

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed:
May 4, 2006
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bar's Products, Inc.,
by change of name from Fre-Bar, Inc.

Serial No. 76415261

Julie A. Greenberg and Ronald W. Citkowski of Gifford Krass
Groh Sprinkle Anderson & Citkowski, P.C. for Bar's
Products, Inc.

Verna Beth Ririe, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Walters, Bucher and Grendel, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Bar's Products, Inc., seeks registration on the
Principal Register of the special form mark shown below:



for goods recited in the application as "cleaning composition for removing insects from motor vehicles" in International Class 3.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this mark given applicant's failure to disclaim the term "one minute" as required by the Trademark Examining Attorney.

Applicant and the Trademark Examining Attorney have fully briefed the case. Although applicant had originally requested an oral hearing, it later waived the scheduled hearing. We affirm the refusal to register.

The issue herein is fairly straightforward. The Trademark Examining Attorney takes the position that the term "one minute" is merely descriptive and should be disclaimed. By contrast, applicant argues "that the words are at most suggestive of the speed with which the cleaning solution works" and that it would be "inconsistent with the practice of the Trademark Office to require such a disclaimer of these words, as evidenced in the countless other registrations

¹ Application Serial No. 76415261 was filed by Fre-Bar, Inc. on June 5, 2002 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. Applicant has disclaimed the words "Bug remover" apart from the mark as shown. The stippling in the drawing is for shading purposes only. Applicant changed its name to Bar's Products, Inc. on August 8, 2002, and this change was recorded with the Assignment Division of the United States Patent and Trademark Office at Reel 2602, Frame 0811.

which incorporate the common element 'ONE MINUTE' without disclaimer." Applicant's brief p. 3.

As explained by the Trademark Examining Attorney, Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), states that the Office may require an applicant to disclaim an unregistrable component of a mark. Inasmuch as Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e), bars the registration of a mark which is merely descriptive of the goods, the Office may require that applicant disclaim a merely descriptive portion of a mark. In the event that applicant does not comply with this disclaimer requirement, the Trademark Examining Attorney may refuse registration of the entire mark.

Applicant takes the position that in the common vernacular, the term "one minute" is understood to mean "right away," not "to describe the period of time technically comprising sixty seconds." Considering marks in third-party registrations that have literal elements specifying various time periods, applicant contends that it is "absurd" to conclude the Office had analyzed during examination the exact amount of time required for each subject product to perform its function before making a determination about descriptiveness, and hence, the requirement for a disclaimer. Applicant's reply brief, pp 2 - 3.

However, the Trademark Examining Attorney argues that the record supports her position that a bug remover that works in sixty seconds is indeed a desirable characteristic of such a product:

As evidenced by the articles submitted with the Final Office Action of January 9, 2004, persons looking to remove bugs or insects from surfaces are aware that the task can be time-consuming. For instance, a November 2, 2002 article in The Boston Globe indicates that while Dow's Bug & Tar Remover can be applied and wiped off, consumers would need to wait 15 minutes after applying an oil before rubbing it off for a similar effect. Other articles suggest a bug and tar remover should sit on a spot for a minute or so (October 29, 2000 Desert News article) while a baking soda paste will remove bugs from cars if the paste is allowed to sit for a few minutes before wiping and rinsing (February 21, 1998 Richmond Times Dispatch article). Since consumers are aware of the immediacy [sic] of removing bugs from vehicles (see, e.g., excerpts from a March 14, 2001 Pensacola News Journal article and a May 11, 2000 Orlando Sentinel article which advise of the need to immediately remove bugs from your car as the acid in bug stains will eat away at the paint finish), they will likely find the quick-acting nature of a bug removing product a benefit. The applicant's use of the term "one minute" tells the users of its products that they can have bug-removing results in only "one minute."

The wording "ONE MINUTE" describes a characteristic that would be very desirable to people using a bug remover on their car. The wording "ONE MINUTE," when used in conjunction with a composition for removing insects from motor vehicles, describes a bug remover composition that, unlike some compositions which users must let sit on a vehicle for several minutes before wiping off, will be effective in "ONE MINUTE." The term "ONE

MINUTE" tells users they need not wait more than "one minute" before they wipe the bug remover off the vehicle. After only "one minute," users can wipe off the applicant's bug remover and find the insects removed from the motor vehicle.

