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PRECEDENT OF
THE T.T.A.B.**

Mailed: August 25, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Internet Promise Group LLC

Serial No. 85637786

Internet Promise Group LLC, *pro se*.¹

Kate DuBray, Trademark Examining Attorney, Law Office 118 (Thomas G. Howell, Managing Attorney).

Before Kuhlke, Cataldo, and Ritchie,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Internet Promise Group LLC (“Applicant”) filed an application to register on the Principal Register the mark SPICE WATER² in standard character format for “a water-based beverage with a blend of tropical fruit extracts and spices from Indian subcontinent [sic],” in International Class

¹ Papers and briefs filed by Applicant were signed by Tara Chand, President.

² Application No. 85637786, filed May 29, 2012, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce.

32.³

The Examining Attorney has refused registration of the application under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of the applied-for goods. After the refusal was made final, Applicant filed an appeal. After filing the appeal, Applicant requested remand so that the Examining Attorney could consider an amendment to the identification of goods. On remand, the Examining Attorney refused the amendment by Applicant as being beyond the scope of the original identification of goods in violation of Rule 2.71(a); 37 C.F.R. § 2.71(a). Accordingly, the issues before us are whether the mark is merely descriptive, and whether the Examining Attorney should have accepted the amendment to the identification of goods. Both Applicant and the Examining Attorney filed briefs, and Applicant filed a reply brief. Upon careful consideration of the relevant arguments and evidence, we affirm the refusal to register under Section 2(e)(1) as well as the refusal to amend the identification of goods.

Section 2(e)(1)

We first consider the refusal as to whether Applicant's mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). 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. *See In re Chamber of Commerce of the U.S.*, 675 F.3d 1297,

³ Applicant's request to amend is discussed *infra*.

102 USPQ2d 1217, 1219 (Fed. Cir. 2012), *citing In re Gyulay*, 820 F.2d 1216, 1217, 3 USPQ2d 1009 (Fed. Cir. 1987). 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 Corp.*, 226 USPQ 365 (TTAB 1985).

The Examining Attorney argues that the applied-for mark SPICE WATER describes ingredients of Applicant’s goods, namely water and spice, citing *In re Entenmann’s, Inc.*, 15 USPQ2d 1750 (TTAB 1990) (holding OATNUT merely descriptive of bread containing oats and hazelnuts); *aff’d per curiam*, 928 F.2d 411 (Fed. Cir. 1991). We consider a composite mark in its entirety. A composite of descriptive terms is registrable only if 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). Accordingly, we look to the plain meaning of the words. The Examining Attorney submitted definitions, of which we note the following relevant portions:⁴

“Water”: 1. The clear liquid that falls as rain and is used for things such as drinking and washing.

“Spice”: 1. a substance made from plants and added to food to give it a particular flavor.

The Examining Attorney also submitted evidence of third-party use of the term “spice water” to indicate a drink consisting of water and spices.

AyurvedaWellness: Dosha Specific Spice Waters: **Spice water** is a type of an herbal tea. In Ayurveda, water mixed with spices, herbs or juice (lemon or lime primarily) are used for a variety of reasons: . . . Basic **spice waters** geared toward an individual dosha support overall health as well as help the body absorb the water more effectively. . . . The following **spice water** recipes are designed to support one of these doshas.
Attached to October 15, 2013 Denial of Request for Reconsideration, p.8.
AyurvedaWellness.org

Global Oneness: Ayurveda: We recommend making your **spice water** first thing in the morning and sipping it every fifteen minutes throughout the day. Drink plain water after 7:00 p.m. as spice water is too enlivening to drink right before sleeping.
Attached to October 15, 2013 Denial of Request for Reconsideration, p.13-14.
Experiencefestival.com

Here is an ama-reducing **spice water** recipe from our ayurvedic expert, co-author of *The Answer to Cancer*,

⁴ Macmillan Dictionary; *macmillandictionary.com* (2012).

Ama Pachana Spice Water

To make the water, boil two quarts of water and put it in a thermos flask. Then add two to three thin slices of fresh ginger, ¼ tsp cumin, ¼ tsp. fennel, 2 black peppercorns, and 2 leaves of mint. Let it steep. Drink this water throughout the day for a very purifying effect. Also, this ama purifying water will help enhance your digestion.

Attached to October 15, 2013 Denial of Request for Reconsideration, p.19.

India-herbs.com

The Council recommends making your **spice water** first thing in the morning and sipping it every fifteen minutes throughout the day. Drink plain water after 7:00 p.m. as spice-water is too enlivening to drink right before sleeping. . . . You may want to drink some plain water during the day as well. If you have been exercising and need to drink a full glass of water, it's better to drink plain water rather than the **spice water**.

Attached to October 15, 2013 Denial of Request for Reconsideration, p. 3.


*Mapi.com*⁵

Yoga journal: A good way to get your daily water intake-along with herbs and spices that can balance your dosha-is to drink **spice water**. Shubha Krishan, author of *Essential Ayurveda* recommends the following recipes.

Attached to September 21, 2012 Office Action, p.10.

Yogajournal.com

⁵ We note that a portion of this entry appears to refer to the content of the Global Oneness entry.




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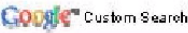
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Question

How to make spice water for Paani Puri?

How to make spice water for Paani Puri?

