

This Opinion is Not a
Precedent of the TTAB

Mailed: July 20, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Riviana Foods Inc.
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Serial No. 87414879
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Ronald E. Shapiro of Shapiro and Silverstein PLLC,
for Riviana Foods Inc.

Anthony Rinker, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

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Before Lynch, Hudis and Johnson,
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

Riviana Foods Inc. (“Applicant”) seeks registration on the Principal Register of the proposed mark RIBBONS OF HOPE (in standard characters) for “pasta” in International Class 30.¹

¹Application Serial No. 87414879 filed on April 18, 2017, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce. As noted below, Applicant filed a Statement and specimen of use pursuant to Trademark Act Section 1(d)(1), 15 U.S.C § 1051(d)(1), in connection with this application.

The RIBBONS OF HOPE Application was filed on April 18, 2017, and was published for potential opposition on July 18, 2017 without issuance of any Office Actions. No opposition having been filed, a Notice of Allowance for the Application was issued on September 12, 2017. Applicant filed its Statement and specimens of use in support of the Application on October 2, 2017.

After reviewing Applicant's specimens, the Trademark Examining Attorney refused registration under Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§ 1051-1053, 1127; *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1202.17(c)(ii)(A) (Oct. 2018) ("Generally, the failure-to-function refusal is a specimen-based refusal."). The Examining Attorney issued the refusal on the ground that Applicant's mark, as applied to the goods identified in the application, is a slogan or term that does not function as a trademark to indicate the source of Applicant's goods and to identify and distinguish them from others. More specifically, it was the Examining Attorney's view that the proposed RIBBONS OF HOPE mark is "an informational social, political, religious, or similar kind of message that merely conveys support of, admiration for, or affiliation with the ideals conveyed by the message."²

When the refusal was made final, Applicant appealed and requested reconsideration.³ After the Examining Attorney denied the request for

² Office Action of October 27, 2017 at TSDR 2.

³ Final Office Action of August 20, 2018; Request for Reconsideration of February 20, 2019, 4 TTABVUE; Notice of Appeal of February 20, 2019 at 1 TTABVUE.

reconsideration, the appeal was resumed.⁴ Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

I. Applicable Law: Failure to Function as a Mark

Trademark Act Section 45, 15 U.S.C. § 1127, defines a “trademark” in relevant part as “any word, name, symbol, or device, or any combination thereof – (1) used by a person ... to identify and distinguish his or her goods ... from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” Not every designation that is placed or used on a product necessarily functions as a trademark and not every designation adopted with the intention that it perform a trademark function necessarily does so. *See In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 215 (CCPA 1976) (“The Trademark Act is not an act to register mere words, but rather to register trademarks. Before there can be registration, there must be a trademark, and unless words have been so used they cannot qualify.”).

Following this precept, the Board has affirmed refusals to register slogans and composite marks that convey information but do not function as marks. *See, e.g., In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1159 (TTAB 2019) (affirming refusal to register INVESTING IN AMERICAN JOBS as failing to function as a mark because it merely serves as an informational message to encourage ventures such as manufacturing of goods in the U.S. and employment in the U.S.); *In re Volvo Cars of N. Am. Inc.*, 46 USPQ2d 1455, 1459-60 (TTAB 1998) (affirming refusal to register

⁴ Denial of Reconsideration of March 21, 2019, 5 TTABVUE; Resumption of Appeal of March 25, 2019 at 6 TTABVUE.

DRIVE SAFELY because phrase would not be regarded as indicator of source but as a familiar safety admonition).

Likewise, slogans and other terms that express support, admiration, or affiliation are generally not registrable. *See, e.g., D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710, 1716 (TTAB 2016) (finding I ♥ DC does not create the commercial impression of a source indicator because it would be perceived as informational); *In re Hulting*, 107 USPQ2d 1175, 1179 (TTAB 2013) (finding “No More RINOs” is a political slogan of the conservative wing of the Republican Party and not registrable as a trademark for bumper stickers, t-shirts, and political pins); *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1230 (TTAB 2010) (“ONCE A MARINE, ALWAYS A MARINE is an old and familiar Marine expression, and as such it is the type of expression that should remain free for all to use.”); *In re Manco Inc.*, 24 USPQ2d 1938, 1941 (TTAB 1992) (refusals to register THINK GREEN and THINK GREEN & Design affirmed because they would be regarded as “slogan of environmental awareness and/or ecological consciousness, rather than be regarded as indicators of source for weather stripping and paper products.”).

