

THIS DISPOSITION IS
NOT CITABLE AS PRECEDENT
OF THE TTAB

Mailed: December 29, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rubimed AG, assignee of Dr. med. Reimar Banis¹

Serial No. 76213128

Julie A. Greenberg of Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C. for applicant.

Leslie L. Richards, Trademark Examining Attorney, Law
Office 106 (Mary I. Sparrow, Managing Attorney).

Before Hairston, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On February 21, 2001, Dr. med. Reimar Banis filed an
application (now assigned) to register the mark
PSYCHOSOMATIC ENERGETICS on the Principal Register for
goods and services ultimately identified as follows:

"printed instructional, educational,
and teaching materials in the field of
naturopathy, empirical therapeutics and

¹ The records of the Assignment Branch of the USPTO indicate that the original applicant (an individual, citizen of Switzerland) has assigned the application to Rubimed AG (a Swiss corporation). Reel 2944 Frame 0825 and Reel 2975 Frame 0891.

holistic medicine" in International Class 16; and

"medical services, namely, medical care in the field of naturopathy, empirical therapeutics and holistic medicine" in International Class 42.

The application is based on applicant's claimed date of first use and first use in commerce of October 1998 for both classes.

The Examining Attorney refused registration on the ground that applicant's mark, PSYCHOSOMATIC ENERGETICS, is merely descriptive of applicant's goods and services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

When the refusal was made final, applicant appealed to the Board. Both applicant and the Examining Attorney have filed briefs. An oral hearing was requested by applicant, but subsequent thereto, applicant withdrew its request for an oral hearing.

The Examining Attorney contends that the proposed mark merely describes the subject matter and a significant feature of these goods (printed matter) and services (medical services), specifically that these goods and services involve the use of energetic medicine to treat psychosomatic disorders; that each of the two words have a readily understood meaning, and the combination of the two

words does not create a unique mark with a separate, non-descriptive meaning; and that neither imagination nor mental gymnastics is needed to discern the nature of applicant's goods and services.

In support thereof, the Examining Attorney made of record several dictionary definitions, including the following:

- (1) **psychosomatic** adjective 1. Of or relating to a disorder having physical symptoms but originating from mental or emotional causes. 2. Relating to or concerned with the influence of the mind on the body, especially with respect to disease: psychosomatic medicine. The American Heritage Dictionary (Third Edition 1992);
- (2) **energetics** noun 1. The study of the flow and transformation of energy. 2. The flow and transformation of energy within a particular system. The American Heritage Dictionary (Third Edition 1992); and
- (3) **energetics** That branch of science which treats of [sic] the laws governing the physical or mechanical, in distinction from the vital, forces, and which comprehends the consideration and general investigation of the whole range of the forces concerned in physical phenomena. On-Line Medical Dictionary.

The Examining Attorney also made of record copies of several excerpted stories retrieved from the Nexis

database, examples of which are reproduced below, to show that "energetics" or "energetic" or "energetic medicine" is a field of the medical industry involving the study of energy changes in relation to healing:

Headline: Hands For Healing: Is Touch Therapy Real Or 'Pseudoscience'?
Traditions more than 5,000 years old have described a universal energy that flows through centers in the human spine and activates the life force. The idea that an imbalance in the human energetic system causes illness, and that healing has an energetic connection, is older than Hippocrates...
'We need both systems -- mainstream medicine and energetic methods of healing,' she said. ...
"Kennebec Journal (Augusta, ME)," October 6, 2002;

Headline: Briefly
...a retreat, will be held in four sessions at the Notre Dame Spiritual Center. The goal of the retreat is to 'offer a holistic approach to spiritual deepening through reflection, creative expression and energetic healing,' using a variety of art media, meditation, scripture and the movements of the Universe Story. ... "Portland Pres Herald," October 5, 2002;

Headline: Healing the Whole Person
... Since then, Slater has done a great deal of research and writing about 'energetic healing.' In 1998, she opened a holistic nursing practice in Clarksville... . "The Leaf-Chronicle (Clarksville, TN)," July 16, 2002;

Headline: Weekend For Wise Women
... Other workshop topics include: yoga, self-care in times of crisis,

insightful aging, energetic healing, past lives breath work and managing stress. "The Miami Herald," July 13, 2002;

