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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Flight Travel, Inc.

Serial No. 85149936

Ellen S. Simpson of Simpson & Simpson, for Flight Travel, Inc.

Eugenia K. Martin, Trademark Examining Attorney, Law Office 114 (K Margaret Le, Managing Attorney).

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

Opinion by Ritchie, Administrative Trademark Judge:

Flight Travel, Inc., applicant herein ("applicant"), seeks registration on the Principal Register of the mark "JITS,"¹ in standard character format, for goods and services identified as follows:

¹ Serial No. 85149936, filed on October 11, 2010, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b) in all classes, expressing a bona fide intent to use in commerce.

Ser. No. 85149936

International Class 16: Magazines featuring lifestyle and culture content related to martial arts and general sports;

International Class 18: Sports bags; backpacks; athletic bags; messenger bags; knapsacks; carry-all bags; satchels; sling bags; travel bags;

International Class 21: Sports bottles sold empty; plastic water bottles sold empty;

International Class 25: Martial arts uniforms, namely, gis;

International Class 41: Operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely competition and entertainment demonstrations.

The trademark examining attorney refused registration on the ground that applicant's mark is merely descriptive of the identified goods and services under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). The examining attorney further made final a requirement for an amended identification of the services in International Class 41 pursuant to 37 C.F.R. § 2.71(a) because the "wording refers to services that are not within the scope of the identification that was set forth in the application at the time of filing."

Both applicant and the examining attorney filed briefs.

Descriptiveness

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). 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).

The examining attorney argues that the term "jits" is descriptive of a feature of the goods and services in the application, in that it refers to a common area of martial arts, specifically, Brazilian Jiu Jitsu.

In support of this argument, the examining attorney submitted the following definition from Urban Dictionary²:

"Jits": 1. "Slang word for the martial art of Brazilian Jiu Jitsu. Also can refer to no-gi

² Both applicant and the examining attorney submitted definitions from Urban Dictionary, and both included this one.

submission grappling." "Joe and Eddie wrestle jits together." "He used some nasty jits right there." www.urbandictionary.com.

The examining attorney further submitted evidence showing third party use of the term "jits" to describe things associated with the martial art form of Brazilian Jiu Jitsu. Some examples include the following:

The Jits Name

The reasoning for the name Jits is simple; it is a word that is short, descriptive, and easy to remember. It also happens to be a widely used slang term for the 'Arte Suave," Brazilian Jiu Jitsu. <http://jitsmagazine.com>.

Attached to July 22, 2011 Office Action, p.9.

The Daily Jits, The Journey of a Brazilian Jiu Jitsu White Belt: Brazilian Jiu Jitsu - Follow me along on my journey from white belt to blue belt in Brazilian Jiu Jitsu.

<http://brazilian-jiu-jitsu-journey.blogspot.com>.

Attached to January 20, 2011 Office Action, p.7.

Got Jits? Perspectives from a Brazilian Jiu Jitsu Blue Belt.

<http://blog.gotjits.com>. Attached to January 20, 2011 Office Action, p12.

Nice jits!: I move that we all collectively ban the use of the word "jits." I'm not saying I've never used it before, but I've now decided that I don't like it (particularly when it's spelled "jitz"). It sounds too much like other words, especially when you say it to outsiders. They're like "What did you say about zits?" or even worse, "Did you just say t . . .?"

I know there's a desire to shorten things these days, and jiu-jitsu seems like it takes sooooo long to say, but we need a better alternative I don't mind "bjj" or "jj" (heck, that's even what I named my puppy). Personally, I've taken to referring to it as "jitsu." It's only one more letter and syllable, but sounds much better to me. www.thejiujitsufighter.com. Attached to January 20, 2011 Office Action, p. 17.

Jujitsu Forums: Brazilian Jiu Jitsu, Grappling, MMA, No Holds Barred:

Should I be taking anything for jits?: I weigh around 200 with muscle/fat, I would like to know if there is anything I should be taking? Since I waste a lot of energy grappling for 1-2 hours I would like to take something that would either help me burn fat, gain muscle or lean out. Does anyone have any good suggestions for something that had a awesome effect while taking jiu jitsu? jiujitsuforums.com. Attached to January 20, 2011 Office Action, p. 32.

Georgette's Jiu Jitsu World: During last night's class, we also covered an unusual ankle lock defense, and in chatting about it with my partner Zack, we kind of mentioned two ways of learning jits.

<http://georgetteoden.blogspot.com>. Attached to January 20, 2011 Office Action, p. 40.

See also following image, from freetechie.com. Attached to January 20, 2011 Office Action, p. 29:

http://webcache.googleusercontent.com/search?q=cache:L2rQMxqDhToJ:www.freetechie.com/blog/ben-jr-practicing-the-jits-jiu-jitsu/+jits+%22jiu+jitsu%22&cd=4&hl=en&ct=clnk&gl=us_01/20/2011 11:13:37 AM

The screenshot shows a Google cache of a blog post. At the top, it states: "This is Google's cache of <http://www.freetechie.com/blog/ben-jr-practicing-the-jits-jiu-jitsu/>. It is a snapshot of the page as it appeared on Jan 15, 2011 22:29:35 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)"

Below this, it says: "These search terms are highlighted: **jits jiu jitsu**"

The website header includes a search bar and navigation links: Home, Advertise, Write for Us, Polls, About, Terms and Conditions, Contact.

