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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Uranus Laboratories, Inc.

Serial No. 76/109,182

Diane B. Melnick of Fross Zelnick Lehrman & Zissu, P.C. for
Uranus Laboratories, Inc.

Brendan Regan, Trademark Examining Attorney, Law Office 113
(Odette Bonnet, Managing Attorney).

Before Simms, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

Uranus Laboratories, Inc. (an Arizona corporation) has
filed an application to register on the Principal Register
the mark THE TECHNO-POPS for "musical sound recordings and
video recordings featuring animation and entertainment;
downloadable musical sound recordings and downloadable
video recordings featuring animation and entertainment" in
International Class 9. The application was filed on August

11, 2000 based on applicant's assertion that it "has, or had as of the application filing date," a bona fide intention to use the mark in commerce.

The Examining Attorney has refused registration on the ground that applicant's mark, THE TECHNO-POPS, is merely descriptive of applicant's goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

When the refusal was made final, applicant appealed to this Board. Both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The test for determining whether a mark is merely descriptive is whether the term or phrase immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.* 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). 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 term or phrase is being used or is intended to be

used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). That is, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

The Examining Attorney contends that the term "techno-pop" refers to a style of music and is commonly used in the music and entertainment industries; that applicant's goods feature "techno-pop" music; and that the term THE TECHNO-POPS is merely descriptive of a feature and characteristic of the goods. The Examining Attorney further contends that there is nothing incongruous or unique about the combination of the words "techno" and "pop" into THE TECHNO-POPS; that the addition of the word "the" and the letter "s" does not change the commercial impression of the mark as relating to "techno-pop" music; that even if the term "techno-pop(s)" does not appear as a generic kind of music genre on certain web sites (e.g., yahoo, amazon),

such is not determinative because those sites do not list several different types of music (e.g., polka, waltz)¹; and that a mark is merely descriptive if it merely describes any, but not necessarily all, of the identified goods in an application.

The Examining Attorney submitted (i) photocopies of several excerpted stories retrieved from the Nexis database, and (ii) photocopies of several third-party web pages from the Internet, all demonstrating use of "techno-pop" to refer to a style of music. Examples of the excerpted stories retrieved from the Nexis database are reproduced below (emphasis in original):

Headline: The Fine Arts
... Reviewers are calling "Blast!" a blend of mind-blowing - and loud - music reminiscent of "Stomp" and a world class drum and bugle corps. He [artistic director James Mason] blends classical, blues, jazz, rock and **techno-pop** music into the performance. "St. Louis Post Dispatch," September 6, 2001;

Headline: 'Spending the Soles of Your Shoes'
... Santiago [Cuba], for the majority of its nearly 500 years, has been home to one of the oldest and most authentic street Carnivals in Latin America....

¹ The Examining Attorney's request that the Board accept the dictionary definitions of "polka" and "waltz" submitted with his brief on the case is granted. See *The University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). See also, TBMP §712.01.

Carnival incorporates all of Cuba's myriad music styles—rumba, mambo, salsa—with plenty of borrowed **techno-pop** and samba.... "Chicago Tribune," August 2, 2001;

Headline: Colby Hip-hop DJ Boasts Global Reach
... Colby is one of 11 colleges and universities that are part of the Web site collegemusic.com, a cyberspace location that gives listeners a selection of music that ranges from hip hop to classical to **techno pop**.... "Central Maine Morning Sentinel," March 10, 2001;

Headline: Best Bets Saturday 3/10
...
Pop Music
The '80s pop revival shows no sign of abating—now L.A. **techno-pop** group Animotion is back on the road, reviving hits such as "Obsession," "Room to Move" and other material from the three albums the group released from 1985-1989.... "Los Angeles Times," March 8, 2001;

Section: Washington Weekend,
Heading: Bing, Bang, Boom
Sit back and be amazed, as "Blast!" blows, pounds and whirrs across the stage. That's all you can do anyway. This energetic musical spectacle bridges the gap between classical, blues, jazz, rock 'n' roll and **techno-pop** music.... "The Washington Times," December 21, 2000;

Headline: Cooking School Puts on a Show
... the Taste of Home Cooking School held on a rainy Wednesday evening recently had the frenzied air of a Hollywood game show.... Matt McLemore, a WTIM talk show host, served as emcee,

conferring prizes on audience members who mastered dumber-than-dirt quizzes. ... During breaks, blaring **techno-pop** music shook the house.... "The State-Journal Register (Springfield, IL)," November 22, 2000; and

Headline: Femininity at Heart of Concert

... The concert opened with her most current piece titled "Meet the Company," previously called "Music Response." It was light-hearted, female power dance in a **techno-pop** jazz style with music by the Chemical Brothers.... "Albuquerque Journal," November 12, 2000.

