

ESTTA Tracking number: **ESTTA670511**

Filing date: **05/05/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86041474
Applicant	Creations By Sherry Lynn, LLC
Applied for Mark	NECKLETTE
Correspondence Address	CHRISTINE WASHINGTON 244 FIFTH AVENUE, SUITE 2660 NEW YORK, NY 10001 UNITED STATES chriscwashington@aol.com, trademark@thoughtstopaper.com
Submission	Applicants Request for Remand and Amendment
Attachments	Necklette SL 100 US TTAB Remand Request.pdf(201471 bytes )
Filer's Name	Christine C Washington, Esq.
Filer's e-mail	chriscwashington@aol.com
Signature	/ccw/
Date	05/05/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

)	IN RE:	APPLICATION OF CREATIONS BY SHERRY LYNN, LLC
)	MATTER:	EX PARTE APPEAL
)	SER. NO.:	86041474
)	MARK:	NECKLETTE (WORD MARK)
)	EXAMINING ATTORNEY:	D.BERYL GARDNER
)	LAW OFFICE:	117

**REQUEST TO REMAND TO CONSIDER ADDITIONAL EVIDENCE**

**I. Request remand to allow new attorney to present additional evidence.**

The undersigned, a newly appointed attorney for the applicant has taken over the current case and wishes to supplement the evidence of records. References is made to 37 CFR § 2.142(d), TBMP § 1207.02 and see *In re Johana Farms, Inc.*, 223 USPQ 459, 460 (TTAB 1984) and *In re Carvel Corp.*, 223 USPQ 65 (TTAB 1984).

**II. Mark is not descriptive.**

The primary function of the Applicant's goods is to augment and physically change (as opposed to merely accessorize) articles of clothing. The use of the mark "NECKLETTE" is in fact a play on words in that the Applicant's goods are never worn as bracelets – a common feature of the articles cited by the examiner. In fact, they are not worn as necklaces either. The suffix "lette" is a diminutive meaning slight or lesser than. <http://www.wordsense.eu/lette/> Used in the context of the Applicant's goods, it merely infers or suggests that it is something less than a necklace. Indeed, the articles do not fasten around the neck or wrist of the wearer – they attach directly to the clothing itself. When used in this context and when targeted to this specific market, the mark is not descriptive – it does not convey the product's purpose, features or functions. Insofar as the mark connotes two meanings, it is, at most, suggestive; accordingly, it is not "merely" descriptive.

**A. Standard for establishing descriptiveness is not met.**

To be refused registration on the Principal Register under §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), a mark must be merely descriptive or deceptively misdescriptive of the goods or

services to which it relates. TMEP § 1209.01(b). The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. *In re Chamber of Commerce*, 675 F.3d at 1300, 102 USPQ2d at 1219; *In re Bayer*, 488 F.3d at 964, 82 USPQ2d at 1831. This determination requires consideration of the context in which the mark is used or intended to be used in connection with those goods/services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. TMEP § 1209.01(b). Because the line between merely descriptive and protected, suggestive terms is a nebulous one, the TTAB generally takes the position that doubt is to be resolved in favor of the Applicant; the theory being that once published, competitors will have the opportunity to oppose and present evidence. See MCCARTHY § 11:51 citing *In re Conductive Systems, Inc.*, 220 USPQ 84 (TTAB 1983) holding that doubts under § 2(e) about the merely descriptive nature of a term are resolved in favor of the applicant, unlike the situation wherein § 2(d) likelihood of confusion disputes are resolved); *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972) (where the board held that the LONG ONE for bread was not descriptive); *In re Morton-Norwich Products, Inc.* 209 USPQ 791 (TTAB 1981) (where COLOR CARE for laundry bleach received similar disposition); *In re Aid Laboratories, Inc.*, 221 USPQ 2d 1215 (TTAB 1983) (PEST PRUF for animal shampoo containing insecticides was held to be on the suggestive side of the line).

