

**THIS OPINION IS NOT A
PRECEDENT OF
THE T.T.A.B.**

Mailed: January 24, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Instant Comma, Inc.

Serial No. 78170402

Katherine Keating of Holme, Roberts & Owen LLP for Instant Comma, Inc.

Dominic J. Ferraiuolo, Trademark Examining Attorney, Law Office 102 (Karen Strzyz, Managing Attorney).

Before Zervas, Walsh and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Instant Comma, Inc. has applied to register the mark CHOW in typed or standard character form on the Principal Register for the following goods and services:

"printed matter and printed publications, namely periodical magazines, newsletters, catalogues and books in the fields of food, wine, dining, cooking, gastronomy, lifestyle and travel" in International Class 16; and

"online publication of magazines, newsletters, catalogues and books in the fields of food, wine, dining, cooking,

gastronomy, lifestyle and travel" in International Class 41.¹

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of a feature or quality of applicant's goods and services.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs on the issue under appeal, and applicant filed a reply brief.

Applicant contends that its mark is just suggestive and does not immediately convey to consumers the nature of its goods or services. Applicant has relied upon dictionary definitions of the word "chow" in support of its contention. According to such definitions, "chow" may be defined as: (1) "breed of thick-coated medium-sized dogs with fluffy curled tails and distinctive blue-black tongues; believed to have originated in north China;" (2) "informal terms for a meal;" (3) "the imperial dynasty of China from 1122 to 221 BC; notable for the rise of Confucianism and Taoism;" and (4) "a surname (common: 1 in 25000 families; popularity rank in the U.S.: #2925.)"

¹ Application Serial No. 78170402 was filed on October 2, 2002, based on applicant's assertion of a bona fide intent to use the mark in commerce in connection with the goods and services.

Lycos Zone RhymeZone, (Lycos, Inc. 2003). With its appeal brief, applicant submits an additional definition of "chow" as "a homophone of 'ciao,' used conventionally as an utterance at meeting or parting." Webster's Ninth New Collegiate Dictionary, (1991).² In addition, applicant has made of record a list of the search results from its search of the term "chow" on the Yahoo Internet search engine.

Excerpts from this search summary follow:

Purina Cat Chow

Get all the latest information on nutrition for your cat or make a homepage for your cat.
www.catchow.com

Purina Puppy Chow

Includes information about choosing a puppy, adoption listings, articles about raising and training puppies, product selection, and more.
www.puppychow.com

Purina Dog Chow

Get information on nutrition for your best friend and even create a homepage for your dog.
www.dogchow.com

Chow Down Down Under

Australian recipes for Aussies abroad and at home, good home cooked Aussie tucker.
Members.tripod.com

Chowbaby.com

Includes restaurant, coffee shop, and brew pub finder. Also features recipes, food and drink terminology, message boards, and more.

² We hereby take judicial notice of this definition. The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982); *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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www.chowbaby.com

Chowhound.com: For those who love to eat!
Choose a chow location from our map. Click to
launch Hot Posts and view all the latest message
board postings at a glance! Pass the chow!
www.chowhound.com

Applicant further has made of record a number of third-party registrations for marks that consist in whole or in part of the term "chow" for food related goods and services. *See, for example:* Registration No. 1115751 for CHOW CONE (CONE disclaimed) for "bakery product-namely, an unfilled food cone;" Registration No. 2888897 for CHOW DOWN for "providing cooking instruction, recipes and dieting information via a global computer network;" Registration No. 1028543 for CHOW for "dairy feed;" Registration No. 2357591 for CHOWBABY.COM and design for "dissemination of advertising for the restaurants of others via an on-line electronic communications network;" Registration No. 2493279 for CHOW-NOW! for "restaurant services;" Registration No. 2540763 for PEOPLE CHOW for "nutritional food supplements;" and Registration No. 2823072 for THAI CHOW for "restaurant services." In addition, applicant has made of record a printed copy from the United States Patent and Trademark Office's (USPTO's) Trademark Electronic Search System (TESS) of its application Serial No. 78446865

for the mark CHOW FOOD. DRINK. FUN. for goods in Class 16 that are identical to those in the subject application.³

The examining attorney maintains that the mark merely describes a feature or quality of the goods and services. In support of the refusal, the examining attorney has made of record additional dictionary definitions of "chow." According to these definitions, "chow" may be defined as "noun 1 informal, chiefly N. Amer. food; 2 (also chow chow) a Chinese breed of dog with a tail curled over its back, a bluish-black tongue, and a thick coat; verb (chow down) N. Amer. informal eat." AskOxford.com (Oxford Online 2006). "Chow" further may be defined as "*Slang* Food; victuals." American Heritage Dictionary of the English Language, 4th Ed. (2000). The examining attorney also made of record copies of third-party registrations for marks that consist in part of the disclaimed term "CHOW" for food related goods and services. *See, for example*, Registration No. 1763424 for CHOW WAGON (CHOW disclaimed) for "restaurant services;" Registration No. 2553897 for DAILY CHOW (CHOW disclaimed) for "restaurant and bar services;" Registration No. 3086559 for TEIN LI CHOW and design (CHOW disclaimed; mark translates into English as "give me chow") for "kosher

³ Such application subsequently issued as Registration No. 321136 with a disclaimer of "FOOD DRINK" apart from the mark as shown.

