attached to March 30, 2012 Office Action, p.8.

Music for Little Mozarts: Music Lesson Books: Keyboard performance and introduction of **music concepts**.

Attached to May 31, 2013 Final Office Action, p.3.

JW Pepper: 101 Music Activities: Product Description: Each activity is geared to the National Standards and can be used to introduce and reinforce **music concepts** and as an assessment tool.

Attached to May 31, 2013 Final Office Action, p.2.

MusicEd Tech: Book: Use the materials in this book and the companion website to teach **music concepts** through the creative process of composition. It's a turn-key, step-by-stop guide for the teacher.

Attached to May 31, 2013 Final Office Action, p.5.

May Watts Elementary School: Indian Prairie School District 204: Themes: The music literature presented in this section is based on common classroom themes related to self, family, friends, adventures, and celebrations. These songs also help reinforce the **music concepts** taught in the concept section of the book.

Attached to May 31, 2013 Final Office Action, p.6.

Auburn Senior High School Bands: Percussion Ensembles: This ensemble is composed of auditioned 10-12 [grade?] percussionists that are concurrently enrolled in Wind Ensemble. In this ensemble, students learn **music concepts** to help them listen, perform and understand high school level percussion literature.

Attached to March 30, 2012 Office Action, p.6.

Islands of Genius: The Bountiful Mind of the Autistic, Acquired, and Sudden:

How do persons with perfect pitch learn?: Learning occurs, in most people, through use of a combination of auditory and visual

cues. Auditory learning is done through hearing the spoken language, such as listening to a teacher's verbal explanation, for example. **Visual learning** is done through sight, such as seeing words in a book or writing on the blackboard.

Attached to December 23, 2013 Denial of Request for Reconsideration, p. 9.

A Few Words . . . What's it all about?: The discrepancy between oral and **visual learning** described above deters many "illiterate" musicians from ever learning how to read **music**.

Attached to December 23, 2013 Denial of Request for Reconsideration, p. 7.

Boys and Girls Learn Differently! A Guide for Teachers and Parents: Another intriguing difference applies to teaching **music**, especially choir. . . . This suggests a biological rationale for how teachers should arrange their students in terms of distance or closeness to **visual learning** aids.

Attached to December 23, 2013 Denial of Request for Reconsideration, p. 10.

This evidence establishes that when Applicant's mark is viewed as a whole, consumers will perceive "visual music concepts," in relation to Applicant's identified goods, as describing a characteristic of them. *See, e.g., In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). In particular, it requires no thought or mental gymnastics to understand that "visual music concepts," when referring to Applicant's goods, describes the visual learning of the music concepts in Applicant's books and flashcards. *In re MBNA America Bank N.A.*, 67 USPQ2d at 1780. As such, we have no doubt that a consumer would understand "visual music concepts," used in connection with Applicant's goods, as directly conveying information about them. *See In re Tower Tech*

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Inc., 64 USPQ2d 1314, 1316-17 (TTAB 2002); *see also In re Conductive Services, Inc.*, 220 USPQ 84, 86 (TTAB 1983). Therefore, we find that the applied-for mark is merely descriptive of the identified goods.

Decision: The refusal to register affirmed.