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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Daedalus Media, LLC

Serial No. 78383304

David V. Radack of Eckert Seamans Cherin & Mellott, LLC for
Daedalus Media, LLC.

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(Janice O'Lear, Managing Attorney).

Before Holtzman, Zervas and Kuhlke, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Daedalus Media, LLC to
register the mark ATMOSPHERE ENTERTAINMENT MM (in standard
character form) for "television and film studio production
services" in International Class 41.²

¹ The application was reassigned to this examining attorney to write
the appeal brief.

² Application Serial No. 78383304, filed March 12, 2004, based on an
assertion of a bona fide intent to use the mark in commerce. The word
"ENTERTAINMENT" is disclaimed.

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the registered mark ATMOSPHERES (in standard character form) for "entertainment services, namely, providing television programs" in International Class 41, as to be likely to cause confusion.³

In addition, the examining attorney has issued a requirement for a disclaimer of the term MM under Section 6 of the Trademark Act on the ground that the wording is merely descriptive of applicant's services under Section 2(e)(1) of the Trademark Act.⁴

When the refusal and the requirement were made final, applicant appealed. Briefs have been filed. An oral hearing was not requested.

We turn first to the requirement for a disclaimer of the term MM. The examining attorney contends that MM is an abbreviation for "multimedia."⁵ In support of that position, the

³ Registration No. 2596831, issued July 23, 2002. The Weather Channel is listed as the owner of the registration. The registration also includes services in Class 42 identified as "providing meteorological information through electronic media and devise [sic]." The refusal to register is based only on Class 41.

⁴ Applicant disclaimed the word "ENTERTAINMENT" in response to the examining attorney's initial requirement for a disclaimer of "ENTERTAINMENT MM."

⁵ The examining attorney does not offer any explanation as to why "multimedia" is descriptive of applicant's services. On the other hand, applicant does not dispute that "multimedia" is descriptive of its services.

examining attorney submitted a page from the website, www.acronymfinder.com, listing "Multi Media" as one of many listed meanings of MM.⁶ Based on that evidence, the examining attorney concludes that MM merely describes a feature of applicant's services. In response, applicant argues:

The designation MM, while in one usage could mean multimedia, can also be the [R]oman numeral for the year 2000. As Applicant's usage of this mark is for television and film studio production services, and because it is well-known that copyright notices, for example, in the film and television industries use [R]oman numerals to designate the year of publication of a work, on viewing this MM designation does not immediately and directly associate this designation with "multimedia" or the year 2000. This "double entendre", where the designation MM can mean [R]oman numeral 2000 and/or "multimedia" (or something else, even) leads to the conclusion that the wording MM is NOT descriptive and does not need to be disclaimed." (Emphasis in original.)

(Response dated April 29, 2005 at 2.)

The examining attorney was "unpersuaded" that applicant "would seek to use a fixed date of publication of a work in a trademark that is presumably intended to be used for many years." (Office action dated June 21, 2005 at 2.) The examining attorney nevertheless stated that "even if MM is taken as the Roman numerals for '2000,' the lettering must be disclaimed as merely informational, i.e., merely providing information about the date

⁶ The one page made of record by the examining attorney lists, in alphabetical order, 14 other meanings of "MM" in addition to "Multi Media." However, it is apparent that there are considerably more listings for the term on the website than we have of record. The page of record contains only the listings from the end of the alphabet, "MU" ("MuchMusic (TV channel))" through "MY" ("Mystery Man").

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of publication of a work." (Office action dated September 29, 2004 at 3.) To support this contention, the examining attorney attached three third-party registrations wherein the designation "2000" has been disclaimed.

A term is merely descriptive within the meaning of Section 2(e)(1) if, when considered in relation to the goods or services, the term immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services in connection with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). On the other hand, a term is suggestive if, in the context of those goods, a purchaser must use imagination, thought, or some type of multi-stage reasoning to understand the term's significance. See Plyboo America Inc. v. Smith & Fong Co., 51 USPQ2d 1633 (TTAB 1999).

As a general rule, initials can be considered descriptive if they are so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith. Modern Optics, Inc. v. Univis Lens Co., 234 F.2d 504, 110 USPQ 293 (CCPA 1956). We find that even assuming that the term "multimedia" is descriptive of the identified services, the examining attorney has failed to establish that the initials "MM" are "substantially synonymous" with the term "multimedia." The

existence of single reference to MM as an abbreviation for "multimedia," particularly from a source which we consider to be of questionable reliability, is simply not sufficient to show that MM would be recognized by the relevant public as meaning "multimedia."⁷

Moreover, the examining attorney has not shown that the term MM as used in the context of applicant's mark would be understood by the relevant public as designating Roman numerals. The third-party registrations of record containing a disclaimer of "2000" are not relevant to this determination. The term at issue here is MM, not 2000. Also, we note that the term 2000 in these registrations is obviously used in each mark to connote the year (for example, "A.D. 2000" in Registration No. 2453401; and "ORCHESTRA CENTENNIAL 1900-2000" in Registration No. 2531706). In this case, even assuming MM would be perceived as Roman numerals, it is not clear that the term would be immediately understood as referring to the "year 2000" rather than just the number 2000, a term with possibly no descriptive meaning.

