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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cortina N.V.

Serial No. 79019306

James C. Wray for Cortina N.V.

Elizabeth N. Kajubi, Trademark Examining Attorney, Law
Office 107 (J. Leslie Bishop, Managing Attorney).

Before Walters, Walsh and Ritchie de Larena, Administrative
Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark
Judge:

Cortina N.V., applicant herein, seeks registration on
the Principal Register of the mark shown below for goods
ultimately identified as "clothing, namely, work shoes and
boots, and headwear" in International Class 25¹:

SAFETY JOGGERS

¹ Serial No. 79019306, filed on November 23, 2005, based on
Section 66(a) of the Trademark Act, 15 U.S.C. §1141f(a).

The trademark examining attorney issued a final refusal to register applicant's mark on the ground that the mark is merely descriptive of the identified services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). Applicant has appealed the final refusal. After careful consideration of the evidence of record and the arguments of counsel, we reverse 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 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). 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. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

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). Moreover, it is settled that "[t]he 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). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985). On the other hand, if 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. The composite is registrable 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). Thus we consider whether the words "SAFETY JOGGERS" have a descriptive meaning as a unitary phrase. The examining attorney submitted various dictionary definitions of the word "safety," with the relevant meaning as "a device designed to prevent accidents."² The examining attorney also submitted evidence of Internet advertisements for sneakers and athletic shoes referred to variously as "joggers." Accordingly, the examining attorney claims that the "logical and apparent meaning" of the term SAFETY JOGGERS is "that applicant's goods involve a sneaker shoe that creates a freedom from injury."

In fact, both applicant and the examining attorney submitted evidence from the applicant's own webpage describing shoes applicant currently sells called the "Safety Jogger." Applicant's website describes its "Safety Jogger" shoes as "high performance safety shoes," with apparent safety features such as "steel toe cap" and "anti-perforation steel sole." The website also touts "extreme comfort anatomic insole" and "breathable leather uppers."

It is not immediately apparent whether the SAFETY JOGGERS mark that applicant seeks to register is meant to

² American Heritage Dictionary (4th ed.).

cover its current "Safety Jogger" shoes since the mark is plural and the shoe name is not. In either case, we turn to the actual identification of goods here to determine whether the mark is "merely descriptive."

To that end, we note that the evidence submitted by the examining attorney regarding third-party use of the term "jogger" correlates to athletic shoes such as sneakers. However, applicant is not trying to register its mark for athletic shoes. The final recital of goods specifically limits footwear to "work shoes and boots." There is no evidence in the record that the term "SAFETY JOGGERS" would convey an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of "work shoes and boots."³

Rather, it requires imagination, thought, and perception to determine how SAFETY JOGGERS relates to "work shoes and boots." *In re MBNA America Bank N.A.*, 67 USPQ2d 1778. Applicant's "SAFETY JOGGERS" mark suggests that applicant's "work shoes and boots" feature the comfort and agility of athletic shoes. Furthermore, we note that unlike a 2(d) analysis, any doubts regarding the

³ Since we base our reversal of the refusal to register on the specific identification of the goods at issue here, we need not consider whether SAFETY JOGGERS as a composite phrase would be merely descriptive of other types of footwear.

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application of 2(e)(1) are to be resolved in favor of the applicant. *In re Conductive Services, Inc.*, 220 USPQ 84, 86 (TTAB 1983) (observing, "[w]e recognize that the suggestive/descriptive dichotomy can require the drawing of fine lines and often involves a good measure of subjective judgment."). With that in mind, we find the mark to be suggestive, rather than merely descriptive. Accordingly, we reverse the refusal to register.

Decision: We reverse the refusal to register under 2(e)(1).