

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Hearing:
March 25, 2003

Mailed: July 30, 2003
Paper No. 20
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Buell Motorcycle Company
v.
Honda Giken Kogyo Kabushiki Kaisha
(Honda Motor Co., Ltd.)

Opposition No. 121,790
to application Serial No. 75/536,031
filed on August 13, 1998

Glenn E. Forbis and Kristin L. Murphy of Rader, Fishman & Grauer PLLC and Linda K. McLeod of Finnegan, Henderson, Farabow, Garrett & Dunner L.L.P. for Buell Motor Company.

Anthony L. Fletcher of Fish & Richardson P.C. for Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Company, Ltd.).

Before Quinn, Hairston and Bottorff, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.) to register

Opposition No. 121,790

STREETFIGHTER as a trademark for "motorcycles and structural parts therefor."¹

Registration has been opposed by Buell Motorcycle Company on the ground that STREETFIGHTER is either generic or merely descriptive of a category of motorcycles. Opposer alleges that "since at least as early as 1995, [it] has been involved in the manufacture and sale of motorcycles which are of a related nature to Applicant's motorcycles, and which Opposer has a valid right and legal right to describe by use of the term streetfighter sought to be registered by Applicant."

Applicant has denied the salient allegations in the notice of opposition.

Evidentiary Matter

At the outset, there is an evidentiary matter we must discuss. First, at the oral hearing held in this case on March 25, 2003, opposer's counsel tendered to the Board three demonstrative exhibits which she indicated were based on evidence and testimony of record. Although applicant's counsel made no objections to the exhibits at the hearing, on March 27, 2003, he filed a communication wherein he objects to one of the exhibits, namely a chart styled

¹ Application Serial No. 75/536,031, filed August 13, 1998, and asserting a bona fide intention to use the mark in commerce.

Opposition No. 121,790

"Categories of On-road Motorcycles." According to applicant's counsel, "[The chart] is, at best, a highly selective syntheses of information contained in various parts of the record, and one of many such synthesis. It is not a fair representation or summary of evidence in the record."

On April 11, 2003 opposer's counsel filed a response to applicant's communication. Opposer's counsel maintains that the chart is based upon evidence and testimony in the record and therefore requests that we overrule applicant's objection.

On April 24, 2003 applicant's counsel filed a further communication wherein he essentially reiterates his objection to the chart.

TBMP Section §802.07 (2d. ed June 2003) provides, in relevant part that:

The Board will generally allow certain types of materials, such as graphs, large depictions of marks, schedules, charts, etc. to be used at oral hearing, either for clarification or to eliminate the need for extended description, when such materials are based on evidence properly of record.
(citation omitted)

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A party may not, however, use an oral hearing for the purpose of offering new evidence, whether in the form of charts, graphs, exhibits, or other materials.
(citation omitted)

Opposition No. 121,790

Materials presented at an oral hearing do not form part of the record in a case, and suffice it to say that in reaching our decision herein, we have considered only that evidence which was properly made of record during the parties' respective testimony periods. In other words, we have not based any of our findings or conclusions on opposer's chart.

The Record

The record consists of the pleadings; the file of the involved application and the testimony depositions (with exhibits) of opposer's witnesses Lisa Nielson and David Edwards. In addition, opposer submitted by way of notices of reliance the discovery deposition of William F. Herten, an officer of applicant; applicant's responses to opposer's interrogatories; copies of books; excerpts from printed publications; and web pages downloaded from the Internet.²

² While printouts retrieved from the Internet generally do not qualify for admission into evidence under Rule 2.122(e), in this case, the parties have stipulated to the entry of the printouts into evidence.

Applicant did not take testimony or submit any other evidence.³ An oral hearing was held at which both parties were represented by counsel.

The Terminal Date For Evidence Relating To Genericness

Before discussing the genericness and mere descriptiveness claims, we must first consider what applicant deems "a critical issue" in this case, namely, whether evidence of generic use of a term dated after the filing date of the involved application may be considered in registrability determinations. It is applicant's position that the terminal date for evidence on the issue of genericness is the application filing date. In other words, applicant contends that the Board may not consider any evidence of use of the term STREETFIGHTER which is subsequent to August 13, 1998, the filing date of applicant's application.

