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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Holland Akins Ventures, LLC

Serial No. 86650058

Maureen C. Kassner of K & G Law LLC for Holland Akins Ventures, LLC.

James T. Griffin, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Shaw, Masiello, and Heasley, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Holland Akins Ventures, LLC ("Applicant") seeks registration on the Supplemental Register of the proposed mark THE LAUNDRY CAFE in standard characters for the services set forth below:

> Providing washing and drying laundry facilities, in International Class 37;
>
> Café and restaurant services, in International Class 43.[1]

[1] Application Serial No. 86650058 was filed on June 3, 2015 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based on Applicant's asserted use of the mark in commerce, stating April 13, 2012 as the date of first use and first use in commerce for both classes of services. Applicant originally sought registration on the Principal Register.

The Examining Attorney refused registration under Section 23 of the Trademark Act, 15 U.S.C. § 1091, on the ground that Applicant's proposed mark is generic and thus incapable of distinguishing the identified services.[2] When the Examining Attorney made the refusal final, Applicant requested reconsideration and simultaneously appealed to this Board. The Examining Attorney denied the request for reconsideration and this appeal proceeded. The case is fully briefed.

In order to qualify for registration on the Supplemental Register, a proposed mark "must be capable of distinguishing the applicant's goods or services." 15 U.S.C. § 1091(c). Generic terms do not so qualify. "[G]eneric terms by definition are incapable of indicating a unique source." *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1267 (Fed. Cir. 2015) (citing *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) ("Generic terms, by definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status.")). A proposed mark is generic if it refers to the class or category of goods or services on or in connection with which it is used. *In re Dial-A-Mattress Operating Corp.,* 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001) (citing *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.,* 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986) ("*Marvin Ginn*"). The test for determining whether a mark is generic is its primary significance to the relevant public. *In re American Fertility Soc'y,* 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir.

[2] During prosecution, the Examining Attorney issued, and later withdrew, a refusal under Trademark Act Section 2(d) on grounds of likelihood of confusion with the registered mark THE LAUNDROMAT CAFÉ (in special form), with THE LAUNDROMAT CAFÉ disclaimed. Reg. No. 4131518.

1999); *Magic Wand Inc. v. RDB Inc.,* 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); and *Marvin Ginn, supra.* Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered … understood by the relevant public primarily to refer to that genus of goods or services?" *Marvin Ginn*, 228 USPQ at 530. The Examining Attorney has the burden of establishing by clear evidence that a mark is generic. *In re Merrill Lynch,* 4 USPQ2d at 1141; *In re American Fertility Soc'y, supra*; and *Magic Wand, supra.* "Doubt on the issue of genericness is resolved in favor of the applicant." *In re DNI Holdings Ltd.,* 77 USPQ2d 1435, 1437 (TTAB 2005).

1. The genus of Applicant's services.

Our first task under *Marvin Ginn* is to determine, based on the evidence of record, the genus of Applicant's services. Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, generally "a proper genericness inquiry focuses on the description of services set forth in the [application or] certificate of registration." *Magic Wand*, 19 USPQ2d at 1552 (citing *Octocom Sys., Inc. v. Houston Computers Servs.* Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). Applicant has identified two rather disparate types of services, in two International Classes. The Examining Attorney argues that one must read both classes of services together, such that the genus is "a combined laundry café service."[3] Applicant resists combining both classes of services into a

[3] Examining Attorney's brief, 14 TTABVUE 5.

single genus, and points out that the services are in "two discrete international classes" and have "obvious distinctions."[4]

The Examining Attorney's position that the appropriate genus is a "combined" service that provides both laundry services and café services is supported by the identification of services and the rest of the record. Applicant's own service is such a hybrid service, as is shown by its specimen of use:

> While your laundry is being done, we invite you to relax in our café area … while treating yourself to a tasty snack or beverage of your choice.[5]

Further, the record shows, as we will discuss, that other such businesses exist. The fact that laundry and café services fall into different classes under the Nice Agreement Concerning the International Classification of Goods and Services is of no relevance to our inquiry. The classification of goods and services is an organizational tool that does not alter the realities of the marketplace. Applicant's application and the other evidence of record show that there are laundromats that serve coffee and coffee houses that offer laundry facilities. Either class of Applicant's identification of services would encompass these services, because we consider an identification of services to encompass all services of the nature and type described therein. *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). Thus, in this case we consider the relevant genus to be the combined service of "Providing washing and drying laundry facilities" and "Café and restaurant services."

