

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
March 14, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re GP Global Limited*

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Serial No. 85399516

James P. Broder of Roeder & Broder LLP for GP Global Limited.

Jenny Park, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

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Before Quinn, Holtzman and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

GP Global Limited (“applicant”) filed an intent-to-use application to register the mark AYURVEDIC, in standard character form, for “herbal tea; tea,” in Class 30. Applicant claimed ownership of Registration No. 4043366 for the mark AYURVEDIC, in standard character form, for “candles; scented candles,” in Class 4.

The Trademark Examining Attorney refused to register applicant’s mark on the ground that it is merely descriptive. Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1). According to the Trademark Examining Attorney, the term “Ayurvedic” refers to a type of tea.

A term is merely descriptive if it “immediately conveys ... knowledge of the ingredients, qualities, or characteristics of the goods ... with which it is used.” *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). This requires consideration of the context in which the mark is used or intended to be used in connection with those goods, and the possible significance that the mark would have to the average purchaser of the goods in the marketplace. *See In re Chamber of Commerce*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Bayer*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Assocs.*, 226 USPQ 285 (TTAB 1985). In other words, the question is not whether someone presented only with the mark could guess the products listed in the description of goods. Rather, the question is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

However, “if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978). *See also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). In this regard, “incongruity is one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark.” *In re Shutts*, 217 USPQ at 365. *See also In re Tennis in the Round, Inc.*, 199 USPQ at 498 (the association of applicant’s mark TENNIS IN THE ROUND with the phrase “theater-in-the-round” creates an incongruity because applicant’s services do not involve a tennis court in the middle of an auditorium).

“Ayurveda” is “[t]he ancient Hindu science of health and medicine.”<sup>1</sup>

Ayurveda is a system of wholistic [sic] medicine from India that aims to bring the individual into harmony with nature. It provides guidance regarding food and lifestyle, so that healthy people can stay healthy and people with health challenges can improve their health.<sup>2</sup>

An “Ayurvedic” diet is part of the “Ayurvedic” therapy.

The diet is another important aspect of Ayurvedic Therapy. Certain foods bring your individual constitution

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<sup>1</sup> **THE AMERICAN HERITAGE MEDICAL DICTIONARY** (2007) (medical-dictionary.thefreedictionary.com) attached to the December 5, 2011 Office action.

<sup>2</sup> **GALE ENCYCLOPEDIA OF MEDICINE** (2008) (medical-dictionary.thefreedictionary.com) attached to the December 5, 2011 Office action. *See also DORLAND’S MEDICAL DICTIONARY FOR HEALTH CONSUMERS* (2007) and **MOSBY’S MEDICAL DICTIONARY** (8th ed. 2009).

or dosha back into balance and certain foods promote imbalance.<sup>3</sup>

Ayurvedic tea blends are a component of the Ayurvedic holistic healthcare practice.

Ayurvedic tea is a component of the ancient Ayurvedic holistic healthcare practice, which was developed in India more than 4,500 years ago to help people achieve optimal health and balance in life. These wellness teas are specially formulated blends that combine herbs, plants, fruits and spices.

Depending on the mix of botanicals, drinking an Ayurvedic blend can help enhance energy, promote emotional well-being, aid digestion, cleanse the body, calm nerves, or provide other types of health benefits.

According to the National Institutes of Health, Ayurveda is considered to be a form of complementary and alternative medicine. The practice includes meditation, exercise, massage, dietary recommendations, as well as daily and seasonal disciplines.<sup>4</sup>

See also the Moulis Incorporation website ([moulisinc.com](http://moulisinc.com)) which posted an article on March 1, 2012 entitled “Ayurvedic Teas to Cleanse Your Body.”<sup>5</sup>

Here experts at Moulis Inc. official blog present an Ayurvedic recipe – tea that can help you to get energy and vigor by retaining your fitness.

### **Ayurvedic Teas to cleanse your body**

You can take this Ayurvedic tea to cleanse your body at least twice a day. After you wake up in the morning, sip this healthy tea that would facilitate in removing toxins from your body. Remember, you can take your breakfast

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<sup>3</sup> “What Is Ayurvedic Therapy?” at [eHow.com](http://eHow.com) attached to the December 5, 2011 Office action.

<sup>4</sup> “Ayurvedic Tea Blends” at [Learn-About-Tea.com](http://Learn-About-Tea.com) attached to the February 23, 2012 Office action.

<sup>5</sup> April 11, 2012 Office action.

only after a few minutes when you have consumed this Ayurvedic tea.