Headline: Community Datebook
...moderated panel discussion with audience interaction. Professions to be represented include Naturopathy (Jason Harmon), Tibetan Buddhist medicine, with Ayurveda and Taoism, and yoga (Deb Lachinski), chiropractic (Rich Newman), Taoist healing/Oriental energetic medicine (Shifu Warren Pretlow), eastern philosophy (Josef Princiotta), acupuncture (Kelly Sandberg... "Anchorage Daily News (Alaska)," March 27, 2001;

Headline: Doctor Known For Holistic Practices Dies at 46
... Sister-in-law Carol Parsow said Jay was a dedicated doctor who preferred to treat patients using holistic medicine, which included acupuncture, and energetic medicine. ... "Omaha World Herald (Nebraska)," January 12, 2001;

Headline: Phila. Region To Play Host To Health Symposium...
... The session will involve authors who have made a name for themselves on varied medical topics, from energetics to acupuncture and cancer screening. ... "The Philadelphia Inquirer," January 28, 1998; and

Headline: Dog's World: Acupuncture Controversy Gets To the Point
... Acupuncture, homeopathy, herbalism, are all part of a healing modality called Energetic Medicine. Energetic Medicine deals with energy fields, not pathology. Pathology develops when energy becomes unbalanced. ... "The Capital (Annapolis, MD," March 12, 1997.

The Examining Attorney also refers to applicant's specimens of record (a one-page flyer and a brochure), as well as printouts of a few pages from applicant's website, all to show that these terms have readily understood meanings, including as used by applicant, and the combination remains merely descriptive. See the examples of applicant's uses quoted below:

"A revolutionary new concept for the exact measurement of the subtle human energy field and the effective treatment of emotional issues"

"• Diagnosis and therapy of the psychosomatic condition

- Exact diagnosis of the disturbed autonomic centers
- Localization of unconscious mental conflicts"

"What is 'Psychosomatic Energetics'?"

The name of the method means that the three parts [-] soul (psyche), body (soma) and subtle energy (energetics) have to work together in harmony in order to maintain our health. ..."

(Applicant's website.)

"'Psychosomatic Energetics' is a new method of treating illnesses in a holistic way, considering both the body and the soul as well as the vital energies."

"It is based on a combination of the energy-medicine from the far East (acupuncture, Yoga) with scientific modern thinking."

"Psychosomatic Energetics gives you the chance for the first time ever to measure the subtle energy-field of the body (Aura) very precisely."

"It is the aim of any energetic healing method to find out about losses of vital energy and to rebalance it again, like in acupuncture and homeopathy."

"How can you explain psychosomatic disorders?":

(Applicant's brochure, p. 2-3.)

"...this method...can measure the human energy field so precisely and reliably—that therapy and rapid healing are the natural consequences."

"To eliminate depression, anxiety, chronic fatigue and other difficult conditions through powerful Homeopathic remedies..."

(Applicant's flyer.)

Applicant argues that the two words together have no readily understood meaning;² that instead the phrase is coined "to suggest the focus of applicant's holistic

² Applicant submitted dictionary definitions of the words "energetics" and "psychosomatic" with its brief. We take judicial notice thereof. See *The University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). See also, TBMP §704.12 (2d ed. rev. 2004).

Applicant also submitted with its brief a copy of a Board decision (*In re I.P. International Inc.*) marked "This disposition is not citable as precedent of the TTAB." We have not considered the non-precedential decision in deciding this appeal. See *In re Caterpillar Inc.*, 43 USPQ2d 1335, 1337 (TTAB 1997); and *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, footnote 9 (TTAB 1992).

spiritual/body therapies" (reconsideration request, p. 2); that applicant does not use the words in their readily understood manner; that applicant's goods and services relate to the "patient's soul," not to the medical/psychiatric focus on the mind as the basis of healing; that "applicant's services are spiritual, not medical, as construed by the Examiner" (reconsideration, p. 3); that this incongruity between the two words ("psychosomatic" relating to *mentally* or *emotionally* based physical symptoms and "energetics" relating to a branch of science governed by the *physical* or *mechanical* - applicant's brief, p. 2) and the involved goods and services makes the mark suggestive; that when viewed in its entirety, the combination of these two words (one clinical and one esoteric, according to applicant), is unique and is a contradiction of terms; that the phrase is "intended to suggest the focus of Applicant's holistic spiritual/body therapies" (brief, p. 3); that the words do not immediately convey information about applicant's goods and services, which puts the "emphasis on utilizing the soul's influence in the healing" (reply brief, p. 2); and that doubt is resolved in applicant's favor.³

³ In its reply brief, p. 3, applicant asserts that the Examining Attorney's inclusion of "additional evidence" with the brief is

We find that the phrase "psychosomatic energetics" is merely descriptive of the subject matter of applicant's various printed materials in the field of naturopathy, empirical therapeutics and holistic medicine; and that the phrase is merely descriptive of a significant feature or characteristic of applicant's medical services in the field of naturopathy, empirical therapeutics and holistic medicine. The two words are English words with dictionary definitions, which would be generally understood by the relevant purchasers of the goods and services.

