

**THIS OPINION IS
NOT A PRECEDENT
OF THE TTAB**

*Decision mailed:
August 23, 2007
GDH/gdh*

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Missions Fest International Association

Serial No. 78631248

Roberta Horton and Catherine Rowland of Arnold & Porter LLP for Missions Fest International Association.

Ronald McMorrow, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Seeherman, Hohein and Taylor, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Missions Fest International Association, by assignment from Missions Festival (Missions Fest) Society, is the owner of an application to register "MISSIONS FEST" as a service mark on the Principal Register in standard character form for services consisting of "educational conferences, seminars and workshops all in the field of religion; conducting seminars for church leaders in the field of religion; [and] conducting youth rallies in the field of religion" in International Class 41.¹

¹ Ser. No. 78631248, filed on May 17, 2005, which alleges a date of first use anywhere of January 31, 1984 and a date of first use in commerce of February 12, 1993 in addition to claiming a right of priority pursuant to Section 44(d) of the Trademark Act, 15 U.S.C. §1126(d), based on Canadian application no. 1240779, filed on December 15, 2004; the word "FEST" is disclaimed.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's services, the mark "MISSIONS FEST" is merely descriptive of them.

Applicant has appealed and briefs have been filed. We affirm the refusal to register.

It is well settled that a mark is considered to be merely descriptive of services or goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the services or goods. See, e.g., 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, 217-18 (CCPA 1978). It is not necessary that a mark describe all of the properties or functions of the services or goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the mark describes a significant attribute or idea about them. Moreover, whether a mark is merely descriptive is determined not in the abstract but in relation to the services or goods for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those services or goods and the possible significance that the mark would have to the average purchaser of the services or goods because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the [service or] product is from consideration of the mark alone is

not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, in its initial brief, contends in essence that:

Applicant's MISSIONS FEST mark is a classic suggestive mark that does not immediately convey specific information about Applicant's services but instead indirectly suggests that Applicant may be linked to educational conferences, seminars, workshops, and the like. The Examining Attorney's sparse evidence fails to satisfy the Patent and Trademark Office's ... burden of establishing that the MISSIONS FEST mark merely describes Applicant's services. In particular, Applicant has shown that its activities are not "missionary" activities and that the Examining Attorney's reliance on dictionary definitions of "missions" is misplaced in this context.

Stating, furthermore, that "[t]he Examining Attorney's evidence of [mere] descriptiveness consists of several dictionary definitions, examples of a few third-party registrations, and, most recently, a few screen shots of websites," applicant asserts that "[n]one of this evidence, however, demonstrates that the MISSIONS FEST mark is [merely] descriptive of educational activities."

Specifically, while applicant "concedes that it provides ... services involving religious topics," applicant insists that "it does not engage in 'missionary' work and instead simply provides educational conferences, seminars, workshops, and youth rallies." According to applicant, "[n]one of these activities are 'missionary' activities and none are included in the dictionary definition of the term 'MISSION.'" Applicant therefore insists that "the definitions offered by the Examining

Attorney do not establish that the MISSIONS FEST mark would be understood as merely descriptive of Applicant's services."

Applicant also maintains, in support of its contention that its mark is no more than suggestive of its services, that it "has demonstrated that there are third-party registrations incorporating the term 'MISSIONS' on the Principal Register, where no disclaimer of 'MISSIONS' is included." In particular, applicant notes that it has "identified the following registrations ... that identify educational and charitable services and [that] do not include a disclaimer of 'MISSION':"

- MISSION KIDS (Reg. No. 2,758,210) for "church-sponsored educational services, namely, conducting courses in missions education and conducting participatory supervised clinical laboratories related to missions, for children in grades 1-6";
- MISSION SPRINGS (Reg. No. 2,301,762) for "educational services, namely, conducting conferences, retreats, recreational youth camps, and outdoor education programs, primarily in the field of religion";
- MISSION RINGS (Reg. No. 2,573,342) for "educational services, namely, conducting seminars featuring the assistance of individuals in determining their life and relationship commitment to others, creating symbols representing those commitments, and furnishing these symbols in the form of physical objects representing these commitments in connection therewith"; and
- MEMORY MISSION (Reg. No. 2,813,503) which has been registered for "charitable services, namely, providing photography services to communities, organizations, and persons that have suffered disasters, hardship or otherwise in need; recovering and

restoring damaged photographs; and
compiling photographs in the form of
memory books."

