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Precedent of the TTAB

Mailed: December 2, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Sweet Dreamzzz, Inc.*

Serial No. 85769368

Mark A. Harper of Gifford, Krass, Sprinkle, Anderson & Citkowski,  
for Sweet Dreamzzz, Inc.

Edward Nelson, Trademark Examining Attorney, Law Office 106,  
Mary I. Sparrow, Managing Attorney).

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

Opinion by Quinn, Administrative Trademark Judge:

Sweet Dreamzzz, Inc. (“Applicant”) filed an application to register the mark R.E.M. (in standard characters) for “educational services, namely, providing courses of instruction and training in the field of sleep” in International Class 41.<sup>1</sup>

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, when used in connection with Applicant’s services, is merely descriptive thereof. When the refusal was made final, Applicant filed an appeal and a request for

<sup>1</sup> Application Serial No. 85769368, filed November 1, 2012 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging first use anywhere and first use in commerce on October 1, 2002.

reconsideration. When the request was denied, the appeal resumed. Applicant and the Examining Attorney filed briefs.

Applicant argues that its mark is just suggestive, and not merely descriptive. More specifically, Applicant asserts that the letters R.E.M. comprising its mark mean “Rest. Educate. Motivate.” rather than “rapid eye movement.” Applicant, while conceding that the letters could immediately convey the idea of “rapid eye movement” as a stage of sleep, contends that some imagination would be required to reach the conclusion that the mark imparts information about educational services in the field of sleep.

The Examining Attorney maintains that R.E.M. is a commonly understood acronym that describes a stage of sleep, and is often measured or used as part of sleep studies. That Applicant has attempted to create a different connotation for R.E.M. does not mitigate the descriptiveness of the letters for Applicant’s services. Rather, according to the Examining Attorney, the mark immediately describes the essential character of the services, namely that the educational services feature instruction and training in the field of sleep. The Examining Attorney submitted dictionary definitions, and excerpts from third-party websites, including Wikipedia.

A mark 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. *In re Chamber of Commerce of the United States of America*, 675 F.3d 1297, 102 USPQ2d 1217 (Fed. Cir. 2012); *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d

1828 (TTAB 2007); *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark 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; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods or services. *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982). Whether a mark 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 the goods or services, and the possible significance that the mark would have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). 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).

The letters "REM" are an acronym for "rapid eye movement," defined as "the rapid, periodic, jerky movement of the eyes during certain stages of the sleep cycle when dreaming takes place." (<[education.yahoo.com/reference/dictionary](http://education.yahoo.com/reference/dictionary)>). The term "rapid eye movement sleep" is defined as follows:

Rapid eye movement sleep (REM) is the portion of sleep when there are rapid eye movements (REMs). Dreams occur during REM sleep. We typically have 3 to 5 periods of REM sleep per night. They occur at intervals of 1-2

hours and are quite variable in length. An episode of REM sleep may last 5 minutes or over an hour. About 20% of sleep is REM sleep. If you sleep 7-8 hours a night, perhaps an hour and half of that time, 90 minutes, is REM sleep.

REM sleep is characterized by a number of other features including rapid, low-voltage brain waves detectable on the electroencephalographic (EEG) recording, irregular breathing and heart rate and involuntary muscle jerks.

By contrast, NREM (non-REM) sleep is dreamless sleep. During NREM, the brain waves on the EEG are typically slow and of high voltage, the breathing and heart rate are slow and regular, the blood pressure is low, and the sleeper is relatively still. NREM is divided into 4 stages of increasing depth of sleep leading to REM sleep. About 80% of sleep is NREM sleep. If you sleep 7-8 hours a night, all but maybe an hour and a half is spent in dreamless NREM sleep.

(<medterms.com>)

(Definitions attached to Office action, 3/5/2013). In mammals, sleep is divided into two broad types: rapid eye movement (REM sleep) and non-rapid eye movement (NREM or non-REM sleep). “The function of REM sleep is uncertain but a lack of it will impair the ability to learn complex tasks.” See “Rapid eye movement (REM) sleep” and “Sleep” listings in Wikipedia. (Listings attached to Office actions, 9/30/2013 and 4/29/2014).

As shown by the evidence, the acronym REM has a commonly used and well recognized meaning in the context of sleep. Applicant’s recitation of services reads “educational services, namely, providing courses of instruction and training in the field of sleep.” Because the recitation is broadly worded to indicate that the services relate to the “field of sleep,” Applicant’s services include, by definition, educational

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services related to REM sleep. No imagination is required by a prospective purchaser or user to discern that a purpose or feature of Applicant's educational services rendered under the mark R.E.M. is to provide courses of instruction and training in the field of sleep, including REM sleep.

*Decision:* The refusal to register is affirmed.