

USPTO Finds Dunkin' Donuts Slogan Mere Puffery

Dunkin' Donuts may claim it has the "Best Coffee in America" but the U.S. Patent and Trademark Office (USPTO) found the phrase was mere "puffery" and had not acquired a secondary meaning sufficient to be registered on the principal register.

In 2007, Dunkin' Donuts registered the phrase "Best Coffee in America" for restaurant services, snack bar services, and fast-food restaurant services on the USPTO's Supplemental Register. The Supplemental Register allows a party to use a mark with the symbol ®. It also prevents subsequent applications for confusingly similar marks for similar goods or services. However, unlike marks registered on the Principal Register, it does not allow the mark to become uncontestable nor does it include the presumption of validity. A registration of a mark on the Supplemental Register sometimes is used until the mark acquires a secondary meaning and becomes distinctive.

In September, 2012, Dunkin' Donuts sought to register the phrase on the USPTO's Principal Register, claiming that "Best Coffee in America" has become "distinctive" because of its continued use by Dunkin' Donuts at its various locations and in its press releases.

In an Office Action issued earlier this month, the Examining Attorney found that the "Best Coffee in America" slogan "is nothing more than a claim of superiority and is so highly laudatory and descriptive of quality of the coffee featured in applicant's restaurants, cafes and snack bars that applicant's claim of acquired distinctiveness, based on five years' use of the mark in commerce, is insufficient and unpersuasive."

In addition, the Office Action found the phrase "fits firmly in the category of marks identified . . . as being mere 'puffery' and incapable of functioning as a trademark. 'Best Coffee in America' touts simply that the coffee featured at applicant's restaurants are [sic] superior to other coffees in this country. While applicant may use this wording in promoting its restaurants and cafes and the coffee sold therein, the proposed mark does not function to indicate the source of applicant's services or distinguish applicant's services from those of others."

Dunkin' Donuts, which applied for the mark as DD IP Holder LLC, has six months to file a response to the Office Action to contest the finding. If the finding is not reversed by the Examining Attorney, then the company may file an appeal to the Trademark Trial and Appeal Board.

For further information, visit Balough Law Offices, LLC's website at www.balough.com or email rbalough@balough.com.