To be characterized as "descriptive," a term must directly give some reasonably accurate or tolerably distinct knowledge of the characteristics of a product. McCarthy §11:19 citing *Blisscraft of Hollywood v. United Plastics Co.*, 294 F.2d 694, 131 USPQ 55 (2d Cir. 1961) and *Robert Bruce, Inc. v. Sears et. al.*, 343 F.Supp. 1333, 174 USPQ 94 (E.D. Pa. 1972). If information about the product or services given by the term used as a mark is indirect or vague, then this indicates that the term is being used in a "suggestive," not descriptive, manner. MCCARTHY at §11. A term that has elements of imagination, the term will be classified as suggestive, not descriptive. *Id.* A mark that connotes two meanings – even if one is possibly descriptive and the other is suggestive of some other association – can be called suggestive because the mark is not "merely" descriptive. *Id.* For example, the mark POLY PITCHER on polyethylene pitchers both connotes a description of the plastic ingredient of the product and it is also reminiscent or suggestive of Molly Pitcher of Revolutionary lore. That mark was found to be an incongruous expression. *Id.* citing *Blisscraft*. Similarly, the mark SUGAR & SPICE for bakery products not only suggests ingredients, but stimulates and association with the nursery rhyme "Sugar and Spice and Everything Nice ..." In holding this use not a merely descriptive one, the court emphasized this

"reminiscent, suggestive, or associative connotation" with a non-descriptive idea. MCCARTHY citing *In re Colonial Stores, Inc.* 34 F2d 549, 157 USPQ 382 (CPA 1968) and *Sweetarts v. Sunline, Inc.*, 380 F2d 923, 154 USPQ 459 (8<sup>th</sup> cir. 1967) (holding that SWEETARTS candy was non-descriptive).

**B. The mark is suggestive and hence, capable of registration on the Principal Register.**

Suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. TMEP § 1209.01(a). Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services. *See In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE for frozen dough found to fall within the category of suggestive marks because it only vaguely suggests a desirable characteristic of frozen dough, namely, that it quickly and easily may be baked into bread); *In re The Noble Co.*, 225 USPQ 749 (TTAB 1985) (NOBURST for liquid antifreeze and rust inhibitor for hot-water-heating systems found to suggest a desired result of using the product rather than immediately informing the purchasing public of a characteristic, feature, function, or attribute); *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT held suggestive of anti-perspirant deodorant for feet in part because, in the singular, it is not the usual or normal manner in which the purpose of an anti-perspirant and deodorant for the feet would be described).

Incongruity is a strong indication that a mark is suggestive rather than merely descriptive. *In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978) (TENNIS IN THE ROUND held not merely descriptive for providing tennis facilities, the Board finding that the association of applicant's marks with the phrase "theater-in-the-round" created an incongruity because applicant's tennis facilities are not at all analogous to those used in a "theater-in-the-round"). The Board has described incongruity in a mark as "one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark," and has noted that the concept of mere descriptiveness "should not penalize coinage of hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and 'mental pause.'" *In re Shutts*, 217 USPQ 363, 364–5 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow-removal hand tool); *see also In re Vienna Sausage Mfg. Co.*, 156 USPQ 155, 156 (TTAB 1967) (FRANKWURST held not merely descriptive for wieners, the Board finding that although "frank" may be synonymous with "wiener," and "wurst" is synonymous with "sausage," the combination of the terms is incongruous and results in a mark that is no more than suggestive of the nature of the goods); *In re Getz Found.*, 227 USPQ 571, 572

(TTAB 1985) (MOUSE HOUSE held fanciful for museum services featuring mice figurines made up to appear as human beings, the Board finding that the only conceivable meaning of "mouse house," i.e., a building at a zoo in which live and/or stuffed mice are displayed, is incongruous).

Suggestive marks, like fanciful and arbitrary marks, are registrable on the Principal Register without proof of secondary meaning. *See Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1340, 71 USPQ2d 1173, 1180 (Fed. Cir. 2004). Therefore, a designation does not have to be devoid of all meaning in relation to the goods/services to be registrable. If, after conducting independent research, it is unclear to the examining attorney whether a term in a mark has meaning in the relevant industry, the examining attorney must make an inquiry of the applicant, pursuant to 37 C.F.R. §2.61(b).

**C. The mark is also a Double Entendre and as such, is protectable and capable of registration on the Principal Register.**

A "double entendre" is a word or expression capable of more than one interpretation. For trademark purposes, a "double entendre" is an expression that has a double connotation or significance *as applied to the goods or services*. The mark that comprises the "double entendre" will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods or services.

A true "double entendre" is unitary by definition. An expression that is a "double entendre" should not be broken up for purposes of requiring a disclaimer. *See In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983), where the Board found inappropriate a requirement for a disclaimer of "LIGHT" apart from the mark "LIGHT N' LIVELY" for reduced calorie mayonnaise, stating as follows: The mark "LIGHT N' LIVELY" as a whole has a suggestive significance which is distinctly different from the merely descriptive significance of the term "LIGHT" per se. That is, the merely descriptive significance of the term "LIGHT" is lost in the mark as a whole. Moreover, the expression as a whole has an alliterative lilting cadence which encourages persons encountering it to perceive it as a whole. *See also In re Symbra'ette, Inc.*, 189 USPQ 448 (TTAB 1975) (holding SHEER ELEGANCE for panty hose to be a registrable unitary expression; thus, no disclaimer of "SHEER" considered necessary).

