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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gospel Music Channel, LLC

Serial No. 77063083

David M. Silverman of Davis Wright Tremaine for Gospel Music Channel, LLC.

Michael J. Souders, Trademark Examining Attorney, Law Office 115 (J. Brett Golden, Acting Managing Attorney).

Before Quinn, Grendel and Holtzman, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Gospel Music Channel, LLC filed an application to register the mark GOSPEL MUSIC CHANNEL RADIO NETWORK ("GOSPEL MUSIC" and "RADIO NETWORK" disclaimed) for "radio program syndication" in International Class 41¹

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

¹ Application Serial No. 77063083, filed December 13, 2006, alleging a bona fide intention to use the mark in commerce.

§1052(e)(1), on the ground that applicant's mark, when used in connection with applicant's services, is merely descriptive of them. Registration also was refused in view of applicant's failure to comply with a requirement to submit additional information under Trademark Rule 2.61(b).

When the refusal to register was made final, applicant appealed. Applicant and the examining attorney filed briefs.

Requirement for Information

The examining attorney, in the first Office action, indicated that additional information about applicant's services was required to permit proper examination of the application. See Trademark Rule 2.61(b); and TMEP §814 (5th ed. 2007). The examining attorney further stated that "[t]he submitted factual information must make clear what the services are and how they are rendered, their salient features, and their prospective customers and channels of trade."

Applicant's response was entirely silent on this requirement. The examining attorney, in his final refusal, noted applicant's failure to respond, and made final the requirement for additional information.

Applicant then filed a request for reconsideration, accompanied by an excerpt from Wikipedia captioned

"Broadcast Syndication." In its request for reconsideration, applicant referred to the Wikipedia explanation in arguing against the refusal to register. Applicant also maintained its contention that the mark is not merely descriptive.

In denying the request for reconsideration, the examining attorney stated that he must "adhere to the final refusal as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue." While the examining attorney went on to address the mere descriptiveness refusal, no mention was made of the requirement for additional information.

Applicant's brief likewise is silent on the requirement, applicant apparently believing that the requirement had been met by the material attached to its request for reconsideration.

In his appeal brief, the examining attorney again asserted that applicant failed to comply with this requirement, framing this failure as one of the two issues on appeal. The examining attorney now notes the Wikipedia evidence, making reference to the definition of "syndication" contained therein. The examining attorney indicates, however, that while the evidence provided some insight into syndication services, "many questions remain

unanswered that would permit proper examination of the application." The examining attorney further contends "applicant's submission of a single source from the Internet that is unrelated to applicant is insufficient to meet the requirement because it fails to provide specific information regarding the applicant and its services."

Applicant, in its reply brief, responds by essentially contending that the examining attorney should have addressed, in his denial of the request for reconsideration, any deficiency in applicant's response to the requirement for more information. According to applicant, it is "inappropriate for the Examining Attorney to have accepted Applicant's additional evidence as sufficient for purposes of denying reconsideration and then to allege for the first time in his Appeal Brief that the requirement for additional information was not fully satisfied."

We agree with applicant's general assessment. It was incumbent upon the examining attorney to indicate in his denial of the request for reconsideration that the information submitted with the request did not meet the requirement for additional information. In saying this we recognize that applicant's request for reconsideration was filed on the last day of the six-month period in which to

respond to the final refusal; thus, one might argue that, even if the examining attorney had specifically maintained the finality of the requirement, applicant was out of time in which to cure the insufficiency. However, in the event additional information had been subsequently submitted after the denial of the request for reconsideration in an attempt to meet the requirement, the Board might well have remanded the application to the examining attorney. See TBMP §§ 1205.01 and 1209.04 (2d ed. rev. 2004) [Good cause may be found when an attempt is made to comply with a requirement; in determining whether good cause has been shown, the Board will consider both the reason given and the point in the appeal at which the request for remand is made.] .

Given the examining attorney's silence on this point in his denial of the request for reconsideration, we find that he waived his right to maintain the objection in his brief.

Accordingly, we deem the requirement to submit additional information to be moot.