We agree with the Trademark Examining Attorney that consumers of automobile appearance products may be presumed to have experimented with a variety of different kinds of products designed specifically to deal with the challenge of removing splattered bugs from the front of an automobile. According to the record, some products require a longer soaking period after application but prior to wiping and/or washing than is true of competing products. To the extent that a manufacturer or merchant of this type of product would recommend spraying the liquid on the vehicle, waiting for a minute, and then rinsing it with a water hose or wiping it off with a towel, the time frame of "one minute" (and especially with this wording surrounding the numeral "1") seems to be a literal, sixty-second minute rather than the more vague "wait a while," do it "soon" or "right away."

It is well settled that third-party registrations are not conclusive on the question of descriptiveness. Each case must stand on its own merits, and a mark with a portion that is unregistrable because it is merely descriptive should not be registered on the Principal Register without a disclaimer simply because other marks appear on the register having

similar terms undisclaimed. The question of whether a term is merely descriptive must be determined based on the evidence of record at the time registration is sought.

Nonetheless, inasmuch as both applicant and the Trademark Examining Attorney have cited to specific third-party registrations on the federal trademark register ostensibly supporting their respective positions, we will look at them to see if we can detect a pattern. Applicant has focused on a listing of marks, all of which contain the term "one minute," where this term *has not* been disclaimed:

THE ONE MINUTE DIET	for "books and teaching guides concerning weight loss programs" ²
ONE MINUTE MORSEL	for "entertainment services in the nature of a television series featuring nutritional education" ³
THE ONE-MINUTE BIBLE	for "religious books" ⁴
ONE MINUTE MAIL ORDER	for "mail order sale of microcomputer hardware and software" ⁵
THE ONE MINUTE CHRISTMAS TREE STAND	for "Christmas tree stands" ⁶
ONE MINUTE MEDITATOR	for "printed publications, namely, books in the field of stress and finding meaning in the readers' every day lives" ⁷

² Registration No. 2672540; the word "Diet" is disclaimed.

³ Registration No. 1880128.

⁴ Registration No. 1847344; the word "Bible" is disclaimed.

⁵ Registration Number 1780677; the words "Mail Order" are disclaimed.

⁶ Registration No. 2044217; the words "Christmas Tree Stand" are disclaimed.

⁷ Registration Number 2473664; the word "Meditator" is disclaimed.

ONE MINUTE MANICURE	for "skin cleansing lotion" ⁸
ONE MINUTE NETWORKER	for "books, workbooks, manuals, and video tapes and books sold as a unit, in the field of network marketing training" ⁹
ONE MINUTE SHOPPER	for "online trading services to facilitate the sale of goods by others via a computer network and affiliate program; online auction services via a global computer network; and online retail services featuring a variety of general merchandise" ¹⁰
ONE MINUTE MILLIONAIRE	for "educational and entertainment services, namely, conducting seminars and lectures, both live and over the Internet, for financial enlightenment in support of personal goals and achievements; a continuing series of television shows and radio broadcasts, all on the subject of financial enlightenment in support of personal goals and achievements" ¹¹

By contrast, the Trademark Examining Attorney has submitted copies of third-party registrations with marks having time frames ranging from two minutes up to thirty minutes, where the wording naming the respective time frames has been disclaimed in each registration:



["2 Minute Advisor" disclaimed]

for "providing customized information to prospective students in the field of undergraduate, graduate and continuing education via the Internet"¹²

THE 5 MINUTE MIRACLE
[standard character drawing,
disclaimed material
underlined]

for "series of video tapes relating to exercise"¹³

⁸ Registration Number 2500082.
⁹ Registration Number 2646068.
¹⁰ Registration Number 2459213; the word "Shopper" is disclaimed.
¹¹ Registration Number 2754128.
¹² Registration Number 2706361.
¹³ Registration Number 2391295.

<u>5 MINUTE MIRACLE MANICURE</u>	for "fingernail strengthener and finger nail color enamel" ¹⁴
<u>BANK ONE FIVE MINUTE MORTGAGE</u>	for "banking services" ¹⁵
<u>VIP 10 MINUTE MEAL</u>	for "frozen foods, namely, frozen vegetables with sauce" ¹⁶
10 MINUTE PRESCRIPTIONS ["10 MINUTE PRESCRIPTIONS" <i>disclaimed</i>]	for "pharmacy services" ¹⁷
<u>THE 10 MINUTE TUNE-UP</u>	for "educational services, namely, conducting seminars and courses in the alleviation of pain and stress in the human body to promote better health" ¹⁸
<u>10 MINUTE MIRACLE</u>	for "manually operated exercise equipment" ¹⁹
<u>THE 15 MINUTE CHEF</u>	for "printed recipes that appear in newspapers; recipe cards and books, magazines and pamphlets on the subject of food and cooking" and "entertainment in the nature of on-going radio, television and cable television programs in the field of food and cooking" ²⁰
<u>BEHR 15 MINUTE QUIK-FIX</u>	for "wood stripping and cleaning preparations" ²¹
<u>20-MINUTE LEARNING CONNECTION</u>	for a "series of non-fiction books" ²²
<u>20 MINUTE MILLIONAIRE</u>	for "pyramid structure multi-level marketing business services" ²³
<u>CINDY ROWE 30 MINUTE WINDSHIELD REPAIR</u>	for "automobile windshield repair service" ²⁴