The EvanorTeas website (evanorteas.com) posted an article entitled “What is Ayurvedic Tea?”<sup>6</sup>

Ayurveda kapha affects endurance, strength and promotes self-healing. Ayurvedic kapha teas, spicy in nature, relieves [sic] congestion and is [sic] useful as a digestion tea.

Ayurveda vata dosha governs the life force and is good for dry skin and poor circulation. Ayurvedic vata teas usually have a toasty and sweet citrus taste.

Ayurveda pitta dosha balances metabolic energy while regulating digestion and promoting appetite. An Ayurvedic pita dosha tea is usually cooling and refreshing.

On July 24, 2009, the Articlesbase.com website posted a story entitled “Ayurvedic Tea Recipes for Various Health Benefits.”<sup>7</sup> The article listed 10 ayurvedic tea recipes. *See also* the Steepster.com website, an online tea community, which posted an article entitled “Shanti Ayurvedic Tea.”<sup>8</sup>

The Ayurvedic Rasayanas website (Ayurveda-herbs.com) advertises the sale of “Ayurvedic Herbal Teas.”<sup>9</sup> *See also* the R•U•VED website (ruved.net), the Emporium website (espemporium.com), and the Ayurvedic Tea Time website (ayurvedicteatime.wordpress.com) advertising the sale of Ayurvedic teas.<sup>10</sup>

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<sup>6</sup> February 23, 2012 Office action.

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<sup>8</sup> February 23, 2012 Office action.

<sup>9</sup> February 23, 2012 Office action.

<sup>10</sup> April 11, 2012 Office action.

We find that within the context of tea, the mark AYURVEDIC directly and precisely conveys to consumers that the product is an herbal tea used in conjunction with Ayurvedic holistic healthcare practice.

Applicant argues that the evidence does not show that “Ayurvedic” is a type of tea, but “that these websites are actually just promoting one potential intended use for these teas, i.e., that these teas may be used in the particular medicinal practice of ‘ayurveda’ if so desired.”<sup>11</sup> That the mark immediately conveys to one seeing it or hearing that the tea may be used in the practice of Ayurveda healthcare makes it merely descriptive. *See In re Abcor Development Corp.*, 200 USPQ at 217 (a mark is merely descriptive if it immediately conveys information regarding a significant function, purpose, or use of the goods). *See also In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) (SCREENWIPE held generic for an anti-static cloth used for cleaning computer and television screens); *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006) (SOLUTIONS merely descriptive of the purpose of applicant’s computer hardware – to resolve a problem – and must be disclaimed); *In re Hunter Fan Co.*, 78 USPQ2d 1474 (TTAB 2006) (ERGONOMIC held merely descriptive of ceiling fans); *In re Cent. Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998) (ATTIC generic for sprinklers installed primarily in attics); *In re Reckitt & Colman, N. Am. Inc.*, 18 USPQ2d 1389 (TTAB 1991) (PERMA PRESS generic for soil and stain removers for use on permanent press products); *In re Wallyball, Inc.*, 222 USPQ 87 (TTAB 1984) (WALLYBALL held descriptive of sports

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<sup>11</sup> Applicant’s Brief, p. 11.

clothing and game equipment); *In re Nat'l Presto Indus., Inc.*, 197 USPQ 188 (TTAB 1977) (BURGER held merely descriptive of cooking utensils); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977) (BREADSPRED held merely descriptive of jams and jellies).

While applicant concedes that “there may exist a certain limited niche segment of the industry that refers specifically to ayurvedic teas,” applicant contends that the average tea consumer would not understand that the term “Ayurvedic” has any significance.<sup>12</sup> However, “[d]escriptiveness is not determined by its meaning to the class of regular customers with the largest head count.” *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987).

In context, “average” or “ordinary” consumers simply refers to the class or classes of actual or prospective customers of applicant’s particular goods or services. In this sense, [Ayurvedic] users of [tea] who, appellant admits, understand the industry meaning of [Ayurvedic] are “average” or “ordinary” customers. That [Ayurvedic] customers may constitute a smaller number of accounts than individuals is irrelevant.

*Id.* See also *In re Cox Enterprises Inc.*, 82 USPQ2d 1040, 1042 (TTAB 2007) (finding the mark descriptive from the perspective of one class of relevant consumers). In this regard, the fact that applicant introduced several tea websites that did not reference ayurvedic tea is unavailing because they do not prove that Ayurvedic is not a type of tea.

**Decision:** The refusal to register is affirmed.

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<sup>12</sup> Applicant’s Brief, p. 12.