

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MAY 12, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re John Sermos

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Serial No. 75/195,261

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David B. Kirchstein of Kirchstein, Ottinger, Israel &  
Schiffmiller for John Sermos.

David H. Stine, Trademark Examining Attorney, Law Office  
114 (Mary Frances Bruce, Managing Attorney).

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Before Hairston, Wendel and Bottorff, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

John Sermos has applied to register, under Section  
2(f) of the Trademark Act, the asserted mark reproduced  
below for "electrical snap connectors for radio controlled  
devices."<sup>1</sup>

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<sup>1</sup> Serial No. 75/195,261, filed November 8, 1996, which alleges  
dates of first use of January 1986. At the request of the  
Trademark Examining Attorney, applicant set forth the following

Registration has been finally refused under Sections 1, 2 and 45 of the Trademark Act on the ground that the asserted mark does not in fact function as a mark to identify and distinguish applicant's goods from those of others and, under Section 2(e)(1) of the Act on the ground that the asserted mark is merely descriptive of applicant's goods and has not acquired distinctiveness.

Applicant has appealed from the refusals to register. Briefs have been filed, but no oral hearing was requested.

We turn first to the refusal to register on the ground that the asserted mark does not in fact function as a mark.

It is applicant's position that he has used and promoted the asserted mark in such a manner that it has come to identify and distinguish applicant's electrical snap connectors for radio controlled devices from those of others. In this regard, applicant submitted a declaration wherein he states that the asserted mark has been in use for over ten years, that he has sold approximately one

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description of the asserted mark: The mark consists of a graphic representation of an electrical snap connector.

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million electrical snap connectors totaling approximately \$400,000, and that he has spent approximately \$80,000 in advertising the goods by way of fliers and advertising in publications in the field. In addition, applicant submitted the declarations of Thomas Hunt and James Martin, both of whom operate companies which sell products for use in connection with aircraft, boat, and automobile radio controlled models.

Mr. Hunt states in pertinent part that:

My company and many like it across the world recognize the "Sermos R/C Snap Connectors" by their shape, as no other connector works or looks like it.

. . . . .

This electrical connector has become the "standard" in our model aircraft industry, primarily because of its quality, versatility and ease of use.

Please consider his application of the connectors in his advertisement as "unique."

Mr. Martin states in pertinent part that:

My company is a national mail order house supplying the modeling consumer. We sell a multiplicity of products employed in connection with models of aircraft, boats, autos, etc. and including electrical connectors employed in various areas, particularly the field of radio-controlled models.

In the course of my business, I interact with thousands of modelers throughout the year by correspondence, personal contacts, at trade shows, etc.

Based on my experience, the aforesaid mark has achieved significance in the minds of the trade and the consuming public in the hobby/sport of building and flying radio-controlled model airplanes as a trademark designating the source of the applicant's products; it is not merely an informational illustration depicting the specific nature and method of use of the product. Users of the product do not regard the mark as informational or instructional only. Rather, the mark immediately conveys that the goods are a product of John Sermos and have the exceptional qualities of construction, durability and, in particular, reliability of connectors emanating from him.

It is the Examining Attorney's position that the asserted mark is merely informational or instructional in nature because it appears on the specimens of record as step "C" of a three-step process for inserting electrical wires and contacts into the involved electrical snap connectors. According to the Examining Attorney, the asserted mark is "a cutaway graphical illustration of the goods, showing the connection method and the correct orientation of the electrical contacts to be inserted therein." (Brief, p. 2). The Examining Attorney was not persuaded by the evidence submitted that the asserted mark is regarded as an indication of origin by purchasers of the involved goods.

A critical element in determining whether matter sought to be registered is a trademark is the impression

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the matter makes on the relevant public. Thus, in a case such as this, the critical inquiry is whether the asserted mark would be perceived as a source indicator or merely as informational or instructional material as the Examining Attorney maintains. See *In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455 (TTAB 1998). In order to assess the commercial impact created by the matter sought to be registered here, we look to the specimens which show how the asserted mark is used in the marketplace. *In re Volvo*, *supra*.

Reproduced below is the front page of the instruction sheet bearing the asserted mark.<sup>2</sup>

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<sup>2</sup> We note that on the specimens of record, the asserted mark is shaded in areas. While such shading is not reflected on the

We find that the primary significance of the matter sought to be registered, as used by applicant, and as likely perceived by purchasers and potential purchasers, is merely that of informational material. As pointed out by the Examining Attorney, the asserted mark appears as part "C" of a set of instructions and informs consumers as to the proper orientation of the electrical snap connectors. Appearing in this manner, it is unlikely that consumers would attribute trademark significance to the asserted mark.

In view of the foregoing, we find that the matter sought to be registered does not in fact function as a mark, but simply serves to convey information regarding use of the goods. In reaching our decision, we have, of course, considered the evidence submitted by applicant. In evaluating the significance of applicant's sales and advertising figures, which are offered as evidence of acquired distinctiveness, we must consider not only the extent of sales and advertising, but also whether applicant has used the asserted mark in such a manner as to create in the minds of the purchasing public an association of the

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drawing of record, we regard this difference as insignificant for purposes of our inquiry.

asserted mark with applicant and electrical snap connectors. See *In re Semel*, 199 USPQ 285 (TTAB 1975). In this regard, applicant has offered no advertising or promotional materials in which the asserted mark is used in the manner of a mark. Moreover, the declarations of Thomas Hunt and James Martin are of limited probative value. We note that Mr. Hunt states that it is the "shape" of applicant's product that he regards as applicant's mark. However, in this case, applicant does not seek to register the configuration or shape of its goods per se, but instead a "representation" thereof.

Also, the opinions of Mr. Hunt and Mr. Martin are unconvincing that the ultimate purchasers, as distinguished from retailers and dealers, actually recognize the matter sought to be registered as applicant's mark. See *In re Semel*, supra. In short, we are not persuaded by the evidence presented herein that the asserted marks do in fact function as marks.

In order to render a complete decision in this case, we turn next to the refusal to register under Section 2(e)(1) of the Trademark Act.

At the outset, we note applicant's contention that the description of the matter sought to be registered is not accurate. According to applicant, the matter sought to be

registered is not a literal pictorial representation of the product, but rather a "diagrammatic representation of the product." While we note that applicant has offered to amend the description of the asserted mark to reflect the foregoing, such an amendment would not aid applicant in overcoming the refusal to register under Section 2(e)(1). The fact is the asserted mark is a representation, whether it be pictorial or diagrammatic, of applicant's electrical snap connectors. As such, it is merely descriptive of applicant's goods and a showing of acquired distinctiveness is required. See, e.g., *In re DC Comics, Inc.*, 689 F.2d 1042, 215 USPQ 394 (CCPA 1982)(Nies, J., concurring). However, for the reasons discussed above, the evidence submitted is insufficient to establish that the matter sought to be registered has acquired distinctiveness.

**Decision:** The refusals to register are affirmed.

P. T. Hairston

H. R. Wendel

C. M. Bottorff  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

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