The following cases illustrate situations where marks were considered to be "double entendres" and, therefore, registrable unitary marks: *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968) (SUGAR & SPICE for bakery products); *In re Tea and Sympathy, Inc.*, 88 USPQ2d 1062 (TTAB 2008)

(holding THE FARMACY registrable for retail store services featuring natural herbs and organic products and related health and information services relating to dietary supplements and nutrition); *In re Simmons Co.*, 189 USPQ 352 (TTAB 1976) (THE HARD LINE for mattresses and bed springs); *In re Del. Punch Co.*, 186 USPQ 63 (TTAB 1975) (THE SOFT PUNCH for noncarbonated soft drink); *In re National Tea Co.*, 144 USPQ 286 (TTAB 1965) (NO BONES ABOUT IT for fresh pre-cooked ham).

**IV. Online Examples of Use of "NECKLETTE".**

The online examples identified by the Examining Attorney actually support the Applicant's position; i.e., whereas the Applicant is using the moniker in a suggestive, fanciful way for an item that attaches to clothing, the users cited by the Examining Attorney are using the term in connection with necklaces and bracelets; i.e., in a literal sense that requires no imagination whatsoever.

**V. Registrations and Approved Applications.**

Reference is also made to the registrations and/or approved applications, attached hereto collectively as Exhibit 1 and incorporated herein by this reference, wherein the diminutive suffix "ette" is used in connection with the exact articles referenced in the mark.

Respectfully submitted,

Christine C. Washington, Esq.

Attorney for Registrant

EXHIBIT "1"

United States of America  
United States Patent and Trademark Office

CAMIETTE

**Reg. No. 3,710,385** FREDERICK'S OF HOLLYWOOD CROUT INC. (NEW YORK CORPORATION)  
Registered Nov. 10, 2009 1115 E 30th AVE, 11TH FLOOR  
NEW YORK, NY 10013

**Int. Cl.: 25** FOR LADIES' BRAS, BRALETTES, CAM SOLEFS IN CLASS 25 (U.S. CLS. 22 AND 52).

**TRADEMARK** FIRST USE 6-2-2009; IN COMMERCE 6-2-2009.  
**PRINCIPAL REGISTER** THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77 647,609, FILED 11-12-2009

ALEX KEAM, CHAMBERS WORKLEY



*David J. Keppas*

United States Patent and Trademark Office

**From:** TMOOfficialNotices@USPTO.GOV  
**Sent:** Tuesday, April 14, 2015 00:41 AM  
**To:** sevag@foundationllp.com

**Subject:** Official USPTO Notice of Publication Confirmation: U.S. Trademark SN 86452785: LEMONETTE

---

## **TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION**

**U.S. Serial Number:** 86452785  
**Mark:** LEMONETTE  
**International Class(es):** 030  
**Owner:** Lemonette, LLC  
**Docket/Reference Number:**

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Apr 14, 2015.

### **To Review the Mark in the TMOG:**

Click on the following link or paste the URL into an internet browser: <https://tmog.uspto.gov/#issueDate=2015-04-14&serialNumber=86452785>

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. If any information is incorrect due to USPTO error, the applicant should immediately email the requested correction to [TMPostPubQuery@uspto.gov](mailto:TMPostPubQuery@uspto.gov). For applicant corrections or amendments after publication, please file a post publication amendment using the form available at <http://teasroa.uspto.gov/ppa/>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

### **Significance of Publication for Opposition:**

- \* Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a certificate of registration should issue.

To check the status of the application, go to [http://tsdr.uspto.gov/#caseNumber=86452785&caseType=SERIAL\\_NO&searchType=statusSearch](http://tsdr.uspto.gov/#caseNumber=86452785&caseType=SERIAL_NO&searchType=statusSearch) or contact the Trademark Assistance Center at 1-800-786-9199. Please check the status of the application at least every three (3) months after the application filing date.

To view this notice and other documents for this application on-line, go to [http://tsdr.uspto.gov/#caseNumber=86452785&caseType=SERIAL\\_NO&searchType=documentSearch](http://tsdr.uspto.gov/#caseNumber=86452785&caseType=SERIAL_NO&searchType=documentSearch). NOTE: This notice will only become available on-line the next business day after receipt of this e-mail.