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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ranir, LLC

Serial No. 85156652

H. W. Reick of Price Heneveld for Ranir, LLC.

Doritt Carroll, Trademark Examining Attorney, Law Office 116
(Michael W. Baird, Managing Attorney).

Before Quinn, Kuhlke and Ritchie,
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Ranir, LLC filed, on October 20, 2010, an application to register the term CLINICAL GRADE (in standard characters) for "night teeth guards" in International Class 10.

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark, when applied to applicant's goods, is merely descriptive thereof.

When the refusal was made final, applicant appealed.
Applicant and the examining attorney filed briefs.

Applicant argues that its proposed mark is only suggestive. In arguing against the refusal to register applicant proffered a detailed critique of the examining attorney's evidence of third-party usage of the term "clinical grade." Applicant essentially contends that the term is typically used in connection with relatively expensive and highly sophisticated medical or electrical instruments used in a clinical setting, as contrasted with applicant's goods which are relatively inexpensive and designed for personal use in a home setting. Applicant also submitted a copy of its Registration No. 4017356, issued on the Supplemental Register, of the term CLINICAL GRADE for "dental instruments, namely scalers, mirrors, and picks; and tongue cleaners," and a dictionary excerpt showing the absence of a listing of "clinical grade."

The examining attorney maintains that the designation "clinical grade" describes goods that are of superior or professional quality, that is, that the product "is of high enough quality for professional use, even when the product specifically is intended for use in the home." (Brief, p. 3). According to the examining attorney the term "clinical grade" is commonly applied to products that are not sophisticated or expensive; and, in this connection, the examining attorney has relied on various third-party uses of the term for a variety of goods. In support of the refusal the examining attorney

introduced dictionary definitions of the words "clinical" and "grade," and also asked the Board to take judicial notice of the meanings of "dental" and "clinic."¹

A mark is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (TTAB 2007); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the mark would have to the average purchaser

¹ The request in the examining attorney's brief is granted inasmuch as the online dictionary also exists in a printed format. *In re Hotels.com, L.P.*, 87 USPQ2d 1100, 1103 (TTAB 2007), *aff'd*, 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009); and *In re Jonathan Drew, Inc.*, 97 USPQ2d 1640, 1642 n.4 (TTAB 2011).

of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

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 composite that is itself merely descriptive. *See, e.g., In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM is merely descriptive of computer game software); *In re Tower Tech Inc.*, 64 USPQ2d at 1317 (SMARTTOWER is merely descriptive of commercial and industrial cooling towers); and *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS is merely descriptive of computer programs for use in development and deployment of application programs).

The examining attorney introduced dictionary definitions of each term appearing in applicant's proposed mark. The word "clinical" means "of, relating to, or conducted in or as if in a clinic." The word "grade" is defined as "a class of things in the same stage or degree." (www.m-w.com). The same dictionary defines "dental" as "of or relating to the teeth or dentistry," and "clinic" as "a class of medical instruction in which patients are examined and discussed; a facility (as of a hospital) for diagnosis and treatment of outpatients."

The record also includes several third-party uses of the term "clinical grade" in connection with a variety of products. Two of the examples show uses in connection with dental products: "a clinical-grade tooth whitening gel"; and "Oral Health Products, Inc. produces clinical grade personal oral hygiene supplies" (specifically dental floss). Other examples include the following: "Good manufacturing practice and clinical grade human embryonic stem cell lines"; "clinical-grade cell purification from thawed cord blood"; "SunTech Medical's clinical grade blood pressure technology selected for new Portable PBS"; "Clinical Grade Treadmill"; "clinical grade instruments for the measurement..."; "Give your clients and patients the experience they deserve with clinical grade NuTelsa Therapy products"; "As a modern chiropractic office, we are committed to using the highest quality research and clinical

grade chiropractic instrumentation available..."; "Clinical Grade Peptides"; "Clinical Grade Optical Cell Sorting"; and "Clinical-grade viral vector can cure choroideremia."

Applicant itself uses "Clinical Grade" in two instances as follows: "Plackers Clinical Grade Tongue Cleaner offers superior cleaning to remove plaque and bacteria that can cause bad breath"; and "Plackers Clinical Grade Dental Tools."

Based on the evidence of record, the term "clinical grade" is used to tout goods as if they were of high professional or superior quality. In applicant's case, the proposed mark describes night teeth guards that are of such superior quality that they could be used in a clinic or professional setting, even when the product is specifically intended for home use (such as in the above examples related to a tongue cleaner, teeth whitening gel and dental floss). The words "clinical" and "grade" are individually descriptive, and the combination of these merely descriptive terms does not evoke a new and unique commercial impression. Rather, each component of the composite mark retains its merely descriptive significance in relation to applicant's goods, thus resulting in a composite that is itself merely descriptive. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753 (Fed. Cir. 2012) (SNAP SIMPLY SAFER is merely descriptive for "medical devices, namely, cannulae; medical, hypodermic, aspiration and injection

needles; medical, hypodermic, aspiration and injection syringes"); and *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM is merely descriptive of computer software for managing a database of records that could include patents for tracking the status of the records by means of the Internet). No imagination is required by a prospective purchaser or user to discern that applicant's night teeth guards are of such superior quality that they could be used in a professional setting.

Applicant's ownership of a Supplemental Register registration of the same term for dental instruments is of no help to applicant. By way of this registration applicant impliedly admits that the term is merely descriptive, at least with respect to its "dental instruments, namely scalers, mirrors, and picks; and tongue cleaners." *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361 (CCPA 1972) ("We also agree with the observation of the board that, when appellant sought registration of SUPER BLEND on the Supplemental Register, it admitted that the term was merely descriptive of its goods..."); and *In re Rosemount Inc.*, 86 USPQ2d 1436, 1439 (TTAB 2008) (seeking registration on the Supplemental Register is a concession that the designation is merely descriptive). See *Perma Ceram Enterprises, Inc. v. Preco Industries, Ltd.*, 23 USPQ2d 1134, n.11 (TTAB 1992) (the

amendment to Sec. 27 does not change the rule that the owner of a Supplemental Registration impliedly admits that the mark was not inherently distinctive). Given the differences between the identified "dental instruments" and "night teeth guards," the registration is not, however, dispositive of the present appeal.

Nevertheless, there is probative evidence showing that applicant itself has used "clinical grade" in a descriptive manner, and that at least two other third parties have used "clinical grade" in connection with dental floss and teeth whitening gel. These products are not expensive or sophisticated, thereby undermining applicant's contention that the term is used by others for expensive or sophisticated instrumentation. We agree with applicant, however, that the remaining third-party uses are not as probative as the ones in the dental field; but, it should be noted that several of the uses are in the broader medical field, indicating that "clinical grade" indeed has a meaning among medical professionals and their patients.

Lastly, the fact that "clinical grade" is not found in a dictionary is not controlling on the question of registrability in view of the examining attorney's evidence showing that the term has an understood and recognized meaning in the dental/medical field. See *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977) (BREADSPRED held merely descriptive of jellies

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and jams). Indeed, a merely descriptive term is not rendered less so even if applicant were the first to use the term. See *In re Hunter Fan Co.*, 78 USPQ2d 1474, 1476 (TTAB 2006) ("a word need not be in common use in an industry to be descriptive, and the mere fact that an applicant is the first to use a descriptive term in connection with its goods, does not imbue the term with source-identifying significance").

We conclude that the term CLINICAL GRADE is merely descriptive of night teeth guards.

Decision: The refusal to register is affirmed.