¹⁴ Registration Number 1545079.
¹⁵ Registration Number 2070669.
¹⁶ Registration Number 2155019.
¹⁷ Registration Number 2421850.
¹⁸ Registration Number 2011881.
¹⁹ Registration Number 2468335.
²⁰ Registration Number 2558227.
²¹ Registration Number 2063300.
²² Registration Number 2698773.
²³ Registration Number 2370676.
²⁴ Registration Number 1980851.

30 MINUTE CLOSET
MAKEOVER

for "closet organizer system comprised of partitions, adjustable shelving, hanging rods, hangers and installation hardware, sold as a unit"²⁵

In making decisions about mere descriptiveness, it is incumbent upon the Trademark Examining Attorney to take into consideration the context in which the mark is intended to be used in connection with the identified goods, and the possible significance that the mark, or any portion of the mark, would have to the average purchaser of the goods in the marketplace. Yet, in support of its position, applicant claims that it is "absurd" to believe that Trademark Examining Attorneys, in deciding the issue of mere descriptiveness on behalf of the Trademark Office, actually make a determination as to whether or not the time period contained within a mark actually prescribes the amount of time required to effectuate each product or service. In effect, the Trademark Examining Attorney argues that, indeed, this is done with each such application.

It is true that the time periods in the marks chosen by the Trademark Examining Attorney are for somewhat longer periods of time than "one minute." Yet, while we do not have access to the underlying files, presumably a closet makeover kit [30 MINUTE CLOSET MAKEOVER] could reasonably be installed in thirty minutes. Similarly, it seems likely that Cindy Rowe

²⁵ Registration Number 2055819.

Auto Glass [CINDY ROWE 30 MINUTE WINDSHIELD REPAIR] is able to repair cracked windshields in half an hour or less. It was probably determined that one quarter of an hour is the time it will take to prepare the meals in THE 15-MINUTE CHEF, while ten minutes should be time enough to prepare a frozen meal [VIP 10 MINUTE MEAL] or get a prescription filled [**10 MINUTE** PRESCRIPTIONS]. Is it equally realistic to believe that "one minute" is all the time one needs to leave this liquid product to do its work on the front of a vehicle? The record tells us it is.

By contrast, the activities in the registrations applicant has highlighted involve meditating or reading the Bible, losing weight or making a million dollars,²⁶ learning about computer networking or ordering computer equipment online. These merchants or manufacturers, when selecting "One Minute" as part of a mark for such activities, legitimately anticipate that potential consumers will view this term as suggesting the activity can be done more quickly than one might expect, or with minimal effort - but not as a realistic instruction for the prospective customer to set aside a sixty-second interval to complete the activity.

²⁶ While twenty minutes may be realistic for the length of time it takes to review an electronic book on getting involved in a pyramid scheme [20 MINUTE MILLIONAIRE] (see registration at footnote 23), it is unlikely one could complete an enlightening personal financial seminar within sixty seconds [ONE MINUTE MILLIONAIRE] (see registration at footnote 11).

Finally, the stark presence of the numeral "1" in a circle within applicant's composite mark reinforces the idea of a sixty-second interval comprising "one minute" rather than suggesting the consumer simply wait "a minute."

Accordingly, we find that applicant's choice of "One Minute" in its composite mark conveys specific information about a timed interval, and that consumers would be looking to another literal designation not present on this composite to find a source indicator for this product. Hence, we affirm the refusal of the Trademark Examining Attorney to register this matter absent a disclaimer of the unregistrable component, "One Minute."

Decision: The requirement for a disclaimer of the "One Minute" portion of the mark herein on the ground that this phrase is merely descriptive in connection with the identified goods is affirmed.

However, in accordance with Trademark Rule 2.142(g), this decision will be set aside and this application will be returned to the Trademark Examining Attorney to place in condition for publication for opposition, if applicant, no more than thirty days from the mailing date of this decision, submits an appropriately worded disclaimer, namely:

No claim is made to the exclusive right to use "One Minute" and "Bug Remover" apart from the mark as shown.