Lastly, as to the Examining Attorney's reliance upon copies of various pages from applicant's websites, applicant contends that, rather than demonstrating that the mark "MISSIONS FEST" merely describes applicant's services as asserted by the Examining Attorney, "the printouts show that Applicant is involved in the field of religion" but otherwise "do not support the Examining Attorney's position."

The Examining Attorney, on the other hand, argues that applicant has conceded the descriptiveness of the term "FEST" by virtue of its disclaimer thereof and that the term "MISSIONS" clearly and unmistakably describes the purpose and subject matter of applicant's conferences, seminars, workshops and rallies, which he maintains are for promoting religious missions. Although recognizing that a mark which combines two descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, the Examining Attorney urges that in this instance, no new and different commercial impression is created by the mark "MISSIONS FEST." Instead, he insists that "in the present case, the combination of the descriptive words creates no incongruity, and no imagination is required to understand the nature of the services." In consequence thereof, the Examining Attorney concludes that the mark "MISSIONS FEST" is merely descriptive of applicant's services.

As support for his contention of mere descriptiveness, the Examining Attorney has made of record dictionary definitions from www.infoplease.com showing that the term "mission" as an adjective means "of or pertaining to a mission" and as a noun is defined, in relevant part, as variously meaning "6. a group of persons sent by a church to carry on religious work, esp. evangelization in foreign lands, and often to establish schools, hospitals, etc. 7. an establishment of missionaries in a foreign land; a missionary church or station. 9. the district assigned to a missionary. 10. missionary duty or work. 11. an organization for carrying on missionary work. 12. Also called **rescue mission**, a shelter operated by a church or other organization offering food, lodging, and other assistance to needy persons. 13. **missions**, organized missionary work or activities in any country or region. 14. a church or a region dependent on a larger church or denomination. 15. a series of special religious services for increasing religious devotion and converting unbelievers: *to preach a mission*." Also of record is a definition from [The American Heritage Dictionary of the English Language](#) (4th ed. 2000) which defines "fest" as a noun meaning "[a] gathering or occasion characterized by a specified activity. Often used in combination: *a music fest; a chilifest*."

With respect to the four third-party registrations relied upon by applicant, the Examining Attorney maintains that a lack of a disclaimer of the term "MISSION" therein is "not persuasive evidence" of the suggestiveness of such term when used

in connection with applicant's services, citing *In re Scholastic Testing Service, Inc.*, 196 USPQ 517, 519 (TTAB 1977) for the proposition that, as stated in his brief:

Third-party registrations are not conclusive on the question of [mere] descriptiveness. Each case must be considered on its own merits. A proposed mark that is merely descriptive does not become registrable simply because other similar marks appear on the register.

Nonetheless, the Examining Attorney goes on to state that he has made of record "third-party registrations for marks used in connection with related services [or goods] that did include a disclaimer of MISSION or MISSIONS." Such registrations, each of which issued on the Principal Register, are:

Reg. No. 2,819,174, issued on March 2, 2004 for the mark "TRINITY MISSIONS" for "educational religious services, namely, teaching religious doctrines and training missionaries" and for "directing missionary activities";

Reg. No. 2,296,863, issued on November 30, 1999 for the mark "MISSIONS WORLD" for a "magazine in the field of foreign religious missions"; and

Reg. No. 2,143,406, issued on March 10, 1998 for the mark "MISSION QUEST" for "religious and cultural training in the form of seminars and individual instruction to prepare missionaries for national and international mission trips."

