

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Willey Motors, Inc.

Serial No. 75/606,003

Thomas J. Rossa of Holme Roberts & Owen for Willey Motors, Inc.

Anne C. Endieveri, Trademark Examining Attorney, Law Office 109 (Ronald R. Sussman, Managing Attorney).

Before Hanak, Hairston and Bottorff, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark ONE FAIR PRICE (in typed form) for services recited in the application as "automobile dealerships."¹

The Trademark Examining Attorney has refused registration of applicant's mark on two grounds. She has

¹ Serial No. 75/606,003, filed December 15, 1998. The application is based on use in commerce under Trademark Act Section 1(a), and May 1997 is alleged as the date of first use of the mark anywhere and the date of first use of the mark in commerce.

refused registration under Trademark Act Section 2(d), on the ground that applicant's mark, as applied to applicant's services, so resembles the mark FAIR PRICE, previously registered on the Supplemental Register for "leasing of automobiles" in Class 39 and for "automobile dealership" services in Class 35,² as to be likely to cause confusion, to cause mistake, or to deceive. She also has refused registration under Trademark Act Section 2(e)(1), on the ground that the mark is merely descriptive of applicant's recited services.

When the refusals were made final, applicant filed this appeal. The appeal has been fully briefed, but applicant did not request an oral hearing.

We turn first to the mere descriptiveness refusal under Section 2(e)(1). A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not

² Registration No. 2,200,768, issued October 27, 1998.

immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

We find that the phrase ONE FAIR PRICE is merely descriptive of a feature or characteristic of applicant's automobile dealership services. Specifically, it immediately and directly informs purchasers that applicant's dealership has a "no-haggle" sales policy pursuant to which the dealer sets "one fair price" for a particular car which is applicable to all retail purchasers, rather than negotiating the price for that car with each individual purchaser.

That applicant's dealership operates under such a policy is not in dispute. Applicant's yellow page and newspaper advertisements include, along with applicant's ONE FAIR PRICE logo, statements like: "No Hassle - Always Our Best Low Price"; "No Haggling - All Cars Marked With Our 'One Fair Price' - Our Best Price!"; "No Haggling - We Give You Our Best Price, A Fair Price Upfront"; "No Hassle - Salaried Salespeople Not Commissioned"; We Shop the Competition for You - It's Fast, Fair and Easy."

Additionally, the Trademark Examining Attorney has made of record excerpts of articles obtained from the NEXIS database which show that applicant is not the only automobile dealer that operates pursuant to this "no haggle" sales policy, and that the phrase "one fair price" has been used descriptively in reference to such other dealers.³ For example (emphasis added):

HEADLINE: The new deal in used-car sales; as chains of no-haggle, low-pressure superstores move in across the nation, traditional auto dealers aren't ready to surrender - but they are watching. BODY: ...pressure, no negotiating. The billboard greeting motorists on U.S. Highway 41 sums it up. "No haggling? **One fair price?**" asks a comely blond. "Where

³ Applicant's objections to this NEXIS evidence on the grounds of hearsay, lack of completeness and irrelevance are not well-taken. See, e.g., *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Medical Disposables Co.*, 25 USPQ2d 1801 (TTAB 1992).

am I, Oz?" (Chicago Tribune, February 16, 1997);

HEADLINE: One-price auto dealership: Some like it; others waiting. BODY: "...go back to the old way of doing business," he said. "It's just a better way to deal with people. You offer **one fair price** to everybody. the old way isn't wrong, but it's different, and it's not the way I want to operate." (Richmond Times-Dispatch, January 4, 1993).

The phrase is used in a similarly descriptive manner in articles about other goods and services:

The study recommends the federal government "take the lead in negotiating a pharmaceuticals peace treaty, which would set **one fair price** for each drug for all of the world's wealthy nations, high enough to finance all needed research." The report... (American Health Line, March 7, 1995);

...sanity. Harkening back to the good old days when quality, value and customer service were the norm, owner Ellen Kaimowitz's dictum is "**One fair price** all the time" - usually at 20 percent less than department store prices. Specializing in sportswear... (The Boston Globe, October 3, 1993).

Based on this evidence, and on the normal meaning of the words as they would be understood when used in connection with automobile dealership services, we find that ONE FAIR PRICE merely describes this feature or characteristic of applicant's automobile dealership services. Other dealers with similar sales policies have a

competitive need to use this phrase in connection with their services, and no single entity may appropriate the phrase to its exclusive use by means of trademark registration. We are not persuaded by applicant's arguments to the contrary.

Therefore, we affirm the mere descriptiveness refusal under Section 2(e)(1).

However, we reverse the Trademark Examining Attorney's Section 2(d) refusal. Applicant's services, as recited in the application, are legally identical to the services recited in the prior registration, and must be presumed to be marketed in the same trade channels and to the same classes of purchasers. Applicant's arguments to the contrary, which are based on applicant's contentions regarding the nature of registrant's actual services (as opposed to the services as recited in the registration), and on the geographic distance between applicant and registrant, are not well-taken. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214 (TTAB 2001).

However, the cited prior registration is a Supplemental Register registration. It is settled that a mark registered on the Supplemental Register is entitled to

a narrow scope of protection, and that it will preclude registration of a later-filed mark only when the two marks are substantially similar. See, e.g., *In re The Clorox Company*, 578 F.2d 305, 198 USPQ 337 (CCPA 1978); *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); *In re Central Soya Company, Inc.*, 220 USPQ 914 (TTAB 1984); and *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975).

We find that applicant's mark is not substantially similar to the prior registered mark, because the two marks have distinctly different connotations. As discussed above, applicant's mark ONE FAIR PRICE immediately connotes and describes a significant feature of applicant's services, i.e., the "no-haggle" sales policy. The mark FAIR PRICE does not carry that connotation, but instead is a more generalized, laudatory phrase. We are not persuaded by the Trademark Examining Attorney's argument that the two marks mean the same thing. This difference in connotation is sufficient to place applicant's mark outside the scope of protection to be accorded to the prior Supplemental Registration mark.

Additionally, we note that automobile dealership services generally involve expensive goods, i.e., automobiles, which typically are not purchased on impulse, but rather with some degree of care. This fact also weighs

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against a finding of likelihood of confusion. See *Weiss Associates, Inc., v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990).

In summary, for the reasons discussed above, we find that confusion is not likely. We accordingly reverse the Section 2(d) refusal.

However, for the reasons discussed above, we affirm the Section 2(e)(1) mere descriptiveness refusal. Registration to applicant is refused.