

**THIS DISPOSITION
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Paper No. 8
CEW

8/29/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re William R. Vestal

Serial No. 75/333,145

Jeffrey R. Gray of Lee, Mann, Smith, McWilliams, Sweeney
& Ohlson for applicant.

Darlene D. Bullock, Trademark Examining Attorney, Law
Office 111 (Craig Taylor, Managing Attorney).

Before Seeherman, Walters and Rogers, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

William R. Vestal has filed a trademark application
to register the mark AMERICAN CIVIL WAR CHANNEL for
"television broadcast services."¹

The Trademark Examining Attorney has finally refused
registration, under Section 2(e)(1) of the Trademark Act,
15 U.S.C. 1052(e)(1), on the ground that applicant's
proposed mark is merely descriptive in connection with
his recited services.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

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 the product or service in connection with which it is used, or intended to be used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used or intended to be used, and the impact that it is likely to make on the average purchaser

¹ Serial No. 75/333,145, in International Class 38, filed July 30, 1997, based on an allegation of a bona fide intention to use the mark in commerce.

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of such goods or services. See *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Both the Examining Attorney and applicant have submitted dictionary definitions of the term "channel." We take judicial notice of the more comprehensive definition submitted by the Examining Attorney with her brief, which includes "8. *Electronics*. A specified frequency band for the transmission and reception of electromagnetic signals, as for television signals."

Applicant argues that its mark is merely suggestive, in part because "channel" has so many possible meanings which could be attributed to the term in the context of applicant's proposed mark. However, as the Examining Attorney correctly states, we must consider the descriptiveness of applicant's proposed mark in connection with the recited services. Thus, the connotation of the term CHANNEL in applicant's proposed mark, considered in connection with "television broadcast services," clearly is the definition indicated above. As such, the term is merely descriptive in connection with applicant's recited services.

Applicant submitted a list and copy of a search report of purported third-party registrations of marks that include the term "channel." The Examining Attorney

correctly pointed out that neither the list nor search report make these registrations properly of record. With its brief, applicant submitted photocopies of seven registrations previously listed, all in connection with television broadcast services. The Examining Attorney properly objected to the timeliness of this evidence, and, thus, we have not considered these third-party registrations.²

Similarly, there is no question that the term AMERICAN CIVIL WAR in applicant's proposed mark refers to the 1861 to 1865 War Between the States and, thus, merely describes the intended subject matter of applicant's television broadcast services. The combination of the merely descriptive term AMERICAN CIVIL WAR with the merely descriptive term CHANNEL results in the equally merely descriptive proposed mark, AMERICAN CIVIL WAR CHANNEL.

In the present case, it is our view that, when applied to applicant's services, the term AMERICAN CIVIL

² We note that, even if we had considered these registrations, we would not find them to be supportive of applicant's contention that CHANNEL is suggestive in connection with television broadcast services. To the contrary, six of the seven registrations include disclaimers of CHANNEL. A disclaimer in the record of an application or registration is an acknowledgment of the lack of an exclusive right therein at the time of the disclaimer. See, *In re Interco Inc.*, 29 USPQ2d 2037 (TTAB 1993); *Kellogg Co. v. Pack'Em Enterprises Inc.*, 14 USPQ2d 1545 (TTAB 1990); and *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361,363 (CCPA 1972).

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WAR CHANNEL immediately describes, without conjecture or speculation, a significant feature or function of applicant's intended services, namely that applicant intends to offer a television channel broadcasting programming related to the American Civil War. No exercise of imagination, cogitation, mental processing or gathering of further information is necessary in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of applicant's proposed mark as it pertains to the recited services.

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

E. J. Seeherman

C. E. Walters

G. F. Rogers
Administrative Trademark Judges,
Trademark Trial and Appeal Board