

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **The Sisson Group Inc.**

Serial No. 74/**407,685**

Stephen L. Grant of Oldham, Oldham & Wilson for applicant.

Elissa Garber Kon, Trademark Examining Attorney, Law Office
106 (Mary Sparrow, Managing Attorney).

Before Seeherman, Quinn and Hairston, Administrative
Trademark Judges.

Opinion by **Quinn**, Administrative Trademark Judge:

An application has been filed by The Sisson Group Inc.
to register the mark STREET HOCKEY for "clothing for men,
women and children, namely, shirts, crew shirts, turtleneck
shirts, mock turtleneck shirts, pants, shorts, jackets,
sweatshirts, sweatpants, sweaters, vests, t-shirts, tank
tops, socks, caps, ties, and footwear, namely athletic
shoes."¹

¹ Application Serial No. 74/407,685, filed June 25, 1993,
alleging a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Act on the ground that applicant's mark, if applied to applicant's goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have submitted briefs.

Applicant acknowledges that there is a game called "street hockey" and that street hockey has become very popular in this country. However, applicant urges that the refusal to register be reversed, contending that the mark is not merely descriptive. Applicant states that there are no specific clothing items identified with street hockey and that the applied-for mark is, at worst, just suggestive of the aura and ambiance of street hockey or the lifestyle of a person who plays the game. Applicant also contends that the final refusal is premature and speculative inasmuch as applicant has not yet filed a statement of use with specimens showing how the mark is actually used in commerce.

The Examining Attorney maintains that the final refusal in this case is appropriate and that STREET HOCKEY is merely descriptive of clothing and footwear suitable for wear while one is playing street hockey. The Examining Attorney has submitted several excerpts retrieved from the NEXIS database which, according to the Examining Attorney, demonstrate the

descriptiveness of STREET HOCKEY with respect to footwear and apparel.

We first turn to the procedural aspect of applicant's appeal, namely, applicant's claim, raised for the first time in its appeal brief, that the final refusal was premature inasmuch as there is no evidence (that is, specimens supporting an amendment to allege use or a statement of use) of how the mark is actually used in commerce, thereby making it difficult to assess the descriptiveness of the mark as perceived by consumers in the marketplace.

As pointed out in detail by the Examining Attorney, applicant's position clearly is ill founded. Firstly, Section 1105.04(e) of the *Trademark Manual of Examining Procedure* (TMEP) provides that "[a]ny question as to whether a final action is premature must be raised while the application is still pending before the Examining Attorney." The question may not be advanced as a ground for appeal nor made the basis of complaint before the Trademark Trial and Appeal Board.²

Secondly, the case of *In re American Psychological Association*, 39 USPQ2d 1467 (Comr Pats 1996) is directly on

² The question of whether a final action is premature is reviewable by petition to the Commissioner. If applicant had wished to have this question reviewed, it could have filed a petition and, in order to preserve its right to appeal, filed a notice of appeal, with the appropriate fee, and requested that

point. As in that case, the identification of goods itself in the application involved here provides enough information about the goods to permit consideration of the issue of descriptiveness.

We now turn to the merits of the refusal. It is well settled that a term is considered to be merely descriptive of goods, 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. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). In this connection, registration must be refused if the term is descriptive of any of the goods for which registration is sought. In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505, 507

proceedings in the appeal be suspended pending a decision on the petition.

(CCPA 1980); and In re Richardson Ink Co., 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1980).

Applicant readily acknowledges that there is a game called "street hockey" and that it has become very popular in this country. The NEXIS evidence bears this out; moreover, the evidence also includes references to street hockey shoes and street hockey apparel. A few of the references are as follows:

This year's hot new category promises to be the street-hockey shoe...

The Houston Chronicle, May 13, 1995

L.A. Gear hopes to reverse its fortunes with the summertime introduction of its first street hockey sneakers...

Advertising Age, April 17, 1995

The company also will introduce its street hockey line of children's shoes and apparel this summer...

Los Angeles Times, April 15, 1995

Although it's still in its infancy, many industry veterans predict nothing but success for street-hockey shoes in seasons to come and say it could have volume of \$100 million to \$200 million.

Footwear News, February 13, 1995

It plans street hockey jerseys and \$95 NHL street hockey shoes...

USA Today, February 7, 1995

...industry observers expect the American sporting goods giant to fully glide into roller and street hockey apparel in the near future.

Chicago Tribune, July 18, 1995

...has launched its own street hockey shoe and related apparel...the line boasts a signature Gretzky shoe and a

full group of activewear, including t-shirts, jerseys, sweatshirts and caps...
Children's Business, March 1995

We agree with the Examining Attorney that the excerpts show that the term "street hockey," as applied to clothing and footwear, immediately conveys information about a feature, function or purpose of the goods, namely that they are designed for or are suitable for wear during the playing of the game of street hockey.³ The fact that applicant may have intended to be the first entity to use the term STRRET HOCKEY for clothing and footwear is not dispositive where, as here, such term unequivocally conveys a merely descriptive connotation. In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Decision: The refusal to register is affirmed.

E. J. Seeherman

T. J. Quinn

P. T. Hairston

³ During the prosecution of the application, applicant made reference to six third-party registrations covering clothing where the registered marks are the names of sports. A mere listing of third-party registrations is insufficient to make them of record. In re Classic Beverage Inc., 6 USPQ2d 1383, 1386 (TTAB 1988). In any event, even if copies of the registrations were properly of record, the registrations would be of little help in determining the registrability of the mark at issue in this case. As often noted by the Board, each case must be decided on its own set of facts.

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Judges, Trademark Trial
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