

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 20, 2008
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re M6 Ventures LLC

Serial Nos. 78911566 and 78911613

Kathleen A. Pasulka of Procopio Cory Hargreaves & Savitch
LLP for M6 Ventures LLC.

Mary D. Munson-Ott, Trademark Examining Attorney,¹
Law Office 104 (Chris Doninger, Managing Attorney).

Before Seeherman, Hairston and Walters, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Applications have been filed by M6 Ventures LLC to
register the marks GANGA and GANGA \$5 & UNDER² for "retail

¹ A different examining attorney examined the applications; the applications were assigned to the present examining attorney at the appeal stage.

² Serial Nos. 78911566 and 78911613, respectively, each filed on June 19, 2006, based on an allegation of a bona fide intention to use the mark in commerce. At the request of the examining attorney, applicant submitted the following translation statement in each application: "The foreign wording in the mark translates into English as bargain." Also, in Serial No. 78911613, applicant disclaimed the term "\$5 & UNDER" apart from the mark as shown.

department store services" in International Class 35.

Registration has been finally refused in each case pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified services.

Applicant, in each case, has appealed. Applicant and the trademark examining attorney have filed briefs. Because the cases have been consolidated and the issue in each case is the same, the appeals have been treated in a single opinion.

The examining attorney maintains that the term "ganga" is the Spanish word for "bargain," and that "bargain" is a descriptive term for retail stores that feature goods at discount prices. Therefore, the examining attorney argues that GANGA is merely descriptive of applicant's identified services.

Applicant admits that the term "ganga" means "bargain" in Spanish (June 10, 2008 Response to Office Action). However, applicant argues that the term "ganga" also means "gang" in "Spanglish;"³ that there are many Spanish phrases

³ We judicially notice that "*Spanglish*" is defined as "*Spanish spoken with a large admixture of English, esp. American words and expressions.*" Random House Unabridged Dictionary (2006).

which mean "bargain," and, therefore, "it is unlikely that American buyers familiar with Spanish would assume that [the mark GANGA] has a descriptive or generic meaning as applied to the services of Applicant." (Brief at p. 3).

We must first determine whether the examining attorney has established that the word "bargain" is merely descriptive of applicant's identified services, namely, "retail department store services."

The test for determining whether a term is merely descriptive is whether it forthwith conveys an immediate idea of a quality, characteristic, function, feature, ingredient, attribute or feature of the goods or services in connection with which it is used, or intended to be used. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary, in order to find a term merely descriptive, that the term describe each and every feature of the goods or services, only that it describe a single ingredient, quality, characteristic or feature of the goods or services. See *In re H.U.D.L.L.E.*, 216 USPQ 358 (TTAB 1982); *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 used or intended to be used on or in connection with those 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. That a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

The examining attorney has submitted excerpts retrieved from the Internet showing uses of the word "bargain" in connection with retail store services. The following are examples:

Outlet/Bargain Stores

Overstock.com - Come shop at Overstock.com to find the real Deals! <http://www.christmasgifts.com>

O.U.R. Mission Bargain Stores

Bargains are often all that the needy can afford. Others can't resist them! If you love bargain hunting, you'll love the Mission's Bargain Stores. <http://ourm.org/stores>

NEW YORK Buying into the Big Apple

Boutiques, bargain stores and big retailers add to the city's appeal. <http://www.sfgate.com>

Bargain stores are popping up all over the country, Larry wrote to tell about a location that just opened up in his area ...

<http://www/betterbuilding.com>

Buying Luxury At a Bargain Store

Sensing Middle-Class Consumers With Luxury Ambitions, Discount Chains Stock More High-End Items <http://abcnews.go.com>

Further, the examining attorney submitted copies of third-party registrations for marks containing the word BARGAIN, with a disclaimer thereof, for retail store services in various fields. Examples include Registration No. 2326653 for the mark BARGAIN BLITZ (BARGAIN disclaimed) for "retail store services in the field of sporting goods;" Registration No. 2588124 for the mark BARGAIN ALLEY (BARGAIN disclaimed) for "retail store services;" Registration No. 2731479 for the mark FINGER'S WAREHOUSE BARGAIN BASEMENT (WAREHOUSE BARGAIN BASEMENT disclaimed) for "retail furniture stores;" Registration No. 2945705 for the mark BARGAIN COUNTDOWN (BARGAIN disclaimed) for "online retail ordering services" featuring a variety of electronic and computer products; and Registration No. 3082607 for the mark B BARGAIN WORLD (BARGAIN disclaimed) for "retail gift shop services; retail store services featuring souvenirs, shoes, clothing and toys."

