

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK EXAMINATION OPERATION

In re: trademark/service mark application

Serial No. 88/095,926  
For the Mark: "MMA MATH"  
Applicant: Roberto Diaz  
Filed Date: August 28, 2018

Docket No.: RDI-TM0001

Examining Attorney: Ellen Awrich  
Law Office: 116

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

Dear Commissioner:

The following is in response to the Office Action dated December 11, 2018 (the "Office Action").

In the Office Action, the U.S. Patent & Trademark Office (the "USPTO") issued a refusal of the mark "MMA MATH" (the "Mark") as applied for by Roberto Diaz ("Applicant") under Section 2(e)(1) of the Trademark Act, citing mere descriptiveness of the mark, claiming that "MMA MATH" merely describes a characteristic of Applicant's entertainment services in international class 41.

Applicant believes the following fully addresses all outstanding matters and refusals in the Office Action, and provides arguments and evidence supporting registration of the Mark on the Principal Register.

Reconsideration of the Mark is respectfully requested in light of this response.

**"MMA MATH" IS NOT DESCRIPTIVE OF APPLICANT'S SERVICES**

While the Office Action has identified that "MMA MATH" is a term that is commonly used in relation to mixed martial arts, or "MMA" (which has been duly disclaimed from exclusive use in the Mark), Applicant respectfully notes that the Office Action has (1) failed to appreciate how producers of goods and services, and more importantly, consumers in commerce appreciate and understand the term, and (2) failed to appreciate the nature and meaning of "MMA MATH" in relation to Applicant's stated services.

“MMA MATH” IS NOT USED IN COMMERCE IN A DESCRIPTIVE FASHION AS  
SUGGESTED IN THE OFFICE ACTION

Applicant believes that the USPTO has misunderstood the nature of “MMA Math” as a concept as understood by fans and commentators (like Applicant) on the sport.

While the Office Action correctly cited to *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012) for the notion that descriptiveness must be determined in relation to Applicant’s services, Applicant notes that the Office Action has failed to take into account all relevant factors in such an analysis.

An analysis of descriptiveness requires consideration of the context in which the mark is used or intended to be used in connection with those goods/services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. *See In re Chamber of Commerce*, 675 F.3d 1297, 1300 (Fed. Cir. 2012); TMEP §1209.01(b).

As demonstrated from the Office Action’s evidence, “MMA Math” is commonly used in relation to discussion of mixed martial arts; however, as should be apparent from the evidence cited, the term is used *facetiously and dismissively* in the marketplace to describe the “fallacy” in reasoning which is employed by uneducated fans to “predict the outcome of a match” based on the transitive property in mathematics (e.g. if fighter X beat fighter Y, and fighter Y beat fighter Z, then fighter X can beat fighter Z). *See* Office Action (in regards to bleacherreport.com).

In this sense, and as Applicant believes should be appreciated by the USPTO, “MMA Math” is commonly used as a derisive descriptor of a flaw in factual and predictive analysis by amateurish fans of the sport of mixed martial arts.

Indeed for fans of MMA, the Office Action’s evidence demonstrates that “MMA Math” is *not applicable* to the sport, and is not seriously considered or applied when engaging in discussion of MMA. *See id.*

In other words, and by actual examination of the context and editorial perspective from the Office Action’s cited evidence, “MMA Math” can fairly be characterized as a facetiously derisive term to describe exactly what thoughtful analysis of MMA *is not* (from themmabile.net – “MMA math rarely works. But it is fun... the fallacy of the transitive property”... this site should show how silly MMA MATH is and hopefully provide some laughs”).

Though implicitly used by the Office Action to provide that “MMA Math” is more broadly understood to be the process of “using fighters’ previous victories and defeats in comparison in an attempt to predict the outcome of a match”, the USPTO has failed to appreciate its own other cited evidence which demonstrates that the term is *specific* to fallacious use of the transitive property to discuss likely outcomes of an MMA match, and is in fact inapplicable to thoughtful analysis or discussion of the sport. *See* Office Action, Page 6-7, and 9.

In this context, the Office Action’s citation to mmagateway.com (which Applicant notes was not attached to the Office Action) stating that “if you follow The World of MMA closely enough... you will come across two people talk about MMA Math” has been misinterpreted – the reference is to the fact that the transitive property will fallaciously be applied in discussion of predictions of outcomes of a match, but Applicant respectfully notes that *actual* reference to “MMA Math” will not be made (except, as noted in same article, as a predictive model one “should definitely be having your doubts about”). Exhibit A.