“The more commonly a phrase is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark.” *Eagle Crest*, 96 USPQ2d at 1229 (citation omitted). In determining whether a designation functions as a mark, the critical inquiry is how the relevant public would perceive the designation. *Id.* at 1229. To make this determination, we look to specimens and other evidence of record showing how the designation actually

is used in the marketplace. *D.C. One Wholesaler*, 120 USPQ2d at 1713 (citing *Eagle Crest*, 96 USPQ2d at 1229-30). See *Bose*, 192 USPQ at 216 (“[T]he manner in which an applicant has employed the asserted mark, as evidenced by the specimens of record, must be carefully considered in determining whether the asserted mark has been used **as a trademark** with respect to the goods named in the application.”) (emphasis in original). Thus, the determinative factor as far as registrability is concerned is the manner in which the mark actually is used. *Michael S. Sachs Inc. v. Cordon Art B.V.*, 56 USPQ2d 1132, 1135 (TTAB 2000).

II. Specimens and Evidence made of Record

Below are two representative examples of several specimens Applicant filed with its Statement of Use:⁵



⁵ Specimens filed with Statement of Use of October 2, 2017 at 6 TSDR 5 and 7. Copies of a majority of Applicant’s evidence filed during prosecution were submitted again with Applicant’s Brief. This was unnecessary, and we discourage this practice. *In re Allegiance Staffing*, 115 USPQ2d 1319, 1323 (TTAB 2015) (practice of attaching to appeal brief copies of the same exhibits submitted with office action responses is discouraged).

Looking at the specimen to the left, on the top left of the point-of purchase display below the SAN GIORGIO & Design mark, it states “50¢ Donation Per Sale.” On the top right of the display below the 77¢/ea. unit price and the designation “San Giorgio Ribbons of Hope”, although the quality of the image makes reading difficult, it states “for every sale of San Giorgio Ribbons for Hope pasta during September 2017, 50¢ will be donated to the Children’s Cancer Foundation to support pediatric cancer research.” On each box presented on the display, the most prominent wording in font size is SAN GIORGIO; the next most prominent is the phrase PASTA FOR A CAUSE; and the least prominent is the proposed mark RIBBONS OF HOPE. In the specimen to the right, on the top right of the point-of purchase display, it says “September is Cancer Awareness Month.”

Additionally, Applicant submitted USPTO TEAS database copies of two U.S. registrations, one containing the designation RIBBON FOR HOPE, and the other showing the designation RIBBONS OF HOPE:⁶

Mark



Reg. No.

Reg. No.: 5136285
Issued: Feb. 7, 2017
Status: Active

Goods

Wearable garments and clothing, namely, shirts



Reg. No.: 4338049
Issued: May 21, 2013
Status: Cancelled

Coffee

⁶ Office Action Response of July 9, 2018 at TSDR 8-9.

The Examining Attorney submitted the following examples of third parties using the designation RIBBON(S) OF HOPE in their names, as part of cancer awareness, women's awareness, or fund raising campaigns:⁷