The following excerpts from third-party Internet web sites further illustrate the descriptive meaning of "techno-pop" in the music field:

The Roots of Techno, By Dan Sicko, ...Berry Gordy's Motown may no longer rule the airwaves, but Detroit has found a new beat. Since 1981, the compositions of techno visionary, Juan Atkins have sent shock waves through contemporary music. On the heels of the German group Kraftwerk, he and partner Rick Davis formed Cybotron, fusing austere European **techno-pop** with street-level funk.... www.wired.com;

Laya Fisher—A long time ago in a galaxy far away there was a princess Leia. In the present, a new princess emerges. Laya Fisher's songs are a hook-laden, **techno-pop** treat. And read the lyrics. No fluff here. ... [quote from a review] Can you make 'pure' **techno-pop**? If so, this American working in Australia has pulled it off.... www.cdbaby.com; and

The World of ProPiano.com
CD Ryuichi Sakamoto Piano Works CD
Pioneer of **techno-pop**, Academy Award
winning film composer, touring
performer, Ryuichi Sakamoto enjoys a
diverse career as an artist whose music
continually challenges traditional
categories....
www.shop.store.yahoo.com.

Applicant, in urging reversal of the refusal to register, argues that the mark THE TECHNO-POPS is suggestive, not merely descriptive, of applicant's goods because the mark "suggests one aspect of the goods, but does not describe any function or feature of them" (brief, p. 3); that applicant intends to use the mark on an "animated video product" as well as recorded music; that the mark does not convey any specific information about the nature of applicant's "recorded entertainment products, which contain video and audio elements, in the context of a story" (*id.*); that the Examining Attorney's evidence does not establish that "techno-pop" is a style of music and further does not establish or even remotely suggest that "techno-pop(s)" is merely descriptive of animated entertainment products; that the mark is incongruous in its combination of the term "TECHNO, which is an eclectic music type, marked especially by its non-mainstream melodies and lyrics," and "Pop" which "refers to a mainstream, radio-friendly genre of popular music" (*id.* -- emphasis in

original); that based on the additions of the word "the" and the letter "s," the primary connotation of the mark is the name of a singing group comprised of individual people, not a genre of music, making the commercial impression unique; that applicant submitted evidence to refute the Examining Attorney's position that "techno-pop" describes a style of music (e.g., photocopies of a search of the USPTO's Trademark Electronic Search System (TESS) to show the word "technopop" does not appear in identifications of goods); that the Examining Attorney's evidence shows that there is colloquial use of "techno-pop" by various journalists, but does not prove the broad conclusion that the term describes a style of music; and that any doubt regarding mere descriptiveness is to be resolved in applicant's favor.

The evidence submitted by the Examining Attorney clearly establishes that "techno-pop" is used to identify a particular style or genre of music. We find that this is not refuted by any evidence submitted by applicant (e.g., applicant's search of USPTO records for "(technopop or techno)[gs] and live[ld] and 009[ic]").

Nor are we persuaded that when applicant adds the term "the" and the letter "s" to form THE TECHNO-POPS the merely descriptive nature of the term to the consuming public is

overcome. Even if consumers could view THE TECHNO-POPS as the name of a singing group, applicant has applied for goods, not services such as an entertainment service of a singing group, and the issue of mere descriptiveness must be considered in relation to the involved identified goods. Moreover, those consumers would presumably expect "techno-pop" music to be the style of music performed by such a group. Certainly in considering THE TECHNO-POPS used on musical recordings and video recordings, purchasers would immediately understand that applicant's musical recordings and video recordings include "techno-pop" music.

Moreover, the term does not create an incongruous or creative or unique mark. We are not persuaded by applicant's argument that the purchasing public would think of the incongruous joining of a term for non-mainstream music with one for mainstream music. Rather, we believe the relevant consumers will relate THE TECHNO-POPS used on musical recordings and video recordings to the style of music known as "techno-pop."

Applicant's mark, THE TECHNO-POPS, if used on applicant's identified goods, thus immediately describes, without need of conjecture or speculation, the nature of applicant's goods, as discussed above. Nothing requires the exercise of imagination or mental processing or

gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term THE TECHNO-POPS as it pertains to applicant's goods. See *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996); and *In re Time Solutions, Inc.*, 33 USPQ2d 1156 (TTAB 1994).

Finally, applicant's argument that the term THE TECHNO-POPS is not merely descriptive of its animated video product is unconvincing. Purchasers of applicant's video product would still assume that the video recordings contain "techno-pop" music. And even if purchasers did not so assume with regard to the video product, a mark is merely descriptive if it merely describes any of the listed goods. That is, registration should be refused if a term or phrase is merely descriptive of any of the goods (or services) for which registration is sought. The fact that a term or phrase may not be merely descriptive of some of the goods (or services) listed in the identification does not mean that it is not merely descriptive of the others. See *In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505 (CCPA 1980); *In re Richardson Ink Company*, 511 F.2d 559, 185 USPQ 46 (CCPA 1975); and *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988), *aff'd unpub'd but*

appearing at 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989). See also, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:51 (4th ed. 2001).

In view of the foregoing, we find that THE TECHNO-POPS when used on applicant's musical sound recordings and video recordings, directly conveys information to prospective purchasers about a significant feature of the goods, namely the type of music recorded thereon, and thus clearly is merely descriptive of the identified goods. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

Decision: The refusal to register on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act is affirmed.