

Hearing:
April 23, 1997

Paper No. 20
PTH

THIS DISPOSITION IS
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gerald A. Weigert

Serial No. 74/605,074

Edouard V. Rosa for Gerald A. Weigert.

Anthony Masiello, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney).

Before Cissel, Quinn and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Gerald A. Weigert has filed an application to register
the term JETBIKE for goods which were subsequently
identified as "boats, namely recreational jet[-]powered
personal watercraft that plane on the surface of the water
by means of runners."¹

Registration has been finally refused pursuant to
Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1),
on the ground that the term is merely descriptive of

applicant's goods. Applicant has appealed.

Applicant and the Examining Attorney have filed briefs on the case, and an oral hearing was held.

It is essentially the Examining Attorney's position that the term JETBIKE is merely descriptive of applicant's goods because applicant's boats are propelled by a jet of water and resemble bikes. In addition, the Examining Attorney contends that JETBIKE, when used in connection with applicant's goods, is generic because it is the equivalent of "jet bike," the apt descriptive name for applicant's goods.

In support of the refusal to register, the Examining Attorney relies on thirty-three excerpts from the NEXIS data base wherein the term "jet bike" (two words) is used. We note that fourteen of the NEXIS excerpts are from foreign publications and are of no probative value as to public perception of the term in the United States, since there is no evidence as to the extent, if any, of circulation of those publications in the United States. See *In re Bel Pease Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986). Moreover, in four of the excerpts, "jet bike" appears to refer to a motorized land vehicle, and thus these excerpts are of no value in deciding the issue in this appeal. The following

¹ Application Serial No. 74/605,074 filed December 1, 1994, which alleges a bona fide intention to use the mark in commerce.

are representative examples of the remaining fifteen NEXIS excerpts, with the term **jet bike** highlighted:

But personal watercraft probably aren't what you have in mind when you think of a cruising vessel. Manufacturers eager to distance themselves from the idea that **jet bikes** are good only for hot-rodding, have been pushing cruising as a viable use for these machines. ("Jetcraft Junkies;" Motor Boating & Sailing; August, 1993);

. . . Marina, 1710 W. Mission Bay Drive, 222-6440. Rentals are available for sailboats, Aquacycles, powerboats, water **jet bikes**, sail boards and more. Prices: \$15 to \$65 an hour. ("Water Sports," The San Diego Union-Tribune; May 20, 1994);

While boaters have traditionally been big buyers of personal watercraft, manufacturers like Kawasaki and Sea-Doo are now launching their **jet bikes** directly into America's living rooms with TV ad campaigns that show the inherent fun of the sport. ("Wave Masters;" Motor Boating & Sailing; August 1994);

Goodwin said many problems come when riders try to engage in "dogfights." That's when riders on two or more of the **jet bikes** try to get as close to each other as possible and spray each other with their jet stream nozzles. ("Get Wet!;" The Dayton Daily News; July 22, 1995);

Sgt. McGrath said water **jet bikes** are particularly dangerous. "The **jet bikes** are treated as if they are toys, and they are not toys," he said. "The equipment in the water has to be handled with care and responsibility." ("Oklahoma Student Dies;" Dallas Morning News; August 17, 1995); and

Cruising on Lake Powell is like taking a waterborne trip into the Old West. We explore its rugged canyons on **jet bikes**-- four of the hottest on the water. ("Canyon Cruising;" Motor Boating and Sailing, September, 1995).

Based on the above evidence, the Examining Attorney concludes that the purchasing public would perceive the designation JETBIKE as a generic name for the type of boats offered by applicant.

Applicant, in urging reversal of the refusal to register, contends that at most, JETBIKE "suggests that personal watercraft may be in the shape of a bicycle and propelled by a jet type device;"² that JETBIKE is not the common term used to describe the type of boats sold by applicant; and that the NEXIS evidence is insufficient to establish that JETBIKE is generic of applicant's goods since most of the excerpts are taken from a single industry publication. In support of its position, applicant submitted copies of numerous articles, advertisements, and competitor product brochures wherein boats such as applicant's are referred to as watercraft, personal watercraft, or "PWC." In addition, applicant submitted the declarations of six individuals who are directly involved in

the personal watercraft industry, each of whom states, in relevant part, that he/she has personal knowledge of applicant's use of the "'JETBIKE' trademark," and that:

Based upon my personal knowledge, I am not aware of any other personal watercraft company that uses the JETBIKE trademark to describe its product line. However, I am aware of the common use of the terms watercraft, personal watercraft and runabouts to specifically describe jet powered watercraft.

We turn first to the question of genericness. The critical issue in determining whether a term is generic, as applied to the goods set forth in an application or registration, is whether the relevant public primarily uses or understands the term to refer to the category of goods or services under that term. See *Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). Evidence of the public's understanding of a term may be obtained from any competent source, including purchaser testimony, surveys, dictionaries, trade journals, newspapers and other publications. In *re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985). The burden is on the Patent and Trademark Office to establish the genericness of a term by "clear evidence" thereof. In *re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141,

² Although this is an intent-to-use application, it appears that

1143 (Fed. Cir. 1987). See *In re Gould Paper Co.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987).

After careful consideration of all of the evidence of record, we find that the primary significance to the relevant public of the term JETBIKE is not a generic expression for applicant's boats. The instances of generic use of the two-word term "jet bike" are de minimus, and it could be that the media has misused the term. In any event, the Nexis evidence is outweighed by the affidavits of the six individuals who are directly involved in the industry, namely boat manufacturers and retailers. Each of these individuals has stated that he knows of no other personal watercraft companies which use the term JETBIKE to describe their products. Moreover, the record fails to show that competitors have a need to use the term JETBIKE as a generic designation for boats such as applicant's; on the contrary, the record shows the opposite, namely that a fair number of competitors exist and that none of them uses the term JETBIKE, but rather, they use the terms "watercraft," "personal watercraft," "PWC," and "runabouts" as common names for these goods. We find, therefore, that on this record, JETBIKE has not been shown to be generic of applicant's goods.

applicant has begun to market goods under the involved mark.

We turn next to the question of mere descriptiveness. The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979); and In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985).

We have no hesitation in finding that JETBIKE is merely descriptive of applicant's goods. As shown by applicant's own description of its goods, JET describes the means by which applicant's boats are powered on the water. Moreover, applicant's boats do resemble both bicycles and motorcycles. In this regard, we note that applicant's boats are steered, in part, by handlebars and the rider straddles the boat as if riding a bicycle or motorcycle. Also, we note the following statements in applicant's product brochures which liken applicant's goods to motorcycles:

JETBIKE. The world's only motorcycle for the water.

This Grand Prix motorcycle-like, high speed machine is the only watercraft . . .

Design and Engineering Highlights . . . motorcycle twist throttle

Performance Highlights . . . motorcycle-like handling.

Accordingly, the relevant class of consumers will immediately understand, without any need for imagination, thought or perception, that applicant's boats are jet

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powered and possess the characteristics of bikes. Under the circumstances, we find that the term JETBIKE is merely descriptive of applicant's goods.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed.

R. F. Cissel

T. J. Quinn

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
Appeal Board