Designation	Description
1. RIBBON OF HOPE	“Ribbon of Hope was founded ... by a small group of passionate and energetic breast cancer survivors (and one very loving spouse) who wanted to support area individuals on their breast cancer journeys.”
2. RIBBONS OF HOPE FOUNDATION	“We are dedicated to making a difference in the lives of those affected by cancer. The foundation is organized to provide financial assistance and support to families in Talladega and St. Clair County who are burdened by the staggering cost of cancer treatment, and to increase integration and coordination of quality services in cancer prevention, detection, treatment, survivorship, palliative care, and hospice services in Alabama.”
3. DANCE FOR THE CURE - RIBBONS OF HOPE	“Dance for the Cure’s annual fundraiser, Ribbons of Hope, is a delightful evening of dinner, basket raffles and a true celebration of the power and connection of women. [Funds] ... raised to date [have] ... gone directly to local families who are struggling financially from the effects of their fight with cancer.”
4. CARBON COUNTY RIBBONS OF HOPE	“Our mission is to help Carbon County residents that have been diagnosed with cancer. The financial assistance provided can be used to help cover travel, lodging, meals and other expenses associated with battling cancer.”
5. RIBBONS OF HOPE - INVEST IN WOMEN, INC.	“[We are] a new foundation based in Atlanta, Georgia. We are fifty women with one focus – to support other women. Our goal is to make a positive impact on women’s lives through the financial support of non-profit organizations that promote

⁷ Designations 1-5 submitted with Office Action of October 27, 2017 at TSDR 4-16. Designations 6-9 submitted with Denial of Reconsideration of March 21, 2019 at TSDR 3-4 and 8-14.

Designation

Description

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| | education, health, economic, independence, social well-being and human rights.” |
| 6. BARRIE’S RIBBONS OF HOPE | “[We are] a dragon boat team comprised of Breast Cancer Survivors based in Barrie, Ontario [, Canada]. [Our] ... mission ... is to raise awareness of life after breast cancer and to demonstrate that those who experience breast cancer can lead full and active lives.” |
| 7. CARE TO GIVE: RIBBONS OF HOPE | “Proceeds from the Ribbons of Hope will support oncology services at Riverview Medical Center.” |
| 8. PELL CITY CHAMBER OF COMMERCE: RIBBONS OF HOPE, ST CLAIR CO. | “Ribbons of Hope Foundation. Inc. is dedicated to making a difference in the lives of those affected by cancer by providing financial assistance to those in St. Clair County.” |
| 9. VCU MASSEY CANCER CENTER: PINK RIBBONS OF HOPE GOLF TOURNAMENT AT CCV | “[R]egister for the Pink Ribbons of Hope Golf Tournament benefiting breast cancer research at VCU Massey Cancer Center.” |

III. Arguments

Applicant argues that (i) the specimens of use it submitted show the mark RIBBONS OF HOPE exactly as consumers are accustomed to seeing trademarks on the point-of-purchase display and product packaging, (ii) none of the prior third-party uses made of record by the Examining Attorney relates to consumer products of the type for which the Applicant’s mark is used, (iii) none of the prior uses show that consumers who encounter Applicant’s mark as used on the specimens of record are likely to perceive RIBBONS OF HOPE as anything other than a trademark for Applicant’s goods, (iv) the prior uses show use of RIBBON(S) OF HOPE in a source-identifying manner, and (v) Applicant’s mark is analogous to the registrations for

TWO HEARTS RIBBON FOR HOPE & Design (Reg. No. 5136285) and RIBBONS OF HOPE COFFEE “GROUNDS TO HELP” & Design (Reg. No. 4338049).⁸

The Examining Attorney argues that (i) Applicant’s product store display signage and packaging show that the proposed RIBBONS OF HOPE mark is used to indicate that a purchase of Applicant’s goods will result in a donation to support cancer awareness and a cure for cancer, (ii) Applicant’s packaging shows that the primary designation of source for Applicant’s goods (pasta) is the SAN GIORGIO & Design mark – placed in the most prominent and dominant position at the top of the package where consumers are accustomed to finding trademark source indicators, (iii) by contrast, RIBBONS OF HOPE appears in smaller font at the bottom right side of the front and side panels of the packages, (iv) he has submitted sufficient evidence to show “RIBBONS OF HOPE” is a commonly used message that conveys support for a cure for breast cancer and/or other cancers for women, (v) this evidence is sufficient to demonstrate that consumers are conditioned to understand that “RIBBONS OF HOPE” does not indicate source, but is a commonly used social message or indicator of financial and/or emotional support for cancer survivors, and (vii) the two third-party registrations incorporating “RIBBON(S) OF HOPE” have little evidentiary value and are not binding upon the USPTO or the Board, and can be easily distinguished from Applicant’s proposed RIBBONS OF HOPE mark.⁹

⁸ Applicant’s Brief, 12 TTABVUE 5-7.

