

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 7,00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Amy Kalafa and Maxine Paul

Serial No. 75/277,909

Max F. Schutzman of Grunfield, Desiderio, Lebowitz &
Silverman for Amy Kalafa and Maxine Paul.

Rudy R. Singleton, Trademark Examining Attorney, Law Office
109 (Ron Sussman, Managing Attorney).

Before Hairston, Bucher and Bottorff, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Joint applicants Amy Kalafa and Maxine Paul have filed
an application to register the mark THERAPY TV: THE
THERAPY TELEVISION NETWORK for services which were
subsequently identified as "production of cable television
network programs featuring actual psychiatric and/or
psychological therapy sessions with actual patients;
entertainment in the nature of on-going cable television

programs featuring actual psychiatric and/or psychological therapy sessions with actual patients and with on-line computer network access and telephone call-in capability to the television programs."¹

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicants' mark, when used in connection with its services, is merely descriptive thereof. When the refusal was made final, applicants appealed. Applicants and the Examining Attorney have filed briefs.

In support of his position that THERAPY TV: THE TELEVISION THERAPY NETWORK is merely descriptive of applicants' services, the Examining Attorney submitted the following three excerpts of articles from the NEXIS database which refer to the term "TV THERAPY."

He is the pioneer of **TV therapy**; in 1982 local psychiatrist Walter E. Brackelmanns did a show called "Couples" where he did on-air counseling (he's careful not to call the 22-minute session therapy). (Los Angeles Times, March 17, 1988);

But according to the American Psychological Assn., there's more concern over radio, phone and **TV therapy**. APA's Doug Fizel: "At least in a van the therapist is there." (Health Line, January 13, 1995); and

¹ Serial No. 75/277,909, filed April 21, 1997, alleging a bona fide intention to use the mark in commerce.

Like other psychologists interviewed, Michael Broder, president of the American Psychology Assn.'s division of media psychology, was reluctant to criticize the concept of **TV Therapy**, though he was skeptical about the notion and its chance for success: "I don't necessarily think it's a great format or in good taste, but that's just my personal opinion," says Broder, who hosts a radio show in Philadelphia.

(Los Angeles Times, June 7, 1987).

In addition, the Examining Attorney made of record an excerpt from The American Heritage Dictionary of the English Language (3rd ed.) wherein "therapy" is defined as "treatment of illness or disability."

Applicants, in urging reversal of the refusal to register, contend that the mark is not merely descriptive of their services because the mark does not indicate the specific types of therapy, i.e., psychiatric and/or psychological, that will be featured on their cable television programs.² In addition, applicants argue that the mark is not in common usage by others for the same or similar services. Finally, applicants contend that the mark should be registered because the Office has permitted registration of several other similar type marks for television programs.

² We note that applicants offered to disclaim the terms "TV" and "TELEVISION NETWORK," but the Examining Attorney refused to accept the disclaimer, maintaining that the mark is descriptive as a whole.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Further, it is well established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. In re Recovery, 196 USPQ 830 (TTAB 1977).

We have no hesitation in finding that the applied-for mark is merely descriptive of applicants' services. As is obvious from the recitation of services, as well as applicants' offer of a disclaimer, "TV" and "TELEVISION NETWORK" describe the mode through which applicants intend to present their programs featuring actual psychiatric

and/or psychological therapy sessions. Further, when these terms are combined with THERAPY, in the mark THERAPY TV: THE THERAPY TELEVISION NETWORK, and is used for the identified services, it directly conveys information about the nature of the services, namely the subject matter of the cable television programs. Accordingly, the relevant class of consumers will readily understand, without any need for imagination or perception, that applicant's THERAPY TV: THE THERAPY TELEVISION NETWORK cable television programs feature therapy sessions. See e.g. In re Kronholm, 230 USPQ 136 (TTAB 1986) [CABLE COLLEGE NETWORK is merely descriptive of cable television network services which have, as their subject matter, colleges and universities].

We recognize that applicants' mark does not indicate the specific types of therapy that will be featured on their cable television programs. However, in order for a mark to be merely descriptive, it is not necessary that the quality, characteristic, or feature of the goods or services be described with absolute exactness. See In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), *aff'd mem.* No 90-1495 (Fed. Cir. Feb. 13, 1991). Moreover, it is not necessary that a designation be in common usage in the particular industry in order for it to be merely

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descriptive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983).

Finally, as to the third-party registrations, as we have often stated, each case must be decided on its own set of facts. Prior determinations of registrability by Examining Attorneys, involving different marks for the same or similar services, are not controlling in this case. As noted by the Examining Attorney, however, two of the registrations relied on by applicant are for marks which include wording and a design. In those two registrations, the respective wording, i.e., "SCI-FI CHANNEL," and "CARTOON NETWORK," has been disclaimed, indicating the descriptive significance of the terms.

Decision: The refusal to register is affirmed.

P. T. Hairston

D. E. Bucher

C. M. Bottorff
Administrative Trademark Judges
Trademark Trial and Appeal Board

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