We do not take applicant's equivocal statements that MM "could mean multimedia" or that it "can mean" the year 2000 as an admission that the term is merely descriptive of its services in

⁷ The examining attorney's statement in his brief (unnumbered p. 10) that "A short review of many multimedia electronic products on the market will demonstrate that many use a MM designation" is unsupported by any evidence.

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one way or the other. The examining attorney has not established, in the first instance, that the term would be understood by the relevant public as having either one of those meanings.

The requirement for a disclaimer of MM is accordingly reversed.

We turn then to the question of likelihood of confusion. Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue, including the similarities or dissimilarities between the marks and the similarities or dissimilarities between the services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and the differences in the marks.").

Applicant intends to provide "television and film studio production services" under the mark ATMOSPHERE ENTERTAINMENT MM and registrant is "providing television programs" under the mark ATMOSPHERES. Applicant argues that the services are not related and that they are directed to different purchasers. Noting that The Weather Channel is identified as the owner of the cited registration, and pointing to a TESS printout of Registration No.

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1696588 for the mark THE WEATHER CHANNEL (for meteorological services) which also issued to that entity, applicant argues that registrant is providing a television program relating to weather, which is "directed toward the general viewing public who watch The Weather Channel." (Brief at 2.) Applicant argues that its own services, in contrast, are directed to sophisticated persons for production of television and film projects.

Applicant argues, with respect to the marks, that they are different in sound, appearance and meaning. Applicant contends that the differences in the marks, i.e., the plural versus singular form of the shared word in the two marks, the additional wording "ENTERTAINMENT MM" and the "distinctive" nature of the term "MM," serve to distinguish the marks as a whole.

We consider first the respective services. It is well settled that the question whether services are related must be based on a comparison of the services as identified in the application and registration, rather than on what any extrinsic evidence might show the actual nature of the services to be. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); and *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990).

Thus, we must compare applicant's "television and film studio services" with the services as identified in the

registration, "providing television programs." Where the services in a registration are broadly described and there are no limitations as to their nature, channels of trade or classes of purchasers, it is presumed that the registration encompasses all services of the nature described, and that they move in all channels of trade and to all classes of purchasers that would be normal for such services. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). We find that the language "providing" in registrant's identification is broad enough to include not only the television programs themselves, as applicant contends, but the production of those television programs, as well. To that extent, applicant's and registrant's services are in part legally identical, as are the channels of trade and the purchasers for the services.

However, even construing the language "providing" narrowly, i.e., as a series of televisions programs, we find that the respective services are closely related. We note that the examining attorney has submitted a number of use-based, third-party registrations showing, in each instance, that a single entity has adopted the same mark for both producing television programs and a series of television programs. Although third-party registrations are not evidence of use, they serve to suggest that purchasers would expect the types of services offered by applicant and registrant, if sold under similar marks, to emanate from the same source. In addition, we must presume

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from the description of registrant's services, that a television series would be directed not only to the viewing public, as applicant maintains, but also to commercial purchasers, such as television networks or studios.

We must also consider that the identical or overlapping purchasers for applicant's and registrant's services would be sophisticated and knowledgeable professionals who would exercise a high degree of care in their purchasing decisions. See *Electronic Design & Sales v. Electronic Data Systems*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992).

We turn next to a consideration of applicant's mark ATMOSPHERE ENTERTAINMENT MM and registrant's mark ATMOSPHERES for similarities or dissimilarities in sound, appearance, meaning and commercial impression. Although both marks contain or consist of the virtually identical terms ATMOSPHERE and ATMOSPHERES, we find that the marks, considered as a whole, convey different meanings and create different overall commercial impressions. There are a number of dictionary definitions of "atmosphere." The word is defined in *Microsoft Encarta College Dictionary* (2001) as meaning, inter alia, "the mixture of gases that surrounds a celestial body such as the Earth"; "the air or climate in a given place"; and "an interesting or exciting mood existing in a

particular place."⁸ When we view the mark ATMOSPHERES in relation to registrant's services, it is apparent from the face of the registration that the term is likely to suggest or connote a series of television programs on topics related to weather or science, such as the climates or "atmospheres" of different planets. While the plural form of a word generally has substantially the same meaning as the singular form, in this case the plural word ATMOSPHERES adds to the perception of the term as referring to the subject matter of registrant's television programs and to the scientific nature of those programs.

In contrast, the wording ENTERTAINMENT MM, and in particular the word ENTERTAINMENT, in applicant's mark imparts a meaning and commercial impression to ATMOSPHERE that is different from ATMOSPHERES alone. Although the word ENTERTAINMENT is descriptive and disclaimed, it is well settled that "[n]o part of the mark can be ignored in comparing the marks as a whole." *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984). The phrase "ATMOSPHERE ENTERTAINMENT," as a whole, does not suggest the subject matter of the television programs produced by applicant,

⁸ The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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but instead evokes a mood or tone associated with applicant's company or the television programs it produces.

Moreover, the presence of ENTERTAINMENT MM in applicant's mark results in differences between the marks in sound as well as in appearance. We find that these differences in the marks, together with the distinct differences in meaning and commercial impression, combine to outweigh the similarities in the marks.

Notwithstanding the identity of the services, when we consider the differences in the marks and the sophistication of the respective purchasers, we find that confusion is not likely.

Decision: Both the refusal to register under Section 2(d) of the Trademark Act and the requirement for a disclaimer under Section 6 of the Act are reversed.