

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 6/25/98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Thomas A. Page

Serial No. 74/627,713

Mark A. Oathout for Thomas A. Page.

Chad M. Smith, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney)

Before Sams, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Thomas A. Page (applicant) seeks to register CIGAR CADDY in typed capital letters for "cigar holders in the nature of a small stand which may be inserted into the ground and which includes clips for holding cigars sold to golfers." The intent-to-use application was filed on January 31, 1995.

The Examining Attorney refused registration pursuant to Section 2(e)(1) of the Lanham Trademark Act on the basis that applicant's mark CIGAR CADDY "merely describes a

feature, function or purpose of [applicant's] goods."

(Examining Attorney's brief page 1).

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

Section 2(e)(1) prohibits the registration of marks which are "merely descriptive" of the goods or services for which registration is sought. (emphasis added). As Professor McCarthy notes, "a mark that connotes two meanings -- one possibly descriptive, and the other suggestive of some other association -- can be called suggestive, as the mark is not 'merely' descriptive." 1 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 11:19 at page 11-26 (4th ed. 1998). For example, the predecessor Court to our primary reviewing Court held that the mark SUGAR & SPICE was not "merely descriptive" of bakery products despite the fact that the mark named two key ingredients of bakery products (i.e. sugar and spice) because the mark also brought to mind the nursery rhyme "Sugar and Spice and Everything Nice." In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968).

When applied to applicant's goods, the word "caddy" has two relevant meanings. One meaning is "any of various devices for holding or storing certain articles." A second meaning is "a person who attends a golf player, carrying his

clubs, etc." Webster's New World Dictionary (2d ed. 1970). This second meaning of the word "caddy" is relevant because applicant's goods are specifically limited to items "sold to golfers." In this regard, applicant has made of record the declarations of golfers who express the view that to golfers, the primary meaning of the word "caddy" (or "caddie") refers to a person who assists a golfer with his/her clubs, balls, etc.

When one focuses on the definition of the word "caddy" as meaning "any of various devices for holding or storing certain articles," then CIGAR CADDY is descriptive of applicant's goods. Applicant's small stands, which may be inserted into the ground, clearly are devices for holding articles, such as cigars.

However, when one focuses on the second meaning of meaning "caddy" as meaning "a person who attends a golf player," then applicant's mark CIGAR CADDY is not merely descriptive of applicant's goods. Obviously, applicant's goods are not a person. We believe that purchasers of applicant's goods, which by definition are golfers, would, upon seeing the mark CIGAR CADDY on small stands for insertion into the ground (i.e. a golf course), think of a golf caddy (person). When viewed in this manner, applicant's mark CIGAR CADDY is only suggestive of applicant's goods in that it takes some thought process for

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purchasers (golfers) to go from the image of a caddy (a person) to the image of a device (a small stand which may be inserted into the ground and which assists with cigars and other items).

Accordingly, because to purchasers of applicant's goods (golfers) the mark CIGAR CADDY has two meanings -- one of which is descriptive and one of which is suggestive -- it cannot be said that the mark CIGAR CADDY is "merely descriptive."

Decision: The refusal to register is reversed.

J. D. Sams

E. W. Hanak

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial
and Appeal Board