³ Applicant did, however, include in its brief on the case a dictionary definition of the word "streetfighter" from the Random House Webster's Unabridged Dictionary (2d ed. 1997). Although this definition is technically untimely, we have considered it inasmuch as the Board may properly take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). We note that this dictionary excerpt defines the word "streetfighter" as a "person whose style of fistfighting was learned in the streets, as opposed to a trained or proficient boxer" and "a person who deals with others in an aggressive, cunning manner."

Opposition No. 121,790

In support of its position, applicant relies on three cases decided by our primary reviewing court - McCormick & Company v. Summers, 354 F.2d 668, 148 USPQ 272 (CCPA 1966); Roselux Chemical Co. v. Parsons Ammonia Co., 229 F.2d 855, 148 USPQ 272 (CCPA 1962); and DeWalt, Inc. v. Magna Power Tool Corp., 289 F.2d 656, 129 USPQ 275 (CCPA 1961). In addition, applicant contends that the Trademark Law Revision Act mandates that the terminal date for evidence on the issue of genericness be the application filing date.

Considering first the case law on this issue, applicant appears to have conveniently ignored our primary reviewing court's later decision which is clearly inapposite to applicant's position. In the case of *In re Thunderbird Products Corporation*, 406 F.2d 1389, 160 USPQ 730, 732 (CCPA 1969), the court dealt with the question of "whether the fact [that a] mark which had become descriptive by 1965 should defeat [the] trademark application filed in 1963, at which time, as far as the record shows, the mark was suitable for registration." The court stated, in relevant part:

We note that in *DeWalt* the mark was already descriptive by the time the trademark application was filed and the case does not therefore provide us with a solution to the present situation where the record does not show the generically designative connotations of the mark "cathedral hull" to have been acquired until some period after the filing date.

However, DeWalt furnishes a starting point for a development of the law in this area which leads next to McCormick & Co., Inc. v. Marion K. Summers, 354 F.2d 668, 148 USPQ 272 (1966). McCormick, who since 1955 had used the phrase HOUSE OF FLAVOR in its advertising, opposed registration on the Principal Register of HOUSE OF FLAVORS by Summers who had a registration of the mark on the Supplemental Register and alleged use of the mark since 1932. The Summers application for registration on the Principal Register was filed on November 23, 1959; however the Trademark Trial and Appeal Board, determining the issue of registrability, considered forty six letters from customers of Marion Kay Products dated September 27, 1961, almost two years subsequent to the filing date of the application. It would appear, therefore, that the board was considering the issue of registrability against the factual situation prevailing in 1961 at the time the problem was before the board rather than against the factual situation prevailing when the application was filed in 1959. In McCormick this court said "registrability of a mark must be determined on the basis of facts as they exist at the time when the issue of registrability is under consideration" and it appears to us consistent with McCormick and DeWalt as well as sound principle to decide in the present appeal that the time when the issue of registrability is under consideration extends at least to the time the application is acted on in the Patent Office.

To summarize, the board properly considered the literature references published after the filing of the application and correctly decided that the term "cathedral hull" designates a type of boat hull. It is therefore descriptive and not registrable as a trademark. In re Thunderbird Products Corporation, pp. 732-733.

Thus, it is clear from the court's decision in In re Thunderbird Products Corporation that the issue of genericness is to be decided on the basis of the facts as

Opposition No. 121,790

they exist at the time when the issue is under consideration.

Also, in *Remington Products Inc. v. North American Philips Corporation*, 892 F.2d 1576, 13 USPQ2d 1444, 1449 (Fed. Cir. 1990), the Court stated in determining the descriptiveness/genericness of the term "travel care," "there is a point in *DeWalt*, repeated in *Thunderbird*, which applies to this case, namely that descriptiveness is determined in cases of this type 'on the basis of the factual situation as of the time registration is sought,' meaning now." (emphasis in original).