Finally, the Examining Attorney urges that "[t]he [mere] descriptiveness of the term MISSIONS in the context of the applicant's services is demonstrated by the fact that the term is used descriptively in advertisements for the applicant's services which were made of record via" excerpts from applicant's websites. In particular, the Examining Attorney points out that

"[o]ne excerpted statement from these advertisements reads [in full] as follows:" "Missions Fest Vancouver is part of Missions Fest International and highlights global mission opportunities, showcases over 230 international mission organizations, features world class speakers within the context of 130 seminars, plenary sessions, youth rallies, and children's workshops." Although not noted by the Examining Attorney, we observe that another excerpt, from the same <http://www.missionsfestvancouver.ca> website as that of the excerpt previously mentioned, refers to an "International Directory of Missions Festivals." Both excerpts feature a banner with the phrases "Welcome to Missions Fest™ Vancouver • January 26-28,2007" and "'Called to Serve'" and contain a series of tabs on separate topics which are entitled "Mission Opportunities," "Conference 2007," "Volunteering," "Current Events," "Bookstore," "About Us" and "Home." A third excerpt, while also not referred to by the Examining Attorney, is taken we note from applicant's <http://www.missionsfestseattle.org> website and states, among other things, that: "The purpose of Missions Fest Seattle is to glorify God by raising the awareness of mission activity within Christ's body of believers and by uniting and empowering members of local congregations to work together in obedience to the Great Commission." Such excerpt additionally contains the statements "SAVE THE DATE: OCTOBER 12-13, 2007 MISSIONS FEST SEATTLE" and "Missions Fest Seattle will be held at Overlake Christian Church in Redmond, WA" and refers, under the heading "NEWS & EVENTS," to an "Exhibitors and Booths Application 2007" and an "Attendee Feedback Survey" in addition to a list of separate topic tabs

which are entitled "ABOUT US," "GET INVOLVED," "FOR EXHIBITORS," "EVENT SCHEDULE," "GUEST BOOK" and "RESOURCES."

According to the Examining Attorney, "[g]iven the use of the term [MISSIONS FEST] in this manner by the applicant in its [webpage] advertisements, it is disingenuous for the applicant to contend that the term 'suggests errands or tasks' when used in the context of applicant's services." Similarly, the Examining Attorney insists, it is simply not persuasive for applicant to dismiss "the overwhelming evidence of the [mere] descriptiveness of the term by stating that it ... [only] shows 'that Applicant is involved in the field of religion.'"

Applicant, in its reply brief, reiterates its contention that its mark is suggestive rather than merely descriptive, asserting in particular that:

.... A term is "descriptive if it forthwith conveys an immediate idea of the ... qualities or characteristics of the [services or] goods." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 11 (2d Cir. 1976) (quoting *Stix Prods., Inc. v. United Merchs. & Mfrs., Inc.*, 295 F. Supp. 479, 488 (S.D.N.Y. 1968)). "If the mental leap between the word and the [service's or] product's attribute is not almost instantaneous, this strongly indicates suggestiveness, not direct descriptiveness." *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902, 911 (9th Cir. 1995).

This "mental leap" is not instantaneous here. As explained in Applicant's Appeal Brief, Applicant does not use the mark MISSIONS FEST in connection with missions. To paraphrase the definitions of "mission" listed ... in the first Office Action, ... Applicant's events are not held in foreign countries by groups of people sent there to carry out religious work. No assistance to needy persons is rendered at Applicant's

events. Moreover, the purpose of the events is not to "convert unbelievers," as virtually all (if not all) of the attendees are already "believers." Simply put, MISSIONS FEST is not a "fest" (or festival) of "missions," and thus the mark is not merely descriptive. See *Rubber Specialty, Inc. v. Sneaker Circus, Inc.*, 195 U.S.P.Q. 798 (S.D. Fla. 1977) ("If the mark describes something other than the goods or services to which it is applied, it is not descriptive").

Noting, furthermore, that the Examining Attorney's "sole evidentiary citation is to an advertisement [on a website] in which Applicant uses the term 'mission,'" applicant observes that:

[A] plain reading of the quoted language shows that the advertisement does not purport to offer "missions" at Applicant's events. Instead, the advertisement is used to explain that over 230 independent organizations, who participated in one of Applicant's events, offered visitors information about opportunities to get involved with missionary activity through such organizations.

Applicant emphasizes that "while Applicant's service is concerned primarily with providing information about organizations that perform missionary work, Applicant itself does not perform missions as part of its events." Applicant also maintains that its "[u]se of 'mission' when mentioning topics covered in educational programs does not detract from the suggestive commercial impression produced by MISSIONS FEST as a mark."

