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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rawlings Sporting Goods Company, Inc.

Serial No. 85445340

Penny R. Slicer of Stinson Morrison Hecker LLP for Rawlings Sporting Goods Company, Inc.

Evelyn Bradley, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Kuhlke, Wolfson, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Rawlings Sporting Goods Company, Inc. has applied for registration on the Principal Register of the mark NATIONAL PLAY CATCH MONTH in standard character form for the following services:

> Promoting anti-obesity initiatives of others; promoting public awareness of the dangers of childhood obesity; promoting public awareness of healthy childhood practices, in International Class 35.[1]

[1] Application Serial No. 85445340, filed on October 12, 2011 under Trademark Act § 1(b), 15 U.S.C. § 1051(b).

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that applicant's mark merely describes the services. When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.

The question before the Board is whether the mark NATIONAL PLAY CATCH MONTH, viewed in its entirety, merely describes the services identified in the application. "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). The determination that a mark is merely descriptive is a finding of fact and must be based upon substantial evidence. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 964, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007).

The examining attorney has demonstrated by means of internet evidence that "catch" is a game or sporting activity that involves throwing and catching a ball between or among the players; and that the expression "play catch" is used to describe the act of engaging in this activity.[2] The examining attorney has also shown that NATIONAL has been defined to mean "Of, relating to, or belonging to a nation as an organized whole."[3] We find somewhat more relevant the definition provided at WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) p. 1505: "of, affecting, or involving a nation as a whole esp. as distinguished from subordinate

[2] Evidence submitted with Office action of December 22, 2011.

[3] Definition from <education.yahoo.com>, submitted with Office action of December 22, 2011.

areas."[4] In this sense, the word NATIONAL describes activities that are nationwide in scope. *See In re Nat'l Rent A Fence, Inc.*, 220 USPQ 479 (TTAB 1983); *Nat'l Fid. Life Ins. v. Nat'l Ins. Trust*, 199 USPQ 691 (TTAB 1978). We also take notice that a MONTH is "one of the twelve portions into which the year is divided in the Gregorian calendar." *Id*. at 1466.

Considering applicant's mark in light of the meanings of its constituent terms, the mark describes a period of time designated, on a nationwide basis, for playing the game of catch.

Applicant argues that its actual services differ from the activities described by the mark, such that the mark is not merely descriptive thereof:

> Appellant's services are not directed to training or instruction for learning the skill of playing catch or improving throwing accuracy, catching ability, or hand-eye coordination. Instead, Appellant's services are directed to promoting public awareness of the <u>health benefits</u> from exercise and the dangers of obesity. Although exercise is an inherent byproduct of playing catch, some amount of imagination is required to make that connection.

Applicant's brief at 3-4 (emphasis in original). Applicant correctly points out that a mark that, when applied to the goods or services at issue, requires imagination, thought, or perception to reach a conclusion as to the nature of those goods or services is not merely descriptive, but suggestive, and is registrable. *Nautilus Grp.,*

[4] The Board may take judicial notice of dictionary definitions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Inc. v. Icon Health & Fitness, Inc., 372 F.3d 1330, 1340, 71 USPQ2d 1173, 1180 (Fed. Cir. 2004); *In re George Weston Ltd.,* 228 USPQ 57 (TTAB 1985).

The examining attorney argues that "Applicant's services are achieved through promoting nationwide play catch sports activities during the month of June";[5] that the mark "immediately identifies the means through which applicant's services are achieved";[6] and that "When consumers view the mark in relation to the services specified in this application, they would immediately understand that applicant's services are achieved through promoting play catch activities on a national level, during a certain month of the year."[7] The examining attorney has submitted evidence from the internet indicating that applicant has advertised its activities under a partly similar mark (NATIONAL PLAY CATCH WITH YOUR KIDS MONTH) in such a way as to actually promote the activity of playing catch:

> Rawlings Sporting Goods Company, Inc., today announced the creation of "National Play Catch with Your Kids Month presented by Rawlings," a new platform to promote kids' physical activity during the summer months while bringing families closer together through the simple game of playing catch.
> …
> "Our mission is to enable participation in the game, even in its simplest form of playing catch, but the bigger goal is to provide a new avenue to promote daily physical activity."

"Rawlings Launches National Play Catch with Your Kids Month," The Business Journals, March 30, 2011.[8]

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[5] Examining attorney's brief at 3.

[6] *Id.* at 6.

[7] *Id.* at 7.

[8] *See also* similar article of the same title in Youth Sports New York, April 21, 2011, both submitted with Office action of December 22, 2011.

Applicant argues in response that the examining attorney's argument in itself illustrates the multi-stage process that is required in order to associate the meaning of applicant's mark with applicant's actual services. That is, if a goal of applicant's services can be achieved through the activities that are described by the mark, then the mark is suggestive of the services but not descriptive of them. Applicant's brief at 5-6.

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). Accordingly, we must ask how the public would perceive the mark in the context of "promoting public awareness of healthy childhood practices" and the other services identified in the application.

In the context of a campaign to promote "healthy childhood practices," members of the public would readily understand the mark to be an exhortation to engage in the activity of playing catch, and would readily understand the activity of playing catch to be one of the "healthy childhood practices" that is recommended by applicant. While applicant has been careful to neither confirm nor deny that promoting the game of catch is a part of its services, promotion of catch is clearly within the scope of the identified service of promoting "healthy childhood practices," and the evidence indicates that the game of catch is a desirable "daily physical

activity" that applicant endorses.[9] Although applicant has identified its services in general terms without use of the word "catch," the mark by its very nature promotes the game of catch. A person who sees the mark NATIONAL PLAY CATCH MONTH in the context of applicant's promotional campaign will inevitably receive the impression that playing catch is one of the "healthy childhood practices" promoted by applicant's program. The possibility that applicant may promote, in addition to catch, other techniques for combatting childhood obesity or achieving good health does not render the mark non-descriptive. It is not necessary that applicant's mark describe every feature of its services to be considered merely descriptive; it is enough if the term describes one significant aspect of the services. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2001). We find that applicant's mark immediately describes a feature of applicant's services and is accordingly merely descriptive under the rule of *In re Gyulay*, 3 USPQ2d at 1009.

We note applicant's argument that its mark is a coined phrase that is not used by others. The fact that an applicant may be the first and only user of its mark does not justify registration of a merely descriptive mark. *See In re Nat'l Shooting Sports Found., Inc.,* 219 USPQ 1018 (TTAB 1983).

Finally, we note the examining attorney's argument that, because applicant's registration of the mark NATIONAL PLAY CATCH WITH YOUR KIDS MONTH is on the Supplemental Register for "nearly identical" services, "the only logical

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[9] "Rawlings Launches National Play Catch with Your Kids Month," The Business Journals, March 30, 2011, quoted above.

conclusion is that since the registered mark is merely descriptive, the mark in this application also merely descriptive [sic]."[10] We do not agree with the examining attorney's contention. Instead we have considered the application before us on its own merits. The file of applicant's earlier application is not part of the record before us and there is no basis for us to give any consideration to the manner in which applicant's earlier application was treated by the Office.

For the reasons stated above, we find that applicant's mark is merely descriptive of applicant's services within the meaning of Trademark Act § 2(e)(1), 15 U.S.C. § 1052(e)(1).

Decision: The refusal to register is affirmed.

[10] Examining attorney's brief at 8.