

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 7, 00
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Globosat Programadora Ltda.

Serial No. 75/279,948

Allen J. Hoover of Rockey, Milnamow & Katz, Ltd.
for applicant.

Vivian Micznik First, Trademark Examining Attorney, Law
Office 104 (Sidney Moskowitz, Managing Attorney)

Before Cissel, Hanak and Wendel, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Globosat Programadora Ltda. has filed an application
to register the mark SPORTV for "cable transmission of
television programs and satellite transmission of
television programs."¹

¹ Serial No. 75/279,948, filed April 23, 1997, under Section
44(e) of the Trademark Act based on ownership of Brazilian
Registration No. 817,634,410, dated August 6, 1996.

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney argues that applicant's mark SPORTV consists of the telescoped words SPORT and TV; that SPORTV is simply a novel spelling of SPORT TV; that SPORT TV means "sports television"; and that, as such, the mark is merely descriptive of television programs on the subject of sports. To support this latter contention of descriptiveness, the Examining Attorney had made of record a representative sampling of articles found on the Nexis database using the terms "sports TV" or "sports television" in connection with television stations or programs in the field of sports. The Examining Attorney has also introduced a printout of applicant's Web page demonstrating use by applicant of its mark in a logo form in which the letters SPOR and the first half of the letter T appear in a different colored background from the remainder of the letter T and the letter V, a manner of use which the Examining Attorney maintains reinforces the descriptive SPORT TV connotation of the mark.

Applicant admits that its services are in the field of sports. Applicant contends, however, its mark SPORTV is

not merely descriptive of these services; that consumers would have to exert some imagination and thought to equate SPORTV with SPORT TV; and that these same consumers would have to exert even more imagination and thought to equate SPORTV with "sports TV" or "sports television." Applicant argues that although the Examining Attorney has produced articles relating to the use of the terms "sports TV" or "sports television," she has not produced any evidence showing use of "sport TV" in a descriptive manner for televised sports. In addition, applicant asserts that the commercial impression of the telescoped mark SPORTV differs from the impression which would be created by the separate words SPORT TV.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, purpose, function or feature of the goods or services with which it is being used. Whether or not a particular term or phrase is merely descriptive is not determined in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the mark is being used, and the significance the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters the goods or services bearing the mark. See In

Ser No. 75/279,948

re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Nibco Inc., 195 USPQ 180 (TTAB 1977) and the cases cited therein. Furthermore, a slight misspelling of a descriptive term which would be perceived by purchasers as the equivalent of the descriptive term is subject to the same proscription of Section 2(e)(1) as the descriptive term itself. See In re State Chemical Manufacturing Co., 225 USPQ 687 (TTAB 1985) and the cases cited therein.

We are convinced that purchasers of applicant's SPORTV cable or satellite television programs, which are acknowledged by applicant to be directed to sports, would perceive the telescoped mark SPORTV as SPORT TV. It would take no imagination or thought to equate the telescoped mark with SPORT TV; the overall commercial impression is the same. Even though the letter T is shared in applicant's mark, it would be highly improbable for the term to be pronounced as other than SPORT TV. The connotation is clearly the same. See In re BankAmerica Corp., 229 USPQ 852 (TTAB 1986)(PERSONALINE is merely descriptive of consumer loan services in which a personal line of credit is provided); In re Gagliardi Bros., Inc., 218 USPQ 181 (TTAB 1983)(BEEFLAKES is merely descriptive of thinly sliced beef). While the manner of use of a mark may

also be taken in consideration in determining the commercial impression created thereby, we do not find it necessary to determine whether the bicolored background used on applicant's Web site has a significant reinforcing effect on the way in which applicant's mark would be perceived. The impact of the term SPORTV as SPORT TV is obvious in any event.

The only remaining question is whether purchasers would immediately construe SPORT TV as the equivalent of "sports TV" or whether some thought and imagination is required to complete this process. As pointed out by the Examining Attorney, this question must be answered taking into consideration the specific nature of the television programs being transmitted by applicant under the mark SPORTV, and not in the abstract.

Applicant's programs are televised sports programs. The Examining Attorney argues that when used in connection with programs featuring an activity which may be defined as a "sport," both the singular and plural forms of the word "sport" are descriptive thereof. Looking to the dictionary definitions upon which the Examining Attorney is relying,²

² Although not earlier made of record by the Examining Attorney, the Board may take judicial notice of dictionary definitions. See *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852 (TTAB 1981).

we also note that the term "sport," when used as an adjective, has the connotation of "relating to ...sports." Thus, whether "sport" is viewed as a noun or an adjective, we find it to be so close in connotation to "sports" that purchasers would make the connection between "sport TV" and "sports TV" with little or no perceptible effort. The descriptive significance is clearly not lost even though the singular form, "sport," is used. Applicant's programs may be described as "programs involving a sport" or "sport programs."

Accordingly, we find the mark SPORTV to be merely descriptive when used in connection with applicant's television programs which are being transmitted by means of cable or satellite.

Decision: The refusal under Section 2(e)(1) is affirmed.

R. F. Cissel

E. W. Hanak

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

Ser No. 75/279,948