[4] Applicant's reply brief, 15 TTABVUE 3.

[5] Specimen of use filed June 3, 2015.

2. Public understanding of the term THE LAUNDRY CAFE.

We next consider whether THE LAUNDRY CAFE would be understood by the relevant public primarily to refer to the combined service of providing laundry and café services. The Examining Attorney contends that the relevant public "comprises ordinary consumers who use applicant's services …"[6] Applicant's brief does not contest this. As laundry services and cafés are commonplace services of widespread use, clearly the relevant public would encompass a wide swath of the general public.

In our deliberations, we have carefully considered all of the evidence of record relating to the public's understanding of the term THE LAUNDRY CAFE. A substantial portion of the Examining Attorney's evidence relates to foreign businesses located in Canada, Australia, Italy and India, to which Applicant objects. The Examining Attorney argues that foreign websites and publications that are accessible to persons in the United States "may be relevant to discern United States consumer impressions of a proposed mark."[7] In this case, we find such foreign materials to be of very little evidentiary weight. This case is distinct from one in which foreign websites might be used to demonstrate the degree of exposure of U.S. persons to particular information or marketing materials. Our primary inquiry in this case is how U.S. customers use and understand words; foreign websites show the use of words by foreign writers, and they cannot, alone, demonstrate that U.S. persons have adopted the terminology used abroad. Even if we were to assume that large numbers of U.S. persons saw these websites, we would require more direct

[6] Examining Attorney's brief, 14 TTABVUE 5.

[7] *Id.*, 14 TTABVUE 8, citing TMEP § 710.01(b).

evidence of how they use or understand the terminology at issue. At best, in this case, the foreign-based evidence would show that a combination of a café and a laundry is a viable type of enterprise, but even then it would not clearly show that such a business would be viable in the United States.[8]

We find the following evidence submitted by the Examining Attorney to have probative value as to consumers' use or understanding of the THE LAUNDRY CAFE:

> News item:
>
> **Madeline, East Nashville's Laundry Café, Shuts Down for Good**
>
> Madeline, the little combination café, bar and laundromat in East Nashville's Cleveland Park neighborhood, has closed.[9]
>
> ***
>
> News item:
>
> **GAS STATION GOURMET AND A LAUNDRY CAFÉ**
> …
> Persimmon Café, owned and run by Chef Robert Cassi, is in a laundromat – yes, you read that correctly. In January of 2012, Rob Cassi decided to open up a sandwich shop … [A]fter searching diligently for the right restaurant location, he found one inside College Laundry.[10]
>
> ***
>
> Blog entitled STRATIVITY:

[8] In any event, some of the evidence of foreign usage would not support the Examining Attorney's case. For example, the Coin Laundry café and the Machine Laundry café in Australia are cafes that do not offer laundry service.

[9] Office Action of September 15, 2015 at 13-15.

[10] Office Action of July 1, 2016 at 13-15.

> I was riding the bus the other day when I passed by a storefront that read "The Laundry Café." I was surprised by the unusual name but in a rush to my destination I didn't get a chance to explore what it was.
>
> At first I thought, "What an odd name for a café. Why would someone want to sip a cup of coffee in a place that reminds them of a monotonous household chore?"
>
> And then it hit me! What if this was a café set up specifically for those waiting for their laundry at the Laundromat?[11]
>
> ***
>
> Webpage referring to The Laundry Café, Oak Grove Kentucky, offering laundry machines, coffee bar, and free Wi-Fi internet.[12]
>
> ***
>
> News item referring to The Laundry Café and Café Louie, Kentwood Michigan:
>
> The combination laundry/café/dry cleaner brings the ultimate to area residents.[13]
>
> ***

We reject several of the domestic examples of use proffered by the Examining Attorney. The signage of iDo Laundry, in Hawaii,[14] clearly indicates that the words "Café & Wash," set forth on a separate line and in a different color from "iDo Laundry," are a separate phrase. The Yellow Pages entry for Laundry Café in Louisville, Kentucky[15] indicates that it is a laundromat but gives no indication that

[11] Office Action of December 9, 2015 at 14-15.