Thus, it is clear from the court's later decisions that the issue of genericness is to be decided on the basis of the facts as they exist at the time when the issue is under consideration.

We also note, in this regard, the recently decided opposition case of *Callaway Vineyard & Winery v. Endsley Capital Group, Inc.*, 63 USPQ 1919 (TTAB 2002). The applicant sought to register the term COASTAL WINERY in an intent-to-use application. Registration was opposed on the grounds that the term "coastal winery" is generic and merely descriptive when applied to varietal wines. On summary judgment, the Board found that the evidence supported a finding that "coastal wine" is commonly recognized and understood to mean wines produced from grapes, vineyards or

Opposition No. 121,790

wineries located on the California coast. In reaching its decision, the Board relied on newspaper and trade publication articles dated after the filing date of the involved application.

Neither do we find support for applicant's position in the Trademark Law Revision Act. Applicant argues that "to consider the inherent registrability of a mark that is the subject of an Intent-to-Use application - as is STREETFIGHTER - at any time after application will frustrate the intent of the TLRA." (Brief, p. 10). However, there is no section in the Act itself which deals with the question of when evidence bearing on the issue of genericness must be dated and applicant fails to point to any part of the legislative history of the Act where this particular question was discussed.

With respect to applicant's contention that permitting a party to submit evidence on the issue of genericness will result in "trademark destruction," in that a competitor will be able to target a mark which is the subject of an intent-to-use application by using it in a generic manner and encouraging others to do so, this is nothing more than speculation on applicant's part. As applicant acknowledges, there is certainly no evidence of such a plan in this case, and again, there is nothing in the legislative history of the Trademark Law Revision Act which indicates that

Opposition No. 121,790

"trademark destruction" was a concern in regard to intent-to-use applications.

Finally, applicant's position is untenable in view of Section 14 of the Trademark Act, 15 U.S.C. §1064 which permits a party to petition to cancel a registration at any time if the mark which is the subject thereof "becomes the generic name of the goods or services." (emphasis added) It only makes sense that a party seeking to cancel a registered mark would be permitted to introduce evidence on the issue of genericness dated after issuance of the registration (and thus, after the underlying application filing date). Applicant has presented no persuasive authority or reason why the evidentiary standard and burden for proving genericness should be more strict in an opposition proceeding than it is in a cancellation proceeding.

In view of the foregoing, we find that it is appropriate for us to consider evidence bearing on the issue of genericness which is dated after August 13, 1998, the filing date of applicant's intent-to-use application.

Genericnes

Turning then to the issue of genericness, a generic term is the common descriptive name for a class or genus of

Opposition No. 121,790

goods or services. Our primary reviewing court has stated that "[d]etermining whether a mark is generic . . . involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). See also *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985). Thus, the test for determining whether a term is generic is its primary significance to the relevant public; that is, whether the term is used or understood by purchasers or potential purchasers of the goods or services at issue, primarily to refer to the class of such goods or services. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *In re Merrill, Lynch, Pierce, Fenner and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, *supra*; and *In re Leatherman Tool Group, Inc.*, 32 USPQ2d 1443 (TTAB 1994). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, newspapers, magazines, dictionaries, catalogs, and other publications.

Opposition No. 121,790

See In re Merrill, Lynch, Pierce, Fenner and Smith Inc., supra; and In re Northland Aluminum Products, Inc., supra.

In this case, applicant's goods are motorcycles and structural parts therefore. The target audience for applicant's goods primarily comprise motorcyclists.

It is opposer's position that a "streetfighter" is a type of motorcycle and in particular a "sub-class of the sportbike/superbike category." It is a "high performance bike" with "less body work than most motorcycles" and the engine is "typically very powerful such that the motorcycle is capable of achieving very high speeds." (Brief, pp. 2-3).

Applicant, on the other hand, argues that the term "streetfighter" is simply a metaphor for motorcycles and is not the common descriptive name for a type of motorcycle.