Chinese restaurant services;" and KID CHOW and design (CHOW disclaimed) for "healthy prepared lunches consisting primarily of meat, fish or poultry, and fruits and vegetables, delivered to schools and camps."

It is well settled that a term is considered to be merely descriptive of goods and/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 and/or services. See Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. See also *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings*

Corp., 226 USPQ 365 (TTAB 1985).

In this case, we find that the examining attorney's evidence has established that, when considered in connection with the identified goods and services, "chow" would be perceived as slang or an informal term for food, rather than a surname, breed of dog, or imperial dynasty of China. Thus, the fact that "chow" may have other meanings in other contexts is not controlling on our determination herein. See *In re Bright-Crest, Ltd., supra*.

However, we also agree with applicant that simply because one meaning of "chow" is "food," it does not necessarily follow that the mark CHOW merely describes a feature or characteristic of applicant's goods and services. We hereby take judicial notice of the following definitions of chow:⁴ "1. n. food - What time is chow served around here? 2. tv. to eat (something). (see also chow down) - I've been chowing canned tuna and stale bagels to save money. 3. Go to ciao." American Slang Dictionary (McGraw-Hill 2006); and "Slang for food. An individual who really enjoys eating is known as a chow hound. When a person says that it is time to chow down, he means that it is time to eat; dinner is served." Dictionary of the

⁴ See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., supra*.

Modern United States Military (1996). The above definitions and evidence of record indicate that "chow" is often used to describe institutional, including military, food as well as food for pets and other animals. Such meanings of "chow" are incongruous, possibly facetious, when applied to applicant's printed and online publications in the fields of food, wine, dining, cooking, gastronomy, lifestyle and travel. We note in that regard that the examining attorney has not submitted any evidence that the term "chow" is used to describe food in the context of a publication which, among other things, discusses dining, wine and gastronomy. In other words, given the meaning of "chow," which includes significance in the fields of institutional and pet food, a prospective consumer viewing the mark CHOW will perceive the term as incongruous in relation to applicant's printed or electronic publications on the subjects of food, wine, dining, cooking, and related topics. Compare, for example, *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ382 (CCPA 1968); and *In re Tennis in the Round, Inc.*, 199 USPQ 496 (TTAB 1978).

We further find that applicant's mark is likely to be understood as a double entendre in connection with the identified goods and services. In addition to the above-noted meaning in relation to food, two of the above

dictionary definitions as well as the Internet reference to the website Chowbaby.com suggests that "chow" is likely to be perceived as indicating a homophone or alternative spelling of the word "ciao." Thus, prospective consumers of applicant's goods and services are likely to view CHOW as the greeting "ciao" as well as a slang term for food. In this context, the mark is, at most, suggestive of the travel content of the identified goods and services. A double entendre is "an ambiguity of meaning arising from language that lends itself to more than one interpretation." See *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005). As in *The Place, supra*, both meanings of the mark in the case before us are readily apparent from the mark itself without reference to other indicia. See also *In re Grand Metropolitan Foodservice, Inc.*, 30 USPQ2d 1974 (TTAB 1994). We do not find that the double entendre extends to other meanings of the term "chow," as those terms are not relevant in the context of the identified goods and services.

The third-party registrations submitted by the applicant and examining attorney are of little help in determining the registrability of the mark at issue in this case. While such third-party registrations as well as applicant's subsequently registered application for the

mark CHOW FOOD. DRINK. FUN. demonstrate that the term "chow" is sometimes, but not always, subject to a disclaimer requirement in the context of various food-related marks, we do not find these registrations persuasive on the issue of whether CHOW merely describes applicant's goods and services. Further, and as often noted by the Board, each case must be decided on its own set of facts, and we are not privy to the facts involved with these registrations. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."] See also *In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001).

In conclusion, the mark CHOW is both incongruous and a double entendre when considered in connection with the recited goods and services, and neither of the likely meanings, discussed *supra*, of the mark CHOW is merely descriptive in connection therewith. Thus, on this record the examining attorney has not established that the mark is merely descriptive in connection with the identified goods and services. We further note that the record in this case does not support a finding that permitting registration of

CHOW for the recited goods and services would deprive applicant's competitors of a necessary term to describe their own goods or services. *See, for example, In re Shutts*, 217 USPQ2d 363, 365 (TTAB 1983).

Finally, if doubt exists as to whether a term is merely descriptive, it is the practice of this Board to resolve doubts in favor of the applicant and pass the application to publication. *See In re Gourmet Bakers Inc.*, 173 USPQ 565 (TTAB 1972). In this way, anyone who believes that the term is, in fact, descriptive, may oppose and present evidence on this issue to the Board.

Decision: The examining attorney's refusal of registration is reversed. Accordingly, the involved application will be forwarded for registration in due course.