Upon careful consideration of the arguments presented and evidence of record, we agree with the Examining Attorney that the mark "MISSIONS FEST" is merely descriptive of applicant's services. While we disagree with the Examining Attorney's characterization of the evidence in support thereof as being

"overwhelming," the dictionary definitions and website excerpts are nonetheless sufficient to show that the mark "MISSIONS FEST," as used in connection with applicant's services of providing "educational conferences, seminars and workshops all in the field of religion; conducting seminars for church leaders in the field of religion; [and] conducting youth rallies in the field of religion" immediately describes, without the need for speculation or conjecture, that the presentation of such services constitute a fest, gathering or occasion characterized specifically by their emphasis on religious missions.

Applicant, as noted earlier, "concedes that it provides ... services involving religious topics" and the record herein, while limited, nevertheless sufficiently demonstrates that its "educational conferences, seminars and workshops all in the field of religion; [its] conducting [of] seminars for church leaders in the field of religion; [and its] conducting [of] youth rallies in the field of religion" have as their religious topics the providing of information on opportunities for religious missions to attendees thereof and those likewise interested in missionary work or other kinds of religious-based missions activities. Thus, contrary to applicant's contention that "[s]imply put, MISSIONS FEST is not a 'fest' (or festival) of 'missions,'" the record shows that applicant's educational conferences, seminars, workshops and youth rallies plainly focus on the subject matter of religious missions as parts of a fest (or festival) devoted principally to spreading the word about the availability of such

missions to those interested in participating in missions activities.

In particular, while it is clear that applicant does not engage in missionary work or other kinds of missions activities, its educational conferences, seminars, workshops, and youth rallies are directed to providing information on a variety of religious missions. As plainly demonstrated by its website advertising, applicant's promotion of its services "highlights global **mission** opportunities, showcases over 230 international **mission** organizations, [and] features world class speakers within the context of 130 seminars, plenary sessions, youth rallies, and children's workshops" (emphasis added). Its website advertising also lists "**Mission** Opportunities"; refers to an "International Directory of **Missions** Festivals" which it sponsors; and states that "[t]he purpose of Missions Fest ... is to glorify God by raising the awareness of **mission** activity" (emphasis added) in addition to providing information for exhibitors who desire to appear at its events (e.g., "Exhibitors and Booths Application 2007"). Applicant, moreover, acknowledges that, as previously noted, its services are "concerned primarily with providing information about organizations that perform missionary work." In view thereof, it is plain that the services rendered by applicant under the mark "MISSIONS FEST," given the emphasis on providing attendees thereof with information about the availability of religious missions which they may wish to pursue, are a fest on the subject of religious "missions" which is analogous to what a "music fest" is to the presentation of music

or a "chilifest" is to a gathering of devotees of chili. No new or different commercial impression is derived from the combination of the words "MISSIONS" and "FEST" into the term "MISSIONS FEST"; rather, such term continues to project the ordinary dictionary meaning of its constituent words and, as such, merely describes applicant's services. Nothing requires the exercise of a multi-stage reasoning process, or the utilization of imagination, thought or perception in order for consumers of applicant's services to immediately perceive the merely descriptive significance of such term.

As to the third-party registrations relied upon by applicant and the Examining Attorney as support for their respective positions, we note simply that we find such evidence inconclusive. Our principal reviewing court has stated that "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board" *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Moreover, and in any event, on this limited record there is no consistent practice which is shown by the third-party registrations with respect to whether the term "MISSION" or its plural "MISSIONS" is regarded as being merely descriptive in the context of services which involve mission activities or missionaries. Specifically, while two of the three registrations made of record by the Examining Attorney, which are the most relevant herein, contain disclaimers of such terms and pertain to services involving educational religious services such as

training of missionaries and directing missionary activities, two of the four service mark registrations submitted by applicant, which plainly are analogous to the services involved in this appeal because they likewise deal with church-sponsored and religious educational services, fail to include a disclaimer of the word "MISSION." The relevant third-party registrations simply are not definitive one way or the other.

Accordingly, because the dictionary definitions and website excerpts demonstrate that the mark "MISSIONS FEST" conveys forthwith that a significant aspect of applicant's "educational conferences, seminars and workshops all in the field of religion; conducting seminars for church leaders in the field of religion; [and] conducting youth rallies in the field of religion" is that its services serve as a gathering, occasion or fest for providing information on religious missions, such term is merely descriptive of applicant's services within the meaning of the statute.

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