After careful consideration of the record herein, we find that there is sufficient evidence to demonstrate that the relevant public understands the term "streetfighter" to primarily refer to a type of motorcycle. The evidence from websites and printed publications which we deem probative of our finding consists of the following (**streetfighter(s)** is highlighted):

Excerpts from the web page of a custom motorcycle shop named "**Streetfighters** By Design":

*If you are a motorcycle enthusiast with the passion and the hunger for the "one of a kind" motorcycle, let us show you the **streetfighter** concept*

from Europe that transforms your sports bike from the boring to the unique-- and exposes your style.

...

*Black chrome flat drag bars were a must, along with gauges from an R1, and small twin spots-- the signature of a **Streetfighter**.*

...

*If there is something you are looking for, we will do our best to find it for you. Or, if you need help building your **streetfighter**, let us know.*

An excerpt from a review of one of opposer's motorcycles which appeared in Sport Rider magazine:

*Love'em or Hate'em, **streetfighter**-style motorcycles are becoming popular in America (having long had an enormous following across the pond) and the Buell Lightning X1, with its aggressive styling and upright riding position, practically stands up and screams the part.*

An excerpt from the website (www.stormloader.com):

*Choppers and **streetfighters** both represent ingenuity in the face of conformity. The chopper is now a tradition, while the **streetfighter** is a new form of the same rule-breaking innovation that has always been the chopper's domain.*

An excerpt from a review of Honda motorcycles and related products for 2000 downloaded from the website www.findarticles.com:

*. . . ATV, dirtbike, **streetfighter**, Honda has certainly put some punch into its 2000 model line-up.*

Excerpts from the website of a company which services motorcycles and offers motorcycle parts and accessories (www.stick-up.com):

Caption: **Street Fighters** & Custom Sport Motorcycles

You're probably wondering "What the hell is a **Streetfighter**?" Well folks, it's the ultimate motorcycle! It's a Primal Balls-to-the-walls, Kick-ass machine. A **streetfighter** is an aggressive motorbike which is all about power: burning tires, screaming exhausts; and going beyond the fairings to exposing the bike's Heart & Soul, the power house.

I started the project in the winter of 1997. At the time it was all I talked about. The only thing that got me excited was the idea of my first **streetfighter** bike and the possibility of creating many other unique **streetfighter** bikes. I decided that I wanted to pioneer the first "**streetfighter**" motorcycle shop in the U.S.

Excerpts from the website www.streetfighters-usa.com:

This website is dedicated to owners and future owners of **Streetfighters**. As well as finding out what's happening in the world of **Streetfighters**, you will be able to find tips on how to build your own **Streetfighter**. If your (sic) looking for parts or accessories for your **Streetfighter**, you've come to the right place. This sight contains an exclusive on-line shop with secure ordering for complete peace of mind. Our secure on-line store should have everything you need and if it isn't here just e-mail us and we will get it for you.

An excerpt from a review of the 2000 Laverdas 750 Strike motorcycle from the website www.roadracing.com:

The chassis remained composed and never wandered about when traversing rough pavement as is the tendency of a number of other "standards" and "**street-fighters**."

An excerpt from the product brochure for the "Yamaha Road Star Warrior" motorcycle:

Introducing the all-new Road Star Warrior.

*Part muscular modern-day **streetfighter**, part cruiser from a by-gone era.*

An excerpt from a review of opposer's Firebolt XB9R motorcycle from Thunder Press magazine:

*At one time, you just bought a motorcycle. Now though, you buy a touring bike, sportbike, hooligan, **streetfighter**, dual sport, super-motard, cruiser, sportfighter, etc., etc. In fact, the hairs have been split even finer as we now have sport tourers and sport cruisers.*

Although there are several excerpts from websites and printed publications where it is not clear whether "streetfighter" is being used in a generic sense⁴, we nonetheless conclude that the above evidence demonstrates that the relevant public would understand the term to primarily refer to a type of motorcycle.

