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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Public Safety Health Systems, Inc.

Serial No. 77204264

Clifford W. Browning of Krieg Devault LLP for Public Safety Health Systems, Inc.

Steven W. Jackson, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

Before Kuhlke, Walsh and Wellington, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

On June 12, 2007, Public Safety Health Systems, Inc. (applicant) filed an application to register the mark PUBLIC SAFETY HEALTH AND WELLNESS in standard characters on the Principal Register for goods identified as "newsletters in the field of enhancing the well-being of public safety professionals" in International Class 16. As the basis for the application applicant asserted that it first used the mark anywhere on February 28, 2002, and that it first used

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the mark in commerce on September 1, 2004. In the application, applicant also inserted a claim of acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. 1052(f), based on the following statement: "The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years before the date of this statement." Applicant signed the application, and this statement, on June 12, 2007. Applicant has disclaimed "PUBLIC SAFETY."

The Examining Attorney has finally refused registration on the grounds that the mark merely describes the goods under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). The Examining Attorney also rejected applicant's claim under Trademark Act Section 2(f). Applicant has appealed. Both applicant and the Examining Attorney have filed briefs.

We affirm.

Before proceeding further, we will discuss applicant's claim of acquired distinctiveness. The application itself contradicts the claim as stated. The claim asserts that applicant used the mark in commerce for at least five years before the statement was made, in accordance with the prima-facie standard specified in Trademark Act Section

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2(f). However, the application asserts that the mark was first used in commerce on September 1, 2004, less than three years before the application was signed and filed on June 12, 2007.

In the first office action the Examining Attorney rejected the claim of acquired distinctiveness. Thereafter applicant simply argued that the mark was not merely descriptive, but applicant did not respond to the rejection of the claim of acquired distinctiveness in any way. Accordingly, we conclude that applicant abandoned its attempt to register the mark on the basis of acquired distinctiveness, and we will limit our consideration to applicant's claim that the mark is not merely descriptive. In any event, we find applicant's claim of use in commerce for less than three years, by itself, to be patently insufficient to show acquired distinctiveness in this case.

A term is merely descriptive of goods 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. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the

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applicant's goods in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods. See *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods identified in the application, and the possible significance that the term would have to the average purchaser of the goods. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

In arguing that the mark merely describes the identified goods the Examining Attorney states, "... public safety professionals would certainly know and be familiar with the terms 'public safety, health and wellness.' Nor would it take any speculation or mental leap to understand that PUBLIC SAFETY HEALTH AND WELLNESS refers to the subject matter of applicant's newsletters." Examining Attorney's Brief at 7. The Examining Attorney argues further that there is nothing novel or incongruous about the combination of these terms which renders them distinctive.

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On the other hand applicant argues, "Applicant strongly asserts that its mark PUBLIC SAFETY HEALTH AND WELLNESS is not merely descriptive of 'newsletters in the field of enhancing the well-being of public safety professionals' but is merely suggestive of those goods, at most. There is absolutely nothing within the mark PUBLIC SAFETY HEALTH AND WELLNESS that immediately tells anyone that it identifies newsletters in the field of enhancing the well-being of public safety professionals." Applicant's Brief at 6 (emphasis in the original).

First, contrary to applicant's arguments, we must, of course, determine whether PUBLIC SAFETY HEALTH AND WELLNESS is merely descriptive as applied to the identified goods, not in a vacuum. *In re Bright-Crest, Ltd.*, 204 USPQ at 593. The question whether a mark is merely descriptive is not determined by asking whether one can guess from the mark what the goods are, but rather by asking, when the mark is seen on or in connection with the goods, whether it immediately conveys information about their nature. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). In fact, in this instance, the mark does disclose the essence of the goods. Thus, when we consider the mark in relation to the identified goods, we conclude that the mark is merely descriptive.

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The identification of goods specifies that the goods are directed to "public safety" professionals. Applicant acknowledges this fact in its argument. Applicant's specimen, consisting of an issue of the identified newsletter, provides further confirmation of this fact. The specimen states, "Public Safety Health and Wellness, a bimonthly publication of Public Safety medical Services is committed to enhancing the well being of public safety professionals." Specimen (emphasis added). Thus, it is evident that PUBLIC SAFETY is merely descriptive because it merely describes the intended users/readers of applicant's newsletter. *In re Major League Umpires*, 60 USPQ2d 1059 (TTAB 2001) (MAJOR LEAGUE UMPIRE held merely descriptive of "clothing, namely, shirts, tee-shirts, jackets, caps, trousers, socks, wind resistant jackets, wristbands, uniforms and shoes" and "face masks, chest protectors and shin guards for athletic use"); *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER held merely descriptive of period trade journal).

Furthermore HEALTH AND WELLNESS is merely descriptive of the subject matter of applicant's newsletters. *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) defines "health" in relevant part as "the condition of being sound

in body, mind or spirit; esp. : freedom from physical disease or pain"; and "wellness" as "the quality or state of being in good health esp. as an actively sought goal."¹

Again, we turn to applicant's specimen, featured articles in the newsletter include: "Your Health and Fitness - Body Composition Techniques Educate on Health Risk"; "Public Safety Psychology News"; "Public Safety Medical News - Protection Against the Hepatitis B Virus." The principal subject matter, that is, the focus of the newsletter is HEALTH AND WELLNESS. Thus, we conclude that HEALTH AND WELLNESS is merely descriptive of the subject matter of the identified goods. See *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876 (TTAB 1992) (DECORATING DIGEST held merely descriptive for "magazines"); *In re Waverly Inc.*, 27 USPQ2d 1620 (TTAB 1993) (MEDICINE held merely descriptive for a "journal published periodically"). See also *In re Rodale Inc.*, 80 USPQ2d 1696 (TTAB 2006) ("NUTRITION BULLETIN" held generic for "providing information in the field of health and diet via a web site on the Internet").

¹ We take judicial notice of these definitions. The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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Thus, it is applicant's own usage, noted above, which explicitly discloses the readily apparent merely descriptive significance of PUBLIC SAFETY HEALTH AND WELLNESS as applied to the identified goods. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987).

Finally, there is nothing at all incongruous or otherwise novel about the combination of PUBLIC SAFETY and HEALTH AND WELLNESS in applicant's mark which would render the combination of terms distinctive. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE held merely descriptive of facsimile terminals employing electrophoretic displays). In the case of this mark, the whole is nothing more than the sum of its parts.

Accordingly, we conclude that PUBLIC SAFETY HEALTH AND WELLNESS, in its entirety, is merely descriptive of "newsletters in the field of enhancing the well-being of public safety professionals."

Decision: We affirm the refusal to register under Trademark Act Section 2(e)(1).