Regardless, Applicant believes the context of how the term “MMA Math” is actually used by relevant consumers demonstrate that the term is *not* seen as a serious or actual topic or tool of discussion, and is solely understood as an indicator of the folly of overly simplistic reasoning (based on the transitive property) which is endemic to the sport.

#### APPLICANT’S SERVICES HAVE NOT BEEN EXAMINED AS THEY ARE DESCRIBED IN THE MARK APPLICATION

It is well established that refusal under Section 2(e)(1) is only warranted if the mark is merely descriptive, or deceptively misdescriptive of *the goods or services for which registration is sought*. See *In re Chamber of Commerce*, 675 F.3d at 1300.

The correct test is whether the mark conveys an *immediate* idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1514 (TTAB 2016) (emphasis added).

Suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services. *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT held suggestive of anti-perspirant deodorant for feet in part because, in the singular, it is not the usual or normal manner in which the purpose of an anti-perspirant and deodorant for the feet would be described).

Incongruity is a strong indication that a mark is suggestive rather than merely descriptive. See *In re Getz Found.*, 227 USPQ 571, 572 (TTAB 1985) (“MOUSE HOUSE” held to be fanciful for museum services for a zoo utilizing a building where stuffed and live mice were displayed, where a “house” was seen as incongruous with such the actual applicable facility given its subject matter); TMEP §1209.01(a).

In the present case, Applicant’s services may be fairly characterized as entertainment and educational services relating to sports such as MMA, akin generally in nature to “sports talk”, or “sports radio”, which is characterized by “extensive debate and analysis” by hosts and listeners. Exhibit B.

Applicant respectfully notes that the Office Action has misinterpreted Applicant’s own website (which highlights that “[Applicant], at MMA MATH, look at the statistics and we look at the records”) by failing to appreciate that Applicant (in the same citation of evidence) “takes

our analysis beyond the transitive property... [taking] a deeper look at skill sets... strengths... weaknesses... consistency... mindset... baggage... distractions”, and that Applicant directly invites audiences that “if you want *real discussions, that dig deeper*, that evaluates fights and fighters individually, we welcome you!”. See Office Action Page 13 (emphasis added).

Applicant simply notes that Applicant *does not* devote its programming to discussion of MMA Math as a concept, whether to “debunk” the principle or otherwise; rather, Applicant has employed and chosen the term “MMA Math” as a mark to ironically, facetiously, and very much “tongue-in-cheek” describe what Applicant *does not* do.

In other words, Applicant’s entertainment and educational programming services are fairly characterized as real, substantive discussion about MMA and other topics which go beyond the superficial type of analysis engaged in by casual, inexperienced “fans” of MMA (i.e. those likely to engage in MMA Math-type reasoning or discussion of the sport).

Thus, when compared in relation to Applicant’s *actual* podcast services, where hosts and audiences engage in in-depth conversation of MMA, Applicant believes it should be apparent that “MMA MATH” would be, and is, readily appreciated as a suggestive term, because it requires listeners to make sense of the incongruity presented – namely, that Applicant has provided hours of podcasting programming content under an ironic moniker that lacks any substance or reasoned analysis whatsoever.

Applicant also notes that because the term “MMA Math” is commonly understood to be a logical fallacy, refusal under Section 2(e)(1) for deceptive misdescriptiveness is likewise inapplicable - relevant consumers would appreciate the irony of the term, especially of the idea that Applicant could possibly “fill” hours of programming time with such an inherently superficial basis for sports analysis.

For these reasons, when examined in relation to entertainment services akin to sports radio, Applicant believes that it should be readily appreciated that “MMA MATH” is an incongruity, and because Applicant’s listeners must engage in further thought to appreciate the nature of Applicant’s actual services provided in connection with a facetious/ironic Mark that references an inapplicable principle, “MMA MATH” should be appreciated by the USPTO as a suggestive mark.

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For at least the foregoing reasons, Applicant believes that the Office Action's refusal of the Mark was issued in error. Accordingly, Applicant respectfully requests that the USPTO withdraw its refusal and permit registration of the Mark on the Principal Register.

Respectfully submitted,

/Neil Park/  
Neil Park

June 10, 2019  
DATE

Attorney for Roberto Diaz

Law Offices of Neil Park  
P.O. Box 660475  
Arcadia, CA 91066  
T: 424.250.8022  
npark@neilparklaw.com