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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re First Quality Products, Inc.

Serial No. 77672102

Holly Pekowsky of Amster, Rothstein & Ebenstein LLP
for First Quality Products, Inc.

Michael Souders, Trademark Examining Attorney, Law
Office 115 (John T. Lincoski, Acting Managing
Attorney).

Before Walters, Zervas and Mermelstein, Administrative
Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On February 17, 2009, First Quality Products,
Inc. filed an application to register on the Principal
Register the term STRETCH FIT (in standard character
form) as a trademark for the following goods:

"incontinence briefs" in International Class 5.¹

¹ Application Serial No. 77672102, based on applicant's
assertion of its bona fide intention to use the mark in
commerce under Trademark Act § 1(b), 15 U.S.C. § 1051(b).

The examining attorney finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's goods, the mark STRETCH FIT would be merely descriptive of such goods.

When the refusal was made final, applicant filed an appeal and requested reconsideration. The examining attorney denied the request for reconsideration and the appeal was resumed. Both applicant and the examining attorney have filed briefs. 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. *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 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re*

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H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

The record includes the following definitions of "stretch" and "fit" taken from *The American Heritage Dictionary of the English Language* (4th ed. 2000):

Stretch: "made of an elastic material that stretches easily: *stretch pants*"; and

Fit: "the manner in which clothing fits; a *jacket with a tight fit*."

Based on the definitions, the combination of "stretch" and "fit" has the meaning identified by the examining attorney, i.e., stretching to fit the wearer.

In the context of incontinence briefs, the record reflects the following uses of "stretch fit" which describe how the briefs adjust to fit the person wearing the briefs:

- TENA Ultra Stretch Diapers
"Stretch fit moves with your body: Freedom of movement provides improved comfort and dignity."
yourdiaper.com and
onlinestore.4daymedicalstore.com
- TENA Ultra Stretch Brief
"Stretch fit moves with the body."
homecaremag.com
- "Stretch terry is also used on the whole diaper because of the stretch fit and softness."
www.essortment.com
- "The best model is a cotton brief with spandex to stretch-fit and hug the body closely."
www.incontinentsupport.org

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- "Wings Stretch fit Briefs."
99.epinions.com

Other webpages use "stretch fit" in the context of underwear:

- "Great stretch fit for everyday wear."
issacsultan.com
- "Women's stretch fit brief, with panty liner."
vsathletics.com
- "This full-cut boxer is made of an ultra-lightweight and soft blend of modal and spandex for soft comfort and a stretch fit."
theundies.com

In addition, the record contains evidence demonstrating that STRETCH FIT is applied to describe the stretch feature of pants, caps, boots, tank tops, shirts, jeans and fitness shorts, as well as shoes.

See, for example:

- "Sport one of these sweet stretch fit caps."
sportsmansguide.com
- "New men's leather dress boots stretch fit ankle hi shoes."
cgi.ebay.com
- "Men's stretch fit tank top."
realmuscleonline.com
- "Champion 7 Stretch fit fitness shorts."
outersports.com
- "Stretch fit pants offer stylish comfort with a great fit."
shopping.com

- "Speedo Silicone Stretch Fit Swim Cap"
amazon.com

These uses of "stretch fit," as well as the definitions of record of "stretch" and "fit," establish that the purchasing public of applicant's goods would immediately recognize, without imagination or thought, that "stretch fit" refers to a fit obtained through the stretching of applicant's incontinence briefs. The combination of "stretch" and "fit" in applicant's mark does not create a unique or incongruous meaning. See *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002).

Applicant contends that the mark is suggestive, relying on a printout from Office records indicating that the Office published for opposition applicant's mark CORRECT-FIT without any disclaimers for "incontinence products, namely, diapers and briefs." Additionally, applicant contends that much of the examining attorney's evidence is not relevant because it does not show third party use of STRETCH FIT in connection with incontinence briefs. We disagree with each of applicant's contentions. First, the CORRECT-FIT printout has no probative value because it concerns a different mark, which the Office may have

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considered to be unitary. If it would have probative value, it is not persuasive because we must determine each case on its own record and prior decisions by examining attorneys are not binding on the Board. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Second, we find that the examining attorney has provided sufficient examples of use of "stretch fit" by third parties in the context of incontinence briefs; and that the examples of use of "stretch fit" for clothing, shoes and even bathing caps - as articles of clothing and the like - have probative value to demonstrate the mere descriptiveness of the term.

Thus, after careful consideration, we find that the examining attorney has established that applicant's mark, STRETCH FIT, is merely descriptive of a feature of applicant's goods. Registration is accordingly barred under Trademark Act § 2(e)(1).

Decision: The refusal to register is affirmed.