[12] Office Action of September 15, 2015 at 8-9; Office Action of July 1, 2016 at 8-9.

[13] Office Action of July 1, 2016 at 3-5; Office Action of December 9, 2015 at 8.

[14] Office Action of December 9, 2015 at 4-5.

[15] Office Action of July 1, 2016 at 10-11.

it serves coffee. The Facebook entry for The Laundry Café[16] carries no indication of where the establishment is and most of the postings are in very non-idiomatic English, suggesting a foreign source.

Applicant suggests that we should discount entirely examples of use of LAUNDRY CAFE as a business name or uses of the term with initial upper-case letters.[17] We disagree. Contrary to Applicant's suggestion, it is not uncommon for a business to select a generic or highly descriptive trade name; and there are many reasons for words to be capitalized, other than that they are not common words.

The probative evidence of record shows two examples of reporters who spontaneously chose the words "laundry café" to designate business establishments that offer, together, laundry services and café services; two examples of such businesses that selected the term "Laundry Café" to identify themselves; and a blogger's detailed description of his reaction to seeing a store marked LAUNDRY CAFÉ, showing that he understood it to refer to a café associated with a laundry. The record also includes evidence of a third entity, the owner of Reg. No. 4131518,[18] which adopted the mark shown below, with the closely similar words THE LAUNDROMAT CAFE disclaimed, to identify its "laundry services, including launderette services" and "cafes":

[16] Office Action of July 1, 2016 at 19-22.

[17] Applicant's brief, 10 TTABVUE 8.

[18] *See* Office Action of September 15, 2015 at 5-7.

There is no doubt that LAUNDRY and CAFE are, individually, the generic names of the services that Applicant provides: these are the very words that Applicant chose to describe them in its identification of services. Placing the two nouns together in order to describe something that combines the essence of both is a commonplace grammatical device in the English language,[19] such that customers would be highly likely to understand Applicant's proposed mark to designate an establishment that is both a laundry and a café, even though such combined services may be relatively novel or unusual. However, our primary reviewing Court has made it clear that this type of analysis is not sufficient:

> [E]ven in circumstances where the Board finds it useful to consider the public's understanding of the individual words in a compound term as a first step in its analysis, the Board must then consider available record evidence of the public's understanding of whether joining those individual words into one lends additional meaning to the mark as a whole.

Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc., 786 F.3d 960, 114 USPQ2d 1827, 1832-3 (Fed. Cir. 2015). The above guidance, read in the context of the Court's full discussion, indicates that a demonstration of genericness of a compound term

[19] An "apposition" is defined as "a grammatical construction that consists of two nouns or noun equivalents referring to the same person or thing, standing in the same syntactical relation to the rest of the sentence without being joined to each other by a coordinating conjunction, and typically adjacent to each other." WEBSTER'S THIRD NEW DICTIONARY OF THE ENGLISH LANGUAGE (1993), p. 105.

will require, in virtually every case, not only evidence of the meanings of the component words, but also *evidence* showing the *public's understanding* of the *entire mark*.

In the present case, the direct evidence of the public's perception of the proposed mark is not voluminous. However, the fact that two writers spontaneously chose the words "laundry café" to identify businesses similar to that of Applicant is particularly clear evidence that they understand these words to refer to the relevant genus of services; and the blogger's detailed discussion of his reaction to the words "laundry café" provides an unusually clear view of the central issue in this case, which is the perception of members of the consuming public. This evidence is supplemented by evidence of two businesses of the relevant genus that found "Laundry Café" to be a suitable trade name or descriptor for their services. We find this evidence to be sufficient to demonstrate that the relevant public would understand THE LAUNDRY CAFE primarily to refer to cafés that offer laundry services and laundries that offer café services.

Decision: The refusal to register Applicant's mark on the Supplemental Register is affirmed.