⁹ Examiner’s Brief, 14 TTABVUE 5-8.

IV. Discussion

We have made the critical inquiry of how the relevant public would perceive the proposed RIBBONS OF HOPE mark. *Eagle Crest*, 96 USPQ2d at 1229. We have reviewed the specimens and other evidence of record showing how the designation actually is used in the marketplace.¹⁰ *D.C. One Wholesaler*, 120 USPQ2d at 1713; *Eagle Crest*, 96 USPQ2d at 1229-30; *Bose*, 192 USPQ at 216; *Sachs v. Cordon Art*, 56 USPQ2d at 1135. We find that, based on the evidence, RIBBON(S) OF HOPE is commonly used, the public will not perceive it to identify only one source, and will not recognize it as a trademark for Applicant's goods. *Eagle Crest*, 96 USPQ2d at 1229.

We find that, as used on Applicant's point-of-purchase display and packaging, and based on the use of the same or similar wording by third parties, the proposed RIBBONS OF HOPE mark fails to function as a designation of source for Applicant's pasta. Rather, consumers would perceive Applicant's SAN GIORGIO & Design mark as the designation of source shown in Applicant's specimens. Applicant's proposed mark, as shown in the specimens, informs consumers of Applicant's pasta that their product purchase supports cancer awareness and research efforts. Moreover, Applicant's use of RIBBONS OF HOPE is very much like the third party uses of RIBBON(S) OF HOPE in non-profit organization names, as part of cancer awareness or women's awareness, or as part of fund raising campaigns. The uses demonstrate

¹⁰ The only third party evidence we do not find relevant to our analysis pertains to the designation BARRIE'S RIBBONS OF HOPE, used in Canada. *In re Bel Paese Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986) (foreign use is essentially of no probative value absent other evidence showing that the foreign use had a material or significant impact on perception of the term by the relevant purchasing public in the United States).

that consumers are familiar with the phrase to signify support of these causes, and would not recognize RIBBONS OF HOPE as a source-indicator.

We further find Applicant's citation to the registrations for the marks TWO HEARTS RIBBON FOR HOPE & Design (Reg. No. 5136285) and RIBBONS OF HOPE COFFEE "GROUNDS TO HELP" & Design (Reg. No. 4338049) unpersuasive. To begin, the registration for the RIBBONS OF HOPE COFFEE "GROUNDS TO HELP" & Design mark has been canceled. A canceled registration is not evidence of any existing rights in a mark. *See Action Temp. Servs. v. Labor Force, Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989). An expired or canceled registration is evidence of nothing but the fact that it once issued. *Sunnen Prods. Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987).

Further, "Even if some prior registrations had some characteristics similar to [the instant] ... application, the [US]PTO's allowance of such prior registrations does not bind the Board ..." *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Each case is decided on its own facts, and each mark stands on its own merits. *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793 n.10 (TTAB 2017) (quoting *In re Boulevard Entm't*, 334 F.3d 1343, 67 USPQ2d 1475, 1480 (Fed. Cir. 2003)).

Finally, Applicant's proposed RIBBONS OF HOPE mark, in standard characters, is distinguishable from the registration for the mark TWO HEARTS RIBBON FOR HOPE & Design. That mark features an image of a Teddy Bear which, along with the wording, is superimposed on a large light blue ribbon. That mark is not analogous to

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Applicant's proposed RIBBONS OF HOPE mark because the third-party mark contains additional distinctive designs and the additional, distinctive term "TWO HEARTS" that serve as source identifying matter rendering the mark registrable as a whole. By contrast, in Applicant's proposed RIBBONS OF HOPE standard character mark, the wording stands alone, and the mark lacks any distinctive design elements or additional source-identifying terms.

Decision

The refusal to register Applicant's proposed RIBBONS OF HOPE mark, on the grounds that it fails to function as a trademark for Applicant's goods, is affirmed.