The main header features the FreeTechie logo with the tagline "Where IT and Freedom Co-Exist" and a Solar Energy Charity banner: "Solar Energy Charity - Helping Relieve Poverty Through The Provision of Solar Energy. Join Us! Public Service Ads by Google".

A navigation menu lists: Featured, Hardware, Off Topic, Operating Systems, Scripting & Security, Software, Tutorials, Virtualization.

The breadcrumb trail reads: "You are here: Home » Off Topic » Ben Jr practicing the Jits (Jiu-Jitsu)"

The article title is "Ben Jr practicing the Jits (Jiu-Jitsu)" by ben kevan on Sep 04, 2007 in Off Topic.

The article text begins: "Looking at his corner after hitting a pretty nice armbar. He still has some work to do to fix it, but not bad for 8 months old."

Below the text is a photograph of a baby lying on its back on a carpeted floor, holding its hands near its face.

On the right side of the page, there is a sidebar with a "Subscribe" section containing a "Subscribe Via Email" form with a "submit" button, a "Privacy guaranteed. We will not share your information." notice, and links for "Subscribe via RSS Feed" and "Connect With Me on LinkedIn".

Applicant does not dispute that the goods and services in the application refer to martial arts, of which Brazilian Jiu Jitsu is a popular form. Rather, applicant argues that the term "jits" has other meanings and acronym definitions, as noted, for example, in Urban Dictionary, and contained in evidence submitted by applicant. We do not find these to be availing. As stated above, in determining whether an applied-for mark is merely descriptive, we must not look at the term in a vacuum, but in the context of the goods and services in the application. *In re Bright-Crest, Ltd.*, 204 USPQ at 593.

We have no doubt that a consumer would understand "jits," used in connection with applicant's goods and services, as directly conveying information about them, namely, in the case of the Class 16 and 41 goods and services, that Brazilian Jui Jitsu is the subject matter, respectively, of the magazines, and the gyms and demonstrations operated or organized by applicant, and in the case of the Class 18, 21 and 25 goods, that these items are for use in practicing the sport of Brazilian Jui Jitsu. *See In re Tower Tech Inc.*, 64 USPQ2d at 1316-17; *see also In re Conductive Services, Inc.*, 220 USPQ 84, 86 (TTAB 1983). Therefore, we find that the mark is merely descriptive of the identified goods and services, and we affirm this refusal to register.

Identification of Goods

The examining attorney additionally made final a requirement to amend the identification of the services in International Class 41 pursuant to 37 C.F.R. § 2.71(a) because the "wording refers to services that are not within the scope of the identification that was set forth in the application at the time of filing."

A. Background

Applicant's original identification of services in International Class 41, as filed in its application dated October 11, 2010, was as follows:

Operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely, martial arts events.

The examining attorney issued an Office Action on January 20, 2011, requiring an amendment to this identification, stating that it was indefinite and must be clarified to specify the type of "martial arts events," such as competitions or entertainment demonstrations, and citing TMEP § 1402.01. The January 20, 2011 Office Action noted that applicant could adopt the following identification, "if accurate":

Operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely, martial arts events, namely, (identify the specific event, such as competitions).

Applicant responded with an amendment via its June 3, 2011 Response to Office Action, as follows:

Operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely competition and entertainment demonstrations.

The examining attorney then issued a Final Office Action on July 22, 2011, again requiring an amendment to this

identification, and stating that applicant could substitute the following wording, "if accurate":

Operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely, competition and entertainment demonstrations in the field of martial arts.

Applicant did not respond to amend its identification of services, but rather filed this appeal.

B. Analysis

The applicable rule reads as follows: "The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods...." Trademark Rule 2.71(a). Further, it is the policy of the USPTO that an unacceptable amendment is not construed to restrict or narrow a previous amendment. Rather, the last acceptable amendment remains operative unless and until a further acceptable amendment is entered. Trademark Manual of Examining Procedure (TMEP) § 1402.07(d) (5th ed. 2007).

In this case, although there was never an accepted recital of services in Class 41, nevertheless, applicant may not extend the scope of the services as identified in the original application.

The original identification by applicant identified "operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely, martial arts events."

The examining attorney noted that this is unacceptably broad, and had to be re-defined to specify a type of martial arts events, either in the nature of competitions or entertainment. The amendment proffered by applicant identifies: "operating of sports gyms; operating of martial arts gyms; organizing sporting events, namely competition and entertainment demonstrations." This is broader than applicant's original identification since, although applicant adopts the terms "competition" and "entertainment" as suggested by the examining attorney, rather than being limited to "martial arts" as in the original identification, in the amendment as submitted, these terms refer to "sporting events" generally. Accordingly, the identification as amended by applicant would encompass competitions and entertainment demonstrations in any sporting events at all, and is not limited to martial arts. Because the original identification did not include the organizing of sporting events other than those involving martial arts, we find the amendment to constitute a broadening beyond the scope of the original identification.³

³ We note that it may well have been useful for applicant and the examining attorney to have a telephone call to work out the wording of the identification.

We conclude that applicant's current identification of services in International Class 41 is unacceptable as being beyond the scope of the original identification of services. Accordingly, we affirm this requirement.

Conclusion

We affirm the refusal to register based on Section 2(e)(1) for the goods and services in all five classes. We also affirm the requirement for an amended identification of services in International Class 41.

Decision: The refusal to register under Trademark Act Section 2(e)(1) is affirmed, as is the requirement for an amended identification of services in International Class 41.