

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Nihondo Co., Ltd.

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Serial No. 79071083

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John Zaccaria of Notaro, Michalos & Zaccaria P.C. for  
Nihondo Co., Ltd.

Cory Boone, Trademark Examining Attorney, Law Office 104  
(Chris Doninger, Managing Attorney).

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Before Kuhlke, Mermelstein and Bergsman,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Nihondo Co., Ltd. ("applicant") filed an application on the Principal Register for the mark KAMPO BOUTIQUE, in standard character form, for the following goods, as amended, "tea; tea-based beverages; Chinese tea; Japanese green tea; herbal tea; all of the goods not for medical, purposes but used in accords [sic] with kampo practices," in Class 43. The application is based on a request for extension of protection filed under Section 66(a) of the Trademark Act of 1946, 15 U.S.C. §1144f(a). Applicant disclaimed the exclusive right to use the word "Kampo."

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive.

Applicant and the examining attorney are in agreement as to the meaning of the words "Kampo" and "Boutique," but disagree as to whether the composite mark is merely descriptive when applied to teas "used in accords [sic] with kampo practices."<sup>1</sup> The record establishes that "Kampo is a Japanese system of herbalism,"<sup>2</sup> or "Kampo medicine is the Japanese study and adaptation of Traditional Chinese medicine. ... but is primarily concerned with the study of herbs."<sup>3</sup> A "boutique" is defined as "a small fashionable shop."<sup>4</sup>

Specifically, applicant contends that "'KAMPO' refers to the Japanese practice of using herbs and herbal preparations in the treatment of various conditions."<sup>5</sup> The examining attorney contends that "'Kampo' is a term with a commonly-understood meaning that describes herbs and teas

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<sup>1</sup> Applicant's Brief, p. 4 and Examining Attorney's Brief, unnumbered pages 3-5.

<sup>2</sup> *Holisticonline.com* attached to the December 15, 2010 Office Action.

<sup>3</sup> *Wikipedia.com* attached to the September 24, 2009 Office Action.

<sup>4</sup> *Merriam-WebsterOnline.com* attached to the September 24, 2009 Office Action.

<sup>5</sup> Applicant's Brief, p. 4.

used as part of a traditional medical system. ... The study and application of these medicinal practices is primarily concerned with the study of herbs, and hundreds of herbal ingredients have been catalogued and studied for their efficacy."<sup>6</sup>

The record shows that one company, Honso USA, sells "Japanese Herbal Kampo CardioShen Tea."<sup>7</sup> The label on the tea box identifies the product as CardioShen Tea.

Both applicant and the examining attorney submitted third-party registrations for marks incorporating the word "boutique" for products. In the third-party registrations submitted by the applicant, the registrants did not disclaim the exclusive right to use the word "boutique," whereas the registrants disclaimed the exclusive right to use the word "boutique" in the registrations submitted by the examining attorney.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products and services it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods and

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<sup>6</sup> Examining Attorney's Brief, unnumbered pages 3-4.

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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). In other words, the question is not whether someone presented only with the mark could guess the products listed in the description of goods. Rather, the question is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a

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<sup>7</sup> December 15, 2010 Office Action and the December 8, 2009 Office Action.

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composite that is itself merely descriptive. See *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of new information services in the food processing industry). In this regard, we must consider the issue of descriptiveness by looking at the mark in its entirety. Common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. See *Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989).

Finally, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); see also, *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

We start our analysis of the registrability of KAMPO BOUTIQUE by inquiring whether that term describes a characteristic, quality, function or purpose of tea products used in accordance with kampo practices, not whether we can guess what the products are or the purpose of the products just by looking at the mark.

The term KAMPO BOUTIQUE immediately describes a store that sells KAMPO based products or products, including tea, used in accordance with kampo practices. Applicant argues that "[b]outique" is not a word that immediately or directly (or even indirectly) describes any significant characteristic relating to the goods -- tea or tea-based beverages."<sup>8</sup> However, in a case with similar facts, the Board held that the mark THE PHONE COMPANY for telephones is merely descriptive because a mark that identifies a type of commercial establishment from which particular goods come is merely descriptive of those goods. *In re Phone Co., Inc.*, 218 USPQ 1027, 1028 (TTAB 1983).

The term "THE PHONE COMPANY" seems to us to inform purchasers directly and immediately that the items of telephone equipment bearing those words emanate from a company specializing in such equipment. The term would, thus, equally describe equipment emanating from one of applicant's competitors.

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<sup>8</sup> Applicant's Brief, pp. 5 and 8.

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*In re Phone Co., Inc.*, 218 USPQ at 1028. See also *In re Paint Products Co.*, 8 USPQ2d 1863, 1866 (TTAB 1988) (because the mark PAINT PRODUCTS CO. for paints describes the goods of any company selling such products, the mark is merely descriptive); *In re Martin's Famous Pastry Shoppe, Inc.*, 221 USPQ 364, 367 (TTAB 1984), *aff'd on other grounds*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984) (requirement to disclaim the exclusive right to register the term PASTRY SHOPPE in the mark MARTIN'S FAMOUS PASTRY SHOPPE and design for baked goods was affirmed because "it conveys a clear and immediate impression of the character of applicant's goods as products likely to emanate from a pastry shop").<sup>9</sup>

Applicant also contends that consumers will dissect the mark into its component parts and that they will engage in a multistage reasoning process to make a connection between Japanese Kampo practices, tea, a specialty store selling tea and the mark KAMPO BOUTIQUE.<sup>10</sup> We do not agree. First, consumers will not engage in the mental process of

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<sup>9</sup> The cases relied on by applicant, *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949 (TTAB 1981) (AN AMERICAN CAFÉ for restaurant services), *In re Hutchinson Technology, Inc.*, 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988) (HUTCHISON TECHNOLOGY for electronic equipment), and *In re TMS Corp. of the Americas*, 200 USPQ 57 (TTAB 1978) (THE MONEY SERVICE for a financial service) are not helpful precedents because they do not present analogous factual situations.

<sup>10</sup> Applicant's Brief, p. 8.

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parsing KAMPO BOUTIQUE into its component parts, but will regard it as a unitary term. Thus, the relevant consumer is going to perceive KAMPO BOUTIQUE as meaning a store that sells Kampo related products.

Second, as indicated above, the test is whether the mark conveys information about the goods, not whether someone can guess what the goods are from the mark. In other words, the issue is whether KAMPO BOUTIQUE conveys information about tea used in accordance with Kampo practices. As previously noted above, a mark that identifies a type of commercial establishment from which particular goods come is merely descriptive of those goods, and the mark would equally describe tea emanating from one of applicant's competitors. Thus, we find that the mark KAMPO BOUTIQUE directly informs consumers that the tea identified by the mark is to be used in connection with kampo practices.

Finally, applicant argues that competitors do not need to use the term KAMPO BOUTIQUE as evidenced by the fact that there is no evidence of use by others of the term. However, there is no requirement that the examining attorney prove actual competitor use or need; it is well established that the even if applicant is the only user of a term, this does not justify registration, where as here,



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the only significance conveyed by the term is merely descriptive. See *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009); *In re BetaBatt Inc.*, 89 USPQ 1152, 1156 (TTAB 2008); *In re Sun Microsystems Inc.*, 59 USPQ2d at 1087.

In view of the foregoing, we find that the mark KAMPO BOUTIQUE, when used in connection with tea, immediately informs the purchaser, without the need for a multistep reasoning process, conjecture or speculation, that the subject tea is for use in accordance with Kampo practices and, therefore, it is merely descriptive.

**Decision:** The refusal to register is affirmed.