Also, the testimony of opposer's witness, David Edwards, is probative of the primary significance of the term "streetfighter" as used in connection with motorcycles. Mr. Edwards is the editor-in-chief of Cycle World magazine. According to Mr. Edwards, Cycle World is the largest monthly

⁴ For example, an excerpt from an on-line review of the "Triumph Speed Triple" motorcycle reads: "Its raw, aggressive styling is built around Triumph's 955cc three-cylinder engine. This gives the bike a **streetfighter** look with explosive performance, fantastic handling and the best braking on the market. In addition, an excerpt from the book 100 Motorcycles 100 Years: The First Century of the Motorcycle by Frederic Winkowski and Frank D. Sullivan (1999) reads: "On the other side of the wheel are the sportbike enthusiasts who flock toward aggressively styled (translation: mean looking), unbelievable fast superbikes whose '**streetfighter**' image is a direct throwback to the in-your face attitude of the cafe racers of the 1950's and 1960's.

Opposition No. 121,790

motorcycle magazine in the United States. Mr. Edwards was questioned as to use of the term "streetfighter" in Cycle World:

Q. Have you ever heard of the term "streetfighter?"

A. Yes.

Q. And has Cycle World ever used the term "streetfighter?"

A. Yes.

Q. How has Cycle World Magazine used the term streetfighter in this publication?

A. In various stories that cover a certain type of motorcycle known as streetfighters we've used that term on numerous occasions.

Q. And what do you mean by a "type of motorcycle?" Can you describe what a streetfighter is?

A. Generally speaking, a streetfighter is a sport bike, a high performance bike that has its body work taken off, higher handlebars put on, probably a custom exhaust system, that kind of thing. (Deposition, p. 5).

In addition, he testified about how he learned of the term "streetfighter" and the use of the term in the United States:

Q. Approximately, when did you first hear the term "streetfighter" used in connection with motorcycles?

A. Oh, its probably been about five years ago, maybe a little more. The term came out of England. We have trade-out agreements with several British magazines, and we subscribe to several of the British magazines. And that's where we first sort of ran across the

term. The British were using it.

Q. Is the term used by anyone in the U.S. market in the kind of manner you've described?

A. As a - brand name or a trade name?

Q. No.

A. As just a description?

Q. Yes.

A. Yeah. Yeah. It's used, I would say, quite universally among motorcycle enthusiasts. If you mention "streetfighters," generally people will know what you're talking about.

Q. Do you know how many - the length of time that it has been known in the U.S. as a - I guess as a category of sport bikes?

A. I would say roughly five years. It might be a year or two more, but about that time frame.
(Deposition, pp. 6-7)

Further, Mr. Edwards testified on cross-examination as follows:

Q. Have you heard motorcycle enthusiasts use the word "streetfighter" yourself?

A. Yes.

Q. When did that start happening, to the best of your recollection?

A. Again, you know, five to six years ago.

Q. In what situations would you have heard them use the term?

A. Well, at any gathering of bikes where there is a streetfighter-type of motorcycle or generally discussing types

of bikes.

Q. Is this a term that so far as you can tell is on the wane or gaining popularity or holding steady?

A. I would say that that type of motorcycle in its various iterations is probably gaining popularity. There are various names that are used instead of streetfighter. There's naked bike. There's hooligan bike. But generally those kind of bikes, sort of the high performance bikes without fairings, are gaining, I would say, in popularity.

. . .

Q. In all cases are these bikes that have been altered from production line models?

A. Well, it certainly started out that way. You know, there are certainly some production line bikes that would sort of fall in the streetfighter realm.

