This Opinion Is Not a Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re JJ206, LLC

Serial No. 86532274

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for JJ206, LLC.

Robert J. Struck, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney (Serial No. 86236122).

Before Ritchie, Lynch, and Larkin,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

JJ206, LLC ("Applicant") seeks registration on the Principal Register of the mark JUJU ROYAL in standard characters, for "smokeless marijuana or cannabis vaporizer apparatus, namely, oral vaporizers for smokers; vaporizing marijuana or cannabis delivery device, namely, oral vaporizers for smoking purposes" in

International Class 34.[1] The Examining Attorney has refused registration based upon the absence of a bona fide intent to use the mark in lawful commerce under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§ 1051, 1127. Applicant appealed and requested reconsideration, which the Examining Attorney denied. We affirm the refusal to register. The lawfulness refusal arises from the Examining Attorney's contention that the identified goods constitute unlawful drug paraphernalia under the federal Controlled Substances Act ("CSA").

Applicant's arguments in this case mirror the unsuccessful arguments it made in the appeals of two other applications identifying essentially identical goods, for which we affirmed unlawfulness refusals. *In re JJ206, LLC,* __ USPQ2d __, Serial Nos. 86474701 & 86236122, slip op. at 10 (TTAB Oct. 27, 2016). As explained in that decision, in an intent to use application, "where the identified goods are illegal under the federal Controlled Substances Act (CSA), the applicant cannot use its mark in lawful commerce, and "it is a legal impossibility" for the applicant to have the requisite bona fide intent to use the mark." *In re JJ206,* slip op. at 3-4; *see also John W. Carson Found. v. Toilets.com, Inc.*, 94 USPQ2d 1942 (TTAB 2010) ("Because the permanent injunction enjoins applicant from making the use required to obtain its federal trademark registration, as a matter of law, applicant cannot make lawful use of its mark in commerce").

[1] Application Serial No. 86532274 was filed February 11, 2015 based upon an intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). Applicant has provided a disclaimer of "JUJU."

In this case, Applicant has explicitly identified its goods as vaporizers for cannabis[2] or marijuana. The CSA makes it unlawful to sell, offer for sale, or use any facility of interstate commerce to transport drug paraphernalia, defined as "any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under [the CSA]." 21 U.S.C. § 863; *see also JJ206, LLC*, slip op. at 4; *Brown*, 119 USPQ2d at 1352 n.10. The CSA identifies marijuana as a controlled substance that is unlawful to possess. 21 U.S.C. §§ 812(a) & (c) (identifying "Marihuana," by its alternate spelling, as a controlled substance); 841, 844 (placing prohibitions on the possession of controlled substances). The CSA defines marijuana (or "marihuana") as "all parts of the plant Cannabis sativa L., whether growing or not; . . . the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin," but for certain exceptions not relevant to Applicant's goods. 21 U.S.C. § 802(16). Based on this definition and the evidence of record, we find that Applicant's reference to "cannabis" in its identification is to

[2] "Cannabis" refers to "any of the preparations (as marijuana or hashish) or chemicals (as THC) that are derived from the hemp and are psychoactive." (www.merriam-webster.com). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

marijuana, as defined in the CSA.[3] Thus, equipment primarily intended or designed for use in ingesting, inhaling, or otherwise introducing cannabis or marijuana into the human body constitutes unlawful drug paraphernalia under the CSA.

Therefore, Applicant's identified goods fall within the definition of illegal drug paraphernalia under the CSA. The identification of goods makes clear that Applicant's devices are designed and intended for the introduction of marijuana or cannabis into the human body. Applicant has not disputed this fact, and has acknowledged that its goods are "marketed to the cannabis industry."[4] Instead, just as in *JJ206, LLC*, Applicant relies on state marijuana laws to claim that its intended use is lawful, but as explained in *Brown*, 119 USPQ2d at 1351 and in *JJ206, LLC*, slip op. at 7-8, the federal CSA is conclusive on the lawfulness issue for registrability purposes.

In its Brief, Applicant attempts to draw parallels to industries with lawful goods, arguing that its goods travel "through legitimate, regulated, and licensed channels according to the rules of the state,"[5] but the identification of goods makes clear that its devices differ because they violate the CSA. Applicant also analogizes its application to six third-party registrations[6] for goods or services that Applicant characterizes as "in support of or marketed to the marijuana industry," and claims

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[3] Moreover, the application specifically identifies a "marijuana or cannabis vaporizer apparatus," thus referencing both.

[4] 4 TTABVUE 44 (Applicant's Request for Reconsideration).

[5] 7 TTABVUE 9 (Applicant's Brief).

[6] 4 TTABVUE 27-34, 48-51.

that its "goods should be treated no differently."[7] Most of these same registrations previously were distinguished in *JJ206, LLC*, slip op. at 6-7 & n.12 as failing to present analogous lawfulness issues under the CSA. Regardless, each application must be considered on its own record to determine eligibility to register. *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016); *see also In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court.").

In *JJ206, LLC*, slip op. at 8-9, we also rejected the argument Applicant again raises in this case, that because the jurisdictions where it does business "comply with federal directives such as the *Cole Memo*,"[8] its goods should be considered lawful. The *Cole Memo* refers to a U.S. Department of Justice memorandum to United States Attorneys which addressed the enactment of medical marijuana laws in certain states, affirmed the illegality of marijuana under the CSA, and set out federal "enforcement priorities" "to guide the Department's enforcement of the CSA against marijuana-related conduct."[9] As stated in *JJ206, LLC*, slip op. at 9 (footnotes omitted), "the memorandum does not and cannot override the CSA, and in fact,

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[7] 7 TTABVUE 5 (Applicant's Brief).

[8] 7 TTABVUE 6 (Applicant's Brief).

[9] 4 TTABVUE 40-43 (The Cole Memo, attached to Applicant's Request for Reconsideration). The memo urges federal enforcement efforts to focus on goals including preventing distribution of marijuana to minors, preventing violence and firearm use in marijuana-related activities, and "[p]reventing the diversion of marijuana from states where it is legal under state law in some form to other states." *Id.* at 40.

explicitly underscores that 'marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime.'"[10]

Finally, Applicant reiterates policy arguments that in *JJ206, LLC*, slip op. at 9, we deemed "beyond our jurisdiction over issues of trademark registrability and that are, in any event, already settled within the existing statutory framework of, and interplay between, the Trademark Act and the CSA." Ultimately, Applicant's various policy contentions "fail[] to recognize that lawful use of a mark in commerce is a prerequisite to federal registration, *Gray*, 3 USPQ2d at 1308, and that Congress has made the sale of marijuana paraphernalia illegal under federal law. We cannot simply disregard the requirement of lawful use or intended lawful use in commerce under the Trademark Act, or Congress's determination as to what uses are illegal. . . ." *JJ206, LLC*, slip op. at 10.

In conclusion, because Applicant's identified goods constitute illegal drug paraphernalia under the CSA, intended use of the applied-for mark on these goods is unlawful, and cannot serve as the basis for federal registration.

Decision: The refusal to register Applicant's mark under Sections 1 and 45 the Trademark Act, 15 U.S.C. §§ 1051, 1127, is affirmed.

[10] *Id.*