

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Hearing:
19

11/2/00

Paper No.

June 20, 2000

BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Ames Department Stores, Inc.**

Serial No. 75/176,745

Deborah M. Lodge of Patton Boggs LLP for **Ames Department Stores, Inc.**

Amos T. Matthews, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Cissel, Hanak and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On October 3, 1996, **Ames Department Stores, Inc.** filed an application to register on the Principal Register the mark shown below

for "retail department store services featuring girls' apparel and accessories." The claimed date of first use and first use in commerce is July 31, 1996.

The Examining Attorney required that applicant submit substitute specimens, supported by an affidavit or declaration, showing use of the mark for the identified services. Applicant submitted additional specimens (properly supported by a declaration), as well as supplemental materials showing how the mark is used to identify a section (girls' large sizes of clothing and accessories) within applicant's department stores.

Registration was finally refused on the ground that none of the specimens submitted by applicant shows use of the mark for services, but rather they evidence only trademark use for goods (i.e., girls' clothing items). See Section 45 of the [Trademark Act](#), and Trademark Rule 2.56(a)(1).

Applicant appealed, and briefs have been filed. Both applicant's attorney and the Examining Attorney attended the oral hearing before this Board.

The Examining Attorney, citing TMEP §1301.04, contends that the specimens and other materials submitted by applicant show use of the mark on goods (i.e., girls' apparel), but are not acceptable specimens demonstrating use of the mark as a source indicator for the recited retail department store services as required by Section 45 of the [Trademark Act and Trademark Rule 2.56](#); and, citing

TMEP §1301.02, that the specimens do not show the mark in reference to the particular involved services.

Applicant contends that its mark (PERFECT PLUS and design) is used to designate and distinguish for customers a particular location or section of the Ames retail stores where customers can find large girls' sizes of clothing and accessories; and that this mark is not used as a trademark for the girls' clothing items, which bear independent trademarks designating the source(s) of the goods.

Applicant also argues that it owns several other service mark registrations for which similar specimens designating specific areas of applicant's stores were accepted, e.g., Registration No. 1,765,091 for PARTY PLAZA; Registration No. 1,897,136 for THE DIAMOND DISTRICT; and Registration Nos. 1,808,209 and 1,830,730 for PAWSITIVELY PETS.¹

Applicant submitted the following examples of the use of its mark: (i) the original specimens², which are tags

¹ Applicant did not submit photocopies of said registrations, but rather merely a typed listing. See *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 1974). Although the Examining Attorney did not object to the list, nonetheless, he did not treat the registrations as if they were of record. Accordingly, the Board has not considered this information in our decision herein. We note that, in any event, the specimens for the instant case must stand or fall on their own merits without regard to third-party registrations.

² Applicant's method-of-use clause reads "The mark is used on signs and tags and in advertising and promotional material for the subject department store services...."

Ser. No. 75/176,745

showing the mark with the additional words "Girls 10½-18½";

(ii) additional specimens, properly supported by applicant's declaration, which are advertising circulars, showing the following use of the mark³:

;

(iii) "topper" signs showing the mark as shown below

; and

(iv) photographs showing the folded "topper" sign appearing on a rack of girls' clothing, which can be seen from a distance within applicant's store.

³ The flower portion of the mark did not reproduce properly.

In this case, we agree with applicant that the specimens are acceptable evidence of service mark use. It has long been recognized that by its very nature, a service mark can be used in a variety of ways. In fact TMEP §1301.04 states, in part: "Generally, the applicant is able to submit more varied types of specimens in a service mark application; however, the specimens must evidence use of the mark in the sale or advertising of the recited services." There is no requirement that a specimen must make explicit reference thereon to the services involved in order to create the required direct association with the identified services. See *In re Ralph Mantia Inc.*, 54 USPQ2d 1284 (TTAB 2000); and *In Re Metriplex Inc.*, 23 USPQ2d 1315 (TTAB 1992).

We can ascertain no reason why a department within a retail store could not itself be identified by a service mark. And in this case, applicant's specimens, in fact, evidence use of applicant's service mark, PERFECT PLUS and design, to identify its "retail department store services, featuring girls' apparel and accessories."⁴ Consumers would readily recognize the mark, as used by applicant, as

⁴ To whatever extent there may be a question about the use shown on applicant's original specimens of record, that is alleviated by applicant's substitute specimens, and the other materials showing how applicant uses its mark in connection with its identified services.

Ser. No. 75/176,745

identifying the source of applicant's retail store services featuring a girls' large-sizes section located within applicant's retail department store. They would not perceive the mark as identifying the source of the particular clothing items on the rack.

Decision: The refusal of registration accordingly is reversed.

R. F. Cissel

E. W. Hanak

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board