

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 14
GFR

9/20/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **American Fastsigns, Inc.**

Serial No. 75/**357,678**

Alton W. Payne of **Payne, Lundeen, D'Ambrosio & Arismendi, L.L.P.** for **American Fastsigns, Inc.**

Jessie W. Billings, Trademark Examining Attorney, Law Office 103 (**Michael Szoke**, Managing Attorney).

Before **Hohein, Holtzman** and **Rogers**, Administrative Trademark Judges.

Opinion by **Rogers**, Administrative Trademark Judge:

American Fastsigns, Inc. has filed an application to register "FASTSHIP" as a mark for services identified as "expedited delivery of signs, namely, digital color graphics, design ideas, logos, symbols, trade show displays, vehicle graphics, magnetics and signage."¹

¹ Serial No. 75/357,678, filed September 16, 1997, asserting December 27, 1996 as a date of first use and first use in commerce. Applicant included a claim of ownership of registrations for: "FASTSIGNS"; "FASTSIGNS THE ONE DAY SIGN AND LETTERING EXPERTS"; "FOR A QUALITY SIGN THAT'S RIGHT. ON TIME."; and "QUALITY DISPLAYS. IN JUST DAYS."

Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, as used in connection with applicant's services, the mark is merely descriptive of them.

When the Examining Attorney made the refusal final, applicant appealed. Briefs were filed, but an oral hearing was not requested.

The Examining Attorney bears the burden of showing that a mark is merely descriptive of the relevant goods. In re Merrill, Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The entirety of the Examining Attorney's argument in support of the refusal is that one feature of applicant's services "is the speedy delivery of signs. The applicant's specimens state that with FASTSHIP the exhibits and displays arrive in 24 hours."² When the mark is used in connection with the services being provided, it is clear to a consumer that the wording refers directly and immediately to the type of shipping provided by applicant."

Applicant argues that its services "are more than the expedited delivery of signs" and include personal services from sign experts; that even individuals in the signage or

² The specimen advertisement includes the following: "Exhibits & Displays in 24 Hours with *FASTSHIP*sm."

shipping industry would not view the FASTSHIP as descriptive because the term has multiple meanings; that potential purchasers of the services confronted with the mark would not readily derive the nature of the services from the mark and would have to exercise imagination, thought or perception to deduce the nature of the services; and that applicant knows of no use of the term by another to identify shipping services. In addition, applicant paraphrases dictionary definitions of the terms "fast" and "ship" and concludes that, given so many different meanings for each term, "it is impossible for the viewer [of FASTSHIP] to forthwith be apprised of the meaning with respect to the goods or services."

It is well settled that a term is considered merely descriptive of services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-218 (CCPA 1978); see also In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

It is not necessary that a term describe all of the attributes of the services in order for it to be merely

descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the services for which registration is sought, the context in which it is being used on or in connection with those services and the possible significance that the term would have to the average purchaser because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

We take judicial notice of the following pertinent definitions for "fast" and "ship":

"fast 1. moving or able to move, operate, function, or take effect quickly; quick; swift; rapid"

The Random House College Dictionary 480 (Revised Ed. 1982)

"ship 6. to send or transport by ship, rail, truck, plane, etc."

The Random House College Dictionary 1214 (Revised Ed. 1982)

In view of the above, when "FASTSHIP" is considered in conjunction with applicant's expedited delivery services, and in the context in which it is being used by applicant,

as demonstrated by the specimens of use, we agree with the Examining Attorney's conclusion that purchasers of applicant's services will, without the need for thought, imagination or perception, conclude that applicant's "FASTSHIP" services are an expedited delivery service offering quick or swift shipping and transport. Cf. In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505 (CCPA 1980) (QUIK-PRINT descriptive of fast and prompt printing services); In re Miteyfast Service Centers, Inc., 223 USPQ 1154 (TTAB 1984) (MITEY FAST descriptive of auto maintenance services provided with great speed).

Applicant argues that its services involve more than just expeditious delivery of its goods, and include "personal services from sign experts." We, however, consider whether applicant's asserted mark is descriptive only in conjunction with the identified services, i.e., expedited delivery of signs.³ Moreover, to the extent applicant may be arguing that its services, as identified, involve other aspects apart from expedited shipping and

³ The qualifying language in the identification, which follows the term "namely", does not expand the nature of applicant's services. It is viewed as introducing terms that merely provide greater particularity for the phrase that precedes the term, not as identifying additional services. See, e.g., TMEP §804.08(c).

Whether applicant intended this identification, which was introduced by amendment, to indicate a broader range of services, we cannot tell. In any event, the question of the true scope of applicant's services is not before us.

Ser. No. 75/357,678

delivery, "FASTSHIP" is still properly refused registration as merely descriptive because it readily describes a significant aspect of the services. See Eugene Biro Corp. v. Empire Diamond Corp., 40 USPQ2d 1527, 1530 (SDNY 1996) ("The fact that the mark does not specify that the service is aimed at wholesalers, that it is wholly automated, or that it allows a caller to specify various characteristics of the stone sought does not alter the essentially descriptive nature of the mark.")

Even if we accept applicant's unsupported argument that there are no others who use this term to describe expedited delivery services, that does not lessen the readily descriptive connotation for the term as used by applicant. It is well settled that the mere fact that one is the only user of a descriptive term does not render the term registrable.

Decision: The refusal of registration is affirmed.

G. D. Hohein

T. E. Holtzman

G. F. Rogers

Administrative Trademark
Judges, Trademark Trial
and Appeal Board

Ser. No. 75/357,678