Q. Can you name some?

A. Well, certainly the Honda 919 would fit in that realm. The Ducati Monster. The Kawasaki ZRX1200, the Buell White Lightning from a few years ago. There are probably a few more that I'm not remembering now. (Deposition, pp. 7-9)

In support of its genericness claim, opposer also offered the results of a consumer survey commissioned by it for use in this case. The survey was directed by Lisa Nielson and its purpose was to determine whether the term "Streetfighter" is generic for motorcycles. It was based on telephone interviews with 171 registered owners of sportbikes in four markets, namely, New York, Boston,

Opposition No. 121,790

Chicago and Atlanta. The owners' names were obtained from the Polk List which is a registry of vehicle registrations in the United States. Ms Nielson testified that in determining what models of sportbikes to include in the survey she consulted with the marketing research director of Harley Davidson, opposer's parent corporation. According to Ms. Nielson, she purposely did not include owners of opposer's or applicant's sportbikes and she stated that she also reviewed the questions to be used in the survey with opposer's counsel.

In conducting the survey, the telephone interviewer asked each respondent whether or not he/she considered the following seven terms to be brands or kinds of motorcycles.

- Monster
- Fat Boy
- Ninja
- Streetfighter
- Venture
- Thunderbolt
- Valkyrie

In the survey, 59.1% of the respondents indicated that "Streetfighter" is a kind of motorcycle, 21% considered "Streetfighter" a brand of motorcycle, and 20% did not know whether it was a kind or brand of motorcycle.

Ms. Nielson concluded from this survey that "'Streetfighter' is a kind of bike and not a brand of bike." (Deposition p. 31).

Opposition No. 121,790

Not surprisingly, applicant has raised a number of objections and perceived flaws regarding the survey. In particular, applicant points to Ms. Nielson's failure to use equal numbers of brands and kinds of motorcycles in the survey. According to applicant, all but "Streetfighter" are known brands/names of motorcycles. Also, applicant contends that it was improper for Ms. Nielson to discuss the survey with opposer's attorneys and the marketing director of opposer's parent corporation. Although Ms. Nielson is qualified as a survey expert, we believe that opposer's objections do indeed have merit, and thus we have accorded no probative value to the survey results in reaching our decision herein.

Further, in reaching our decision herein, we have not relied on the evidence of use of the term "streetfighter" in publications and websites originating outside the United States. Applicant has objected to such evidence on the ground that it is irrelevant to a determination of whether, in the United States, the term "streetfighter" is the generic name for a type of motorcycle. We need not decide that issue, however, because we have found that the evidence of use of the term "streetfighter" in sources originating in the United States is sufficient to support a finding of genericness. We believe, however, that the foreign evidence establishes the genericness of "streetfighter" in Great

Britain for a type of motorcycle. Thus, the foreign evidence lends support to the finding that "streetfighter" is a generic term in the United States for a type of motorcycle.⁵

Mere Descriptiveness

Although we have found the term STREETFIGHTER to be generic as applied to motorcycles, in the interest of completeness, we will decide whether STREETFIGHTER is merely descriptive of such goods.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information about a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single,

⁵ See In re Consolidated Cigar Corp., 13 USPQ2d 1481, n. 7 (TTAB 1989). ("Notwithstanding that the material [relating to the uses of 'whiffs' in Great Britain] does not prove genericness in the United States, we think that the evidence of record establishes the genericness of 'whiffs' for a type of small cigar in Great Britain. Although it is conceivable that such term would not have a descriptive or generic status in this country as well, it is the more plausible assumption that the word would.") (citation omitted)

Opposition No. 121,790

significant quality, characteristic, function, ingredient, attribute or feature of the product or service. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Further, it is well established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to have on the average purchaser of such goods or service. In re Recovery, 196 USPQ 830 (TTAB 1977).

In this case, we find that the term "streetfighter" is merely descriptive of motorcycles in that it describes a particular type of motorcycle, i.e., a high-performance motorcycle with less body work than most motorcycles and a very powerful engine. See In re Abcor Development Corp., 588 F.2d 811, 816, 200 USPQ 215, 219 (CCPA 1978) (J. Rich, concurring) (In holding GASBADGE generic for a gas monitoring badge, Judge Rich noted in his concurring opinion that "the ultimate in descriptiveness is the *name* of a thing." (emphasis in original)).

Decision: The opposition is sustained on the grounds of genericness and mere descriptiveness.