

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB OCT. 5, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re ZD Inc.

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Serial No. 75/183,789

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Mark D. Engelmann of Fross, Zelnick, Lehrman and Zissu, PC  
for ZD Inc.

Gary R. Thayer, Trademark Examining Attorney, Law Office  
103 (Michael A. Szoke, Managing Attorney)

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Before Hanak, Hohein and Wendel, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

ZD Inc. (applicant) seeks to register HOMESHOPPER in  
typed drawing form for "entertainment in the nature of on-  
going television programming providing information of  
general interest to consumers." The intent-to-use  
application was filed on October 18, 1996.

The Examining Attorney refused registration on three  
grounds. First, citing In re Babies Beat Inc., 13 USPQ2d  
1729, 1731 (TTAB 1990), the Examining Attorney contends

that the "applicant failed to provide information about the intended audience, subject matter, purpose and channels of trade of [applicant's] services" despite repeated requests that applicant do so. (Examining Attorney's brief pages 12 and 19).

Second, the Examining Attorney refused registration on the basis that "applicant has failed to comply with the requirement to adopt an identification of the services which is not unreasonably broad." (Examining Attorney's brief page 16).

Finally, the Examining Attorney refused registration pursuant to Section 2(e)(1) of the Trademark Act on the basis that applicant's mark is merely descriptive of its services.

Each of the three grounds of refusal is without merit, and accordingly the refusal to register is reversed. Considering the first ground, it must be remembered that Babies Beat involved a use based application. This present application is an intent-to-use application. Section 1105.01(a)(iv) of the Trademark Manual of Examining Procedure provides, in pertinent part, that "the examining attorney may not make any inquiry or request any information premised on use of the mark before the applicant files an amendment to allege use." The Examining

Attorney has acknowledged that such an amendment has not been filed. (Examining Attorney's brief page 2). Accordingly, applicant's failure to provide more information regarding the nature of the services on which it intends to use its mark HOMESHOPPER is not a proper ground for refusal.

Second, with regard to the Examining Attorney's refusal to register on the basis that "applicant has failed to comply with the requirement to adopt an identification of the services which is not unreasonably broad," we simply note that the Examining Attorney has conceded that applicant's identification of its services is "a possibly acceptable identification" depending upon what the specimens of use show applicant's services to be. (Examining Attorney's brief page 16). We find that applicant's chosen identification of services -- entertainment in the nature of on-going television programming providing information of general interest to consumers -- is acceptable and is not necessarily overly broad. Accordingly, the second ground for refusal is likewise without merit.

Finally, we turn to the question of whether applicant's mark is merely descriptive of applicant's services. As has been stated repeatedly, "a term is merely

descriptive if forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services]." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (emphasis added); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2<sup>nd</sup> Cir. 1976). Moreover, the immediate idea must be conveyed forthwith with a "degree of particularity." In re TMS Corp. of the Americas, 200 USPQ 57, 59 (TTAB 1978); In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd 90-1495 (Fed. Cir. February 13, 1991).

There is no dispute that applicant has previously used its mark HOMESHOPPER on a Web site and in a publication involving computers and computer-related products. However, applicant's use of the mark HOMESHOPPER in connection with goods or services other than the services set forth in the application is largely irrelevant in determining whether applicant's mark is descriptive of the services as set forth in the application. This is true even if we assume for the sake of argument (1) that applicant's mark is merely descriptive of its other goods or services, and even if we assume (2) that applicant's other goods or services are fairly closely related to the goods or services for which applicant seeks registration. See In re The Stroh Brewery Co., 34 USPQ2d 1796, 1797 (TTAB

1994) ("Moreover, in determining whether a mark is descriptive, the mark must not be considered in the abstract, but instead, it must be considered as 'applied to the goods or services involved.' Abcor Development, 200 USPQ at 218. In addition, the fact that a term may be descriptive of certain types of goods [or services] does not establish that it is likewise descriptive of other types of goods[or services], even if the goods [or services] are closely related (e.g. hats and boots). Abercrombie & Fitch, 189 USPQ at 766.").

The Examining Attorney has conceded that as applied to television programming, applicant's mark HOMESHOPPER conveys at least two possible messages. To use the Examining Attorney's words, the mark HOMESHOPPER could refer to television viewers who "either ... shop at home, or those who are shopping for products/services for the home." (Examining Attorney's brief page 6, original emphasis). However, the Examining Attorney has at no time taken issue with applicant's contention that its mark HOMESHOPPER could also refer to television viewers who are real estate agents; who are individuals shopping for a home for their own use; or who are individuals viewing applicant's television programming to get information on products and services which they can later utilize when they physically

shop in stores. In short, as applied to television programming, the mark HOMESHOPPER has so many plausible meanings that it simply fails to convey forthwith any information about applicant's television program with the required "degree of particularity." Moreover, to the extent of there are doubts on the issue of mere descriptiveness, it is the long standing practice of this Board to resolve doubts in applicant's favor. In re Gourmet Bakers Inc., 173 USPQ 565 (TTAB 1972).

Decision: The refusal to register on all three grounds is reversed. However, once applicant submits its specimens of use, then if it is clear that the mark HOMESHOPPER is merely descriptive of applicant's television program or if it is clear that applicant's television program has a very narrow focus, then the Examining Attorney may on second examination again raise either or both refusals, namely, mere descriptiveness and/or the fact that applicant's identification of its services is too broad. See Section 1105.01(a)(iv) of the Trademark Manual of Examining Procedure.

E. W. Hanak

G. D. Hohein

Ser No. 75/183,789

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board