"Psychosomatic" is defined as relating to disorders which have physical symptoms but mental or emotional causes, or the more general definition of relating to the influence of the mind on the body especially with respect to disease and the dictionary even refers to "psychosomatic medicine."

"Energetics" is clearly a type of medicine which considers the whole range of forces concerned in physical phenomena.

(See the dictionary definition, several of the Nexis excerpted stories, and applicant's website pages and specimens.) Thus, relevant consumers will readily

not appropriate and does not form part of the record. Applicant is advised that the Examining Attorney's quotes from Nexis articles, statements from applicant's website, and statements from applicant's specimens are all proper references to material previously made of record herein. To the extent applicant requests that the Board not consider this material, applicant's request is denied.

understand that applicant's goods and services focus on the energetic healing method and the mind/body connection.

Applicant's argument that it does not use the terms in their ordinary meaning is not persuasive in light of the uses on applicant's specimens and applicant's website. Applicant's argument, with regard to its services, that its services are "spiritual, not medical" (applicant's brief, p. 7) is unpersuasive, particularly in light of the identification of services "medical services, namely, medical care in the field of ... holistic medicine."

Consumers will understand the phrase as meaning that applicant's goods and services involve the influence of the mind on the body and how this changes the energy of the body. That is, they will understand that applicant's method of treating patients and the printed materials about how it treats patients involves a focus on energetics and holistic medicine in dealing with psychosomatic disorders.

When we consider the mark PSYCHOSOMATIC ENERGETICS as a whole, and in the context of applicant's goods (various printed materials in the field of inter alia, holistic medicine) and applicant's services (medical care in the field of, inter alia, holistic medicine), we find that the phrase immediately informs consumers that applicant's goods and services use or feature information about energetic

medicine (energetics) to treat physical symptoms originating from mental or emotional causes.

The combination of these English words does not create an incongruous or unique mark. Rather, applicant's mark, PSYCHOSOMATIC ENERGETICS, when used on and in connection with applicant's identified goods and services, immediately describes, without need of conjecture or speculation, the essential feature, purpose or function of applicant's goods and services. No exercise of imagination or mental processing or gathering of further information is required in order for purchasers or prospective customers for applicant's goods and services to readily perceive the merely descriptive significance of the phrase PSYCHOSOMATIC ENERGETICS as it pertains to the identified goods and services on which applicant uses the phrase. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Polo International Inc.*, 51 USPQ2d 1061 (TTAB 1999); *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996); and *In re Time Solutions, Inc.*, 33 USPQ2d 1156 (TTAB 1994).

While evidence of descriptive use of the multiple words together is generally persuasive that such a multiple word mark is merely descriptive, there is no requirement

that an Examining Attorney must obtain evidence of all the words used together in order to make a prima facie showing that a multiple word mark is merely descriptive.⁴ See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001)(Court affirmed Board holding THE ULTIMATE BIKE RACK merely descriptive and subject to disclaimer for carrying racks for mounting on bicycles and accessories for bicycle racks, namely attachments for expanding the carrying capacity of a carrying rack.) See also, *In re Shiva Corp.*, 48 USPQ2d 1957 (TTAB 1998).

Finally, even if applicant was the first (and/or only) entity to use the phrase "psychosomatic energetics" in relation to printed materials and medical services, in the field of inter alia, holistic medicine, such is not dispositive where, as here, the phrase unquestionably projects a merely descriptive connotation. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994). See also, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2001).

Decision: The refusal to register on the ground that the proposed mark is merely descriptive under Section

⁴ The issue here is not whether the phrase is generic for applicant's identified goods and/or services, but rather is whether the phrase is merely descriptive in the context of applicant's goods and/or services.

Ser. No. 76213128

2(e)(1) of the Trademark Act is affirmed as to both classes.