In addition, the examining attorney submitted an entry from the The American Heritage Dictionary of the English Language (4th ed. 2000) where the word "bargain" is defined, inter alia, as: "3. *Something offered or acquired at a price advantageous to the buyer.*"

It is clear from the examining attorney's evidence that the word "bargain" has descriptive significance when

used in connection with retail stores featuring discounted or low price merchandise. Therefore, prospective purchasers who encounter the word "bargain" for retail stores would immediately understand that the word describes a significant feature of such stores, namely, that they feature discounted or low price merchandise. Applicant's identification "retail department store services" is broad enough to encompass stores that sell merchandise of this type. We find, therefore, that the term "bargain" is descriptive of applicant's identified services.

We next must determine whether the term "ganga" is the foreign equivalent of the word "bargain." The Federal Circuit has recently discussed the applicability of the doctrine of foreign equivalents.

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine genericness, descriptiveness, as well as similarity of connotation in order to ascertain confusing similarity with English word marks ...
Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline ...
The doctrine should be applied only when it is likely that the ordinary American purchaser would "stop and translate [the word] into its English equivalent." In *Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976).

Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed.

Cir. 2005). The "ordinary American purchaser" for purposes of the doctrine is a purchaser of goods and services who is knowledgeable in the foreign language.

The examining attorney presented an excerpt from the online translation site <http://www.ultralingua.com> showing that the term "ganga" is the Spanish equivalent of "bargain." Further, as previously indicated, applicant has admitted that "ganga" means "bargain" in Spanish, and has supplied a translation for the record that "The foreign wording in the mark translates into English as bargain."

Although applicant has submitted evidence showing that there are other Spanish terms that mean "bargain," the existence of these other terms does not in any way lessen the descriptive significance of the word "ganga." See *Roselux Chemical Co., Inc. et al. v. Parsons Ammonia Company, Inc.*, 132 USPQ 627 (CCPA 1962); *Meehanite Metal Corp. v. The International Nickel Co., Inc.*, 120 USPQ 293 (CCPA 1959). Also, there is no evidence in this case which suggests that "ganga" is an obscure Spanish term. Indeed, in the excerpt submitted by applicant from the online translation site <http://www.wordreference.com>, "ganga" is listed in entry no. 2 for the word "bargain."

Finally, with respect to applicant's contention that "ganga" has another meaning, namely, "gang" in "Spanglish,"

Ser No. 78911566 and 78911613

as we previously stated, whether a term is merely descriptive must be determined in the context in which it is used or intended to be used in connection with the goods or services. In the context of applicant's retail department store services, purchasers would readily understand "ganga" to mean "bargain." That "ganga" may have another meaning in a different context is not controlling.

In view of the foregoing, we find that the mark GANGA is merely descriptive of applicant's retail department store services.

As noted, in Serial No. 78911613 which covers the mark GANGA \$5 & UNDER, applicant disclaimed the term \$5 & UNDER. This term is clearly descriptive of retail department store services as it forthwith conveys an immediate idea of a feature of such services, namely, that at least some of the merchandise sold therein retails for five dollars and under. We find that the two merely descriptive terms which comprise applicant's mark in this application, i.e., GANAGA and \$5 & UNDER, are likewise merely descriptive when considered together. It is possible that two terms which in themselves are merely descriptive may be combined into a composite term which is not merely descriptive because it is more than the sum of

Ser No. 78911566 and 78911613

its parts. In such cases, combining or juxtaposing the two descriptive terms may result in an inventive or incongruous new composite. However, this is not such a case. While combining a Spanish term and an English term to form a composite term may be somewhat unusual, there is nothing incongruous or particularly inventive about combining the Spanish term GANGA and the English term \$5 & UNDER into GANGA \$5 & UNDER, where that composite is used in connection with retail department store services featuring merchandise that retails for five dollars and under.

Accordingly, we find that the mark GANGA \$5 & UNDER is merely descriptive of applicant's retail department store services.

Decision: The refusals to register under Section 2(e)(1) in application Serial Nos. 78911566 and 78911613 are affirmed.