

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: January 6, 2005
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Great Thoughts, LLC

Serial No. 76016727

William P. Oberhardt of William P. Oberhardt, LLC for Great Thoughts, LLC.

Kathleen M. Vanston, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Hairston, Bottorff and Drost, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Great Thoughts, LLC seeks registration on the Principal Register of the mark PVDVD for, as amended, the following goods and services:

audio and video cassettes featuring music, movies, and filmed products for general entertainment; compact discs, video cassettes, digital video disks, versatile disks, CD-ROMs and DVD-ROMs containing music, movies and filmed products for general entertainment; CD-ROMs and DVD-ROMs containing computer software for word processing, spreadsheets, data processing, data analysis, data manipulation, web browser, search engine,

graphic display, graphic manipulation, video display, video manipulation, computer files maintenance, computer programming, and entertainment in the nature of video games, for business, home, education or developer use in class 9; and

retail store, mail order catalogue, phone order and computerized on line ordering services in the field of audio and video recordings and hardware, video game software and hardware, computer software and hardware and related electronic home products and equipment in class 35.¹

The Trademark Examining Attorney has finally refused registration of the mark on the ground that it is merely descriptive of the identified goods and services and thus unregistrable under Trademark Act Section 2(e)(1). Applicant has appealed. The Examining Attorney and applicant have filed briefs. No oral hearing was requested.

The Examining Attorney maintains that "PV" means "previously viewed" and that "DVD" means "digital video disk." Thus, according to the Examining Attorney, applicant's mark PVDVD means "previously viewed digital video disk." The Examining Attorney argues that PVDVD is merely descriptive of the identified goods which presumably

¹ Application Serial No. 76016727, filed March 7, 2000, on the basis of applicant's bona fide intention to use the mark in commerce.

will include previously viewed DVDs and the identified services which presumably will feature previously viewed DVDs for purchase.

In support of the refusal, the Examining Attorney submitted Internet printouts wherein the designations "PV" and "PV DVD" appear.

Applicant, in urging reversal of the refusal to register, argues that the Examining Attorney has not considered the mark as a whole, but rather has considered the two portions, namely "PV" and "DVD" separately; that there is no evidence to support the Examining Attorney's presumption that applicant intends to sell previously viewed DVDs; that "PV" in applicant's mark could have other meanings; and that the Examining Attorney has provided no evidence that the combined term PVDVD is merely descriptive of the identified goods and services.

A term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all

Ser No. 76016727

of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a single significant attribute or idea about them. In *re* *Venture Associates*, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a mark is merely descriptive must be determined not in the abstract, that is, by asking whether one who sees the mark alone can guess what the applicant's goods or services are, but in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is applied to the goods or services, it immediately conveys information about their nature. In *re* *Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Further, we note that as a general rule, initials are not considered descriptive unless "they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith." See *Modern Optics, Inc. v. The Univis Lens Co.*, 234 F.2d 504, 110 USPQ 293, 295 (CCPA 1956). See also *Property Damage Appraisers, Inc. v. Property Damage Appraisers, Inc.*, 177 USPQ 792 (TTAB 1973).

At the outset, we note that there is no dispute that "DVD" is descriptive of digital video disks. Moreover,

there is no question that "previously viewed" has descriptive significance as applied to digital video disks.

In the present case, applicant's "DVD-ROMs containing music, movies and filmed products for general entertainment" are broad in nature such that they may be presumed to include previously viewed DVDs. Similarly, applicant's "retail store, mail order catalogue, phone order and computerized on line ordering services in the field of audio and video recordings" are broad in nature such that it may be presumed that applicant will offer previously viewed DVDs for purchase.

Further, the following Internet printouts submitted by the Examining Attorney clearly establish that "PV" is a recognized initialism for "previously viewed" and that "PV DVD" is a recognized designation for a "previously viewed DVD."

-The homepage of "Hollyweb DVD" contains the following:

DVD Collection Plan
Discounts on PV movies
Limited Quantity Super-Specials
every week on selected New & PV DVDs
No minimum purchase

-The homepage of "Hollywood Liquidators" states that:

Previously viewed movies are sometimes looked at by the public as defective goods. In essence they are FAR from that. You probably did not know this but most of those big rental chains buy their inventory from

Ser No. 76016727

companies like ours. Yes, that catalog movie you rented last week could have been a PV movie from some past video store. After fifteen years of selling PV videos, we seldom have a problem.

-The homepage of "MickeyMovies.com", states that customers may:

Order any 10 videos and get A Bug's Life video free!

Video: N = New Video
PV = Previously viewed video

-At the "e-bay" website, there are the following listings:

Agent Cody Banks PV DVD Movie
Red Dragon PV DVD Movie

-At "The Movie Room" website, there is a movie review which states:

The good news is that I picked up this movie as a PV (previously viewed) DVD.

-The "Meta Exchange" website has the following listing:

Sixth Sense, The (PV DVD)

-The website of "dv-depot.com" states:

What is the quality of PV DVDs? All items are legitimate Region 1 DVDs, the condition will be stated on the product page under "used condition."

Are PV DVDs Guaranteed? Yes. All of these products have been thoroughly inspected and we guarantee they are in good working order.

We find that this evidence suffices to establish that "PV" is a readily recognizable initialism for "previously viewed" and that the term is merely descriptive as applied

Ser No. 76016727

to previously viewed digital video disks, i.e., DVDs. Further, the evidence of record leaves no doubt that "PV DVD" is merely descriptive of a previously viewed DVD.

Further, the mere joining of PV and DVD to form the unitary designation PVDVD does not result in an inventive, incongruent or otherwise inherently distinctive new composite. Rather, we find that PVDVD is the legal equivalent of the merely descriptive term PV DVD; applicant's compression of the two terms does not change the commercial impression or create any new or different meaning.

Under the circumstances, we find that PVDVD is merely descriptive of applicant's DVD-ROMs containing movies and filmed products which may be presumed to include previously viewed digital video disks. Further, we find that PVDVD is merely descriptive of applicant's retail store, mail order catalogue, phone order and computerized on line ordering services in the field of audio and video recordings which may be presumed to include offering previously viewed digital video disks for purchase.

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