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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Flower Restaurant Group, Inc.

Serial No. 77455669

Sheila Fox Morrison of Davis Wright Tremaine LLP for Flower Restaurant Group, Inc.

Inga Ervin, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).¹

Before Seeherman, Walsh and Wellington, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Flower Restaurant Group, Inc. (applicant) has applied to register LEMONADE on the Principal Register in standard characters for services identified as "restaurant services; catering; self service restaurants" in International Class 43.

¹ A different examining attorney acted on this application prior to this appeal.

The Examining Attorney has issued a final refusal on the grounds that the mark merely describes the services under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Applicant has appealed. Applicant and the Examining Attorney have filed briefs. We affirm.

As a preliminary matter we note that applicant filed certain evidence, a copy of a magazine article, for the first time with its reply brief. This submission was late. Therefore, we have not considered it. See Trademark Rule 2.142(d). Also, if we had considered this evidence, we would not have decided this case differently.

Turning to the merits, a term is merely descriptive of 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 services. 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 applicant's services in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the services. See *In re H.U.D.D.L.E.*, 216 USPQ

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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 services identified in the application, and the possible significance that the term would have to the average purchaser (user) of the services because of the manner of use. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

The Examining Attorney argues that LEMONADE is merely descriptive because LEMONADE is "... the name of a beverage offered at applicant's restaurant." Examining Attorney's Brief at 3. The Examining Attorney also points out that applicant offers a variety of lemonade blends and argues that applicant highlights lemonade as a "house specialty" in the operation of its restaurant. *Id.* at 5.

Furthermore, the Examining Attorney points to the fact that applicant draws attention to its lemonade in the promotion of its restaurant on applicant's website. The website states, "Once you've filled your tray with quirky, mouthwatering morsels, pay up at the central stand, where you'll select from the several varieties of the requisite lemonade. Favorites are rosemary, watermelon and pink ginger..."

Applicant argues, "The term LEMONADE is used as a symbol. The name LEMONADE evokes an earlier time in a consumer's life, when she was a kid, when she was focused on having fun and (in retrospect), when life was easy. The name LEMONADE serves this symbolic role because lemonade is a common drink of choice for kids and is emblematic of summertime playfulness. The mark is therefore suggestive." Applicant's brief at 3.

Applicant also points out that the décor of its restaurant reflects this concept - it is evocative of a grade-school cafeteria. Applicant's menu includes four blends of lemonade, as well as other beverages and a selection of food items.

We find LEMONADE merely descriptive of the identified services. As the Examining Attorney points out, applicant's own website promotes lemonade as a featured item in the restaurant. Applicant offers several varieties of lemonade at a prominent location in the restaurant.

Also, we are not persuaded that the term LEMONADE would, by itself, evoke the suggestive meaning applicant asserts. While a term, such as lemonade stand, might have that effect, we fail to see how LEMONADE alone would.

Applicant argues that we should consider three questions to determine whether LEMONADE is merely

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descriptive of restaurant services: (1) Is the named item a "house specialty" or "principal food item"? (2) Has applicant applied to register the same mark for the named goods, as well as restaurant services? and (3) Has applicant engaged in significant advertising which emphasizes the named food item, indicating that the applicant's restaurant is the principal source of these goods?

Applicant alleges that this three-part "test" is derived from prior Board cases. However, applicant has not cited, nor can we find, a case which frames the issue as applicant suggests. While cases discuss some of the considerations applicant notes, we reject applicant's test. In this connection, applicant relies on the following cases: *In re France Croissant, Ltd.*, 1 USPQ2d 1238 (TTAB 1986) (LE CROISSANT SHOP held merely descriptive of an eating establishment where croissants are the principal attraction, even though other items are available); *In re Le Sorbet, Inc.*, 228 USPQ 27 (TTAB 1985) (LE SORBET held merely descriptive for restaurant and carry-out services where sorbet is the principal attraction); and *In re The Registry Hotel Corporation*, 216 USPQ 1104 (TTAB 1983) (LA CHAMPAGNE held not merely descriptive of restaurant services because the mark is suggestive of French cuisine

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in general rather than descriptive of a particular wine served by applicant). In particular, we find no basis for applicant's assertion that the second question, as to whether applicant has applied to register the mark for the named item of goods, as well as the service, is relevant.

We reiterate that we must consider whether LEMONADE is merely descriptive as applied to the identified services, *In re Polo International Inc.*, 51 USPQ2d at 1062, and that it is enough that the term describes one significant feature of the services. *In re H.U.D.D.L.E.*, 216 USPQ at 359. The cases cited by applicant discuss whether the named goods are a principal attraction of the restaurant services to show that the term describes a significant feature of the services. However, they do not require that a mark must name the principal product offered by the establishment in order for us to find that a mark is merely descriptive of the services. In this case, we find that LEMONADE describes one significant feature of "restaurant services; catering; self service restaurants."

The evidence of record as to applicant's own use of LEMONADE demonstrates that LEMONADE merely describes the identified restaurant and related services. As we noted, applicant itself features lemonade as a principal attraction, and applicant promotes lemonade as such in its

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website advertising. Thus, our conclusions here are entirely consistent with the cases applicant emphasizes.

Applicant has also provided examples of third-party registrations for marks, including, MUSTARD CAFE, KETCHUP, HONEY, CITRUS, and FIG & OLIVE, all for restaurant or related services. Through this evidence applicant attempts to argue that these marks are analogous to its mark, and therefore, that we should treat LEMONADE in the same manner. Of course, we must decide each case on its unique facts and the record before use. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Furthermore, we do not find any of the marks applicant references analogous to LEMONADE. For example, it is not reasonable to conclude that either mustard or ketchup would generally serve as a featured attraction in a restaurant. Accordingly, we reject that argument.

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