Answer

Half of this recipe serves 5

Plan:

- 2C Mint (leaves only, not the stem parts)
- 1C cilantro leaves (leaves and soft, top stems only)
- 1/3 C Chopped Ginger
- 6 -7 Thai green chilies
- Juice of 2 Lemons
- 3 Tbs roasted Cumin
- 1 Tbs fennel seeds
- 1 ? tsp Black salt
- Salt as per taste
- 1 tsp black pepper powder
- 2 tsp Amchoor powder
- 1/4 tsp roasted ajwain/carom
- 2 Tbs Tamarind paste

Procedure:

Take a big bowl and fill it with water

Put the mint and cilantro in it and let it soak for a couple of minutes

Take out the herbs, rinse the bowl, repeat the process

This process ensures that we rinse off all the soil and other particles from the mint and cil

Grind the mint, cilantro, ginger and green chilies into a very fine paste

To enable smooth grinding you may need to add a Tbs of the juice of lemon as and when

Dry grind the cumin, fennel, carom, black pepper powder to a fine powdery consistency

Put this mixture through a sieve once or twice, to get the fine powder separated from the c

Run the coarse powder through the grinder once or twice more, until you get most of it gr

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A delicious spice drink

Posted by Michelle on August 28, 2011

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This recipe was from Julia Pace. She writes:

This spice water is VERY refreshing and very healthful as well! I suffer from diabetes, high blood pressure, high cholesterol, depression, insomnia, and severe nausea and heartburn. Not any more!

A delicious spice drink

Recipe type: Drink Authors: Julia Pace Prep time: 5 mins Total time: 5 mins

This spice water is VERY refreshing, and very healthful as well! I suffer from diabetes, high blood pressure, high cholesterol, depression, insomnia, and severe nausea and heartburn. Not any more!

Ingredients

- 1 drop Peppermint
- 3 drops Lemon
- 1-2 drops Spikenard
- 1-2 drops Purification
- 1-2 drops Citrus Fresh
- 1 drop Coriander
- 1 drop Clary Sage
- 1-2 drops Wintergreen
- 1 drop Idaho Balsam Fir
- 1 tbs Blue Agave
- 32 oz Water

Instructions

1. I like to take a big glass of pure water each night and spice it up for health and emotional reasons.
2. I take a 32 oz. glass, fill it with pure water.
3. Then I take about 1 tbs. of blue agave and add oils!

WordPress Recipe Plugin and Microformatting by [EasyRecipe](#)

<http://healthyaromas.com/a-delicious-spice-drink>

9/21/2012

Attached to September 21, 2012 Office Action, p.24.

Finally, the Examining Attorney points to Applicant's identification of goods, which contains the terms "water" and "spices" as generic terms to identify the goods for which Applicant seeks registration: "a water-based

beverage with a blend of tropical fruit extracts and spices from Indian subcontinent [sic].”

Applicant argues that its applied-for mark is not merely descriptive of its goods because the use of the term “spice water” together is incongruous (appl’s brief at 10) or un-natural (Sept 20, 2013 Req for Recon at 2). However, Applicant’s argument is belied by the evidence, which shows third parties using the terms together to mean, simply, water that contains spices.

Applicant further argues that

An objective person being exposed to the mark “SPICE WATER” alone cannot come up with any sensible identification of the goods; and vice versa, an objective person reading the identification of the goods alone cannot come up with the mark. Thus the mark cannot be “merely descriptive.” (appl’s brief at 15-16).

This, however, is not the legal test. As noted above, we must not consider the mark in a vacuum, but rather how consumers would view the mark in relation to the identification of goods. *In re Tower Tech Inc.*, at 1316-17. Accordingly, we have no doubt that a consumer would understand “SPICE WATER,” used in connection with Applicant's goods, as directly conveying information about them, namely, that they contain water with spice. Therefore, we find that the mark is merely descriptive of the identified goods, and we affirm this refusal to register.

Amendment to the Identification

After filing the appeal, and after receiving a denial of its September 20, 2013 Request for Reconsideration, Applicant sent an email to the Examining

Attorney dated October 20, 2013 stating:

I proposed amending the Identification of the goods as follows:
“Beverage with a blend of tropical fruit extracts, black salt, and cumin”
This identification of goods does not use the words water and spice.

By return email, the Examining Attorney advised that as an appeal had been filed, she no longer had jurisdiction over the case and therefore “cannot consider the proposed amendment.” Applicant made a request for remand dated November 1, 2013, “based on communication with the trademark examining attorney and in view of the examining attorney’s response to the applicant’s request for reconsideration that the issues may be addressed by amending the identification of the goods/services in this application.” The request was granted by the Board on December 12, 2013.

The Examining Attorney has refused to allow Applicant to amend its identification because the “wording is beyond the scope of the original wording.” In particular, the Examining Attorney points out that Applicant deleted the modifying term “water-based” before beverage, which unduly broadens the types of beverages covered by the identification, and that Applicant changed the identification from covering “Indian subcontinent” to all of “tropical,” which is much broader, and covers many more places.

Applicant argues that water is a “commonly understood” type of beverage, and that for “an objective person” the term “‘tropical’ is equivalent to ‘Indian-subcontinent’, as the Indian-subcontinent climate is tropical.” (appl’s brief at 3). However, we find the Examining Attorney’s arguments to

be persuasive. Although water is indeed one type of beverage, it is not the only one, and neither is the Indian sub-continent the only one that is tropical. For both, the wording of Applicant's amendment would expand the scope of the identification of goods in violation of Rule 2.71(a); 37 C.F.R. § 2.71(a). Accordingly, we affirm the refusal to amend the identification of goods.⁶

Decision: The refusal to register under Section 2(e)(1) is affirmed, and the refusal to amend the identification of goods is also affirmed.

⁶ We also note, as did the Examining Attorney, that the amendment would be futile, as it would not change the outcome of the descriptiveness refusal.