Mere Descriptiveness

Applicant, while conceding the words "Gospel Music Channel" and "Radio Network" may be descriptive of its broadcasting and related services, argues that the words

are not merely descriptive of "radio program syndication services." According to applicant, its proposed mark GOSPEL MUSIC CHANNEL RADIO NETWORK requires imagination to determine how the mark relates to radio program syndication services. Although applicant has disclaimed the words "Gospel Music" and "Radio Network," it maintains that the term "Channel" is arbitrary with respect to the identified services. Applicant places significant reliance on the examining attorney's statement that the "evidence establishes that the GOSPEL MUSIC CHANNEL is a well-known cable channel and the source of various services related to gospel music" and that the "evidence demonstrates that the relevant purchasing public will immediately recognize the wording 'GOSPEL MUSIC CHANNEL' as the source of the identified services." Applicant submitted copies of two prior registrations that it owns, and a Wikipedia entry covering "Broadcast Syndication."

The examining attorney argues that applicant's mark is a combination of descriptive terms that, when considered as a whole, is merely descriptive of applicant's services. According to the examining attorney, the term is merely descriptive because "'gospel music channel' describes the source or provider of the services using merely descriptive wording." The examining attorney also argues that

purchasers "will immediately understand that the radio syndication services are for gospel music programming produced by a gospel music channel and offered over a radio network." Another argument is the term "channel" is descriptive on its own in that it "identifies that the applicant itself is a radio and television station and that the services are for use by radio stations throughout the country and the world." In support of the refusal the examining attorney submitted dictionary definitions of the terms "gospel music" and "channel"; a Wikipedia entry covering "Radio Network"; and excerpts of articles retrieved from the Internet on gospel music and radio networks.

A term is deemed to be merely descriptive of goods or services, within the meaning of 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. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (TTAB 2007); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; rather, it is sufficient that the term describes one

significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *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 the 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). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of applicant's goods or services. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

We begin by considering the dictionary definitions of the term "channel" that read, in pertinent part, as follows: "Broadcasting. TV or radio station: a television or radio station broadcasting on a specific band

of the frequency spectrum. *Watching one of the news channels.*" (www.encyclopedia.msn.com); and "a specified frequency band for the transmission and reception of electromagnetic signals, as for television signals." (The American Heritage Dictionary of the English Language (4th ed. 2000)).

As indicated earlier, applicant, in response to the mere descriptiveness refusal, disclaimed the terms "Gospel Music" and "Radio Network." We also note that applicant owns two registrations, Reg. Nos. 3066939 and 3238483, both for GOSPEL MUSIC CHANNEL.² In each case, the registration issued on the Supplemental Register with a disclaimer of the word "Channel."

The Wikipedia entry indicates "[i]n broadcasting, syndication is the sale of the right to broadcast radio shows and television shows to multiple individual stations, without going through a broadcast network. It is common in countries where television is organized around networks

² Reg. No. 3066939 covers "broadcasting programs containing music, musical performances, biographies, news and general interest content, via television, radio and the Internet," and "entertainment services, namely production and distribution of television and radio programming featuring music, musical performances, biographies, news and general interest content; providing information over the Internet dealing with programs containing music, musical performances, biographies, news and general interest content." Reg. No. 3238483 covers "cable television broadcasting; satellite television broadcasting; television broadcasting."

with local affiliates, notably the United States...Radio syndication generally works the same way as in television..."

The examining attorney offers various theories for why the term "channel" is merely descriptive, thus rendering the applied-for mark GOSPEL MUSIC CHANNEL RADIO NETWORK merely descriptive in its entirety. In considering this case, the Board may affirm on any of these theories, or we can even rely on a different rationale. See *In re AFG Industries Inc.*, 17 USPQ2d 1162 (TTAB 1990). See also TBMP §1217 (2d ed. rev. 2004).

After consideration of the record, we find that the term "channel" is merely descriptive and that, in turn, the applied-for mark in its entirety is merely descriptive of "radio program syndication."

Applicant's services feature the syndication of a radio channel, specifically a gospel music channel that is part of applicant's radio network. It is the channel that is being syndicated; thus, the term indicates the subject or feature of the services. In view thereof, the term "channel" is merely descriptive of the radio program syndication services.

Further, based on the meanings of the individual terms comprising the mark, the combination GOSPEL MUSIC CHANNEL

RADIO NETWORK is merely descriptive. The applied-for mark merely describes radio program syndication of a gospel music channel that is part of applicant's radio network. No imagination is required to discern the nature and purpose of the services.

In making our determination we have considered applicant's registration of GOSPEL MUSIC CHANNEL, albeit for different (but certainly related) services, on the Supplemental Register, with a disclaimer of "Channel." Moreover, in the present application, applicant already disclaimed the words "Gospel Music" and "Radio Network." Although certainly not dispositive of the issue, these circumstances buttress our conclusion.

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