

5/16/01

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

Paper No. 9  
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Seaport Hotel, LP

Serial No. 75/585,779

David B. Bernstein of Mintz Levin Cohn Ferris Glovsky and  
Popeo P.C. for Seaport Hotel, LP.

Lourdes D. Ayala, Trademark Examining Attorney, Law Office  
106 (Mary Sparrow, Managing Attorney).

Before Walters, Wendel and Drost, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Seaport Hotel, LP has filed an application to register  
the mark CHEFS IN SHORTS for "charitable fund raising" in  
Class 36 and "charitable food and beverage services,  
namely, preparation and providing food and beverages to  
donors of charitable funds" in Class 42.<sup>1</sup>

<sup>1</sup> Serial No. 75/585,779, filed November 9, 1998, claiming a first  
use and first use in commerce date of June 1, 1998.

Registration has been finally refused under Section 2(e)(1) on the ground that the mark, when used in connection with the recited services, is merely descriptive thereof. The refusal has been appealed and applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that the mark CHEFS IN SHORTS is merely descriptive of a significant feature or attribute of applicant's services, in that the chefs wear shorts while providing food and beverages to donors of charitable funds. To demonstrate that this is a highlighted feature of applicant's services, the Examining Attorney has made NEXIS articles of record, such as the following:

... 14 of the best-known chefs in and around Boston shed their trademark whites for shorts during, appropriately, "Chefs in Shorts," a fund-raiser held to benefit the local chapter of the Chefs Collaborative 2000.  
*Nation's Restaurant News* (September 14, 1998).

Applicant argues that while CHEFS IN SHORTS may be descriptive of the clothing worn by the food service professionals, the mark is in no way descriptive of the particular services being provided. Applicant argues that although the mark might well be descriptive with respect to an informal theme restaurant in which the chefs wore short

pants, CHEFS IN SHORTS is not informative to consumers as to the nature of the charitable fundraising services with which it is actually being used.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic or feature of the goods or services with which it is being used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether or not a particular term or phrase is merely descriptive is determined not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the designation is being used, and the significance the designation is likely to have to the average purchaser as he or she encounters the goods or services bearing the designation, because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary that the term or phrase describe all the characteristics or features of the goods or services in order to be merely descriptive; it is sufficient if the term or phrase describes one significant attribute thereof. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

We find the phrase CHEFS IN SHORTS merely descriptive of a highlighted feature of applicant's fund-raising

services. These are charitable events at which food and beverages are provided by "chefs in shorts." As noted above, to be merely descriptive the phrase need not provide information with respect to each and every characteristic of the services, the pinpointing of one distinctive feature is sufficient. Here the fact that the chefs appear in shorts is clearly a significant feature of the fund raising events and is promoted as such, as shown by the NEXIS evidence. The informational content of the phrase would be immediately grasped by prospective donors.

Furthermore, as has often been stated, the descriptiveness of a term or phrase is not determined in a vacuum, but in relation to the goods or services with which the term or phrase is being used. The question is not whether consumers, upon encountering CHEFS IN SHORTS, would comprehend the nature of the services with which it is being used. Instead, the question is whether consumers, upon seeing CHEFS IN SHORTS being used in connection with charitable services, would immediately comprehend the informational significance of the phrase. We are convinced that consumers would immediately understand the significance of CHEFS IN SHORTS, i.e., that this is a charitable funding-raising activity featuring "chefs in shorts."

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Accordingly, we find CHEFS IN SHORTS merely descriptive when used in connection with applicant's charitable fund raising activities and charitable food and beverage services.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

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