

1/26/01

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

Paper No. 14  
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re A & E Stores, Inc.

Serial No. 75/224,145

Donna L. Mirman and Maria A. Savio of Gottlieb Rackman & Reisman for A & E Stores, Inc.

David M. Mermelstein, Trademark Examining Attorney, Law Office 103 (Dan Vavonese, Acting Managing Attorney).

Before Seeherman, Cissel and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

A & E Stores, Inc. has appealed from the refusal of the Trademark Examining Attorney to register the stylized word mark PAYHALF, as shown below, for "retail store services in the field of clothing and footwear and related accessories, costume jewelry and watches, handbags and small leather goods, sunglasses, umbrellas and hair accessories."<sup>1</sup>

***PayHalf***

---

<sup>1</sup> Application Serial No. 75/224,145, filed January 10, 1997. The application is based on asserted dates of first use and first use in commerce on April 2, 1992.

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its services.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We affirm the refusal of registration.

A mark is merely descriptive, and therefore prohibited registration under Section 2(e)(1) of the Trademark Act, if it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. See In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). See also, In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

In support of his refusal, the Trademark Examining Attorney has submitted dictionary definitions of "pay" and "half."<sup>2</sup> From these entries, the Trademark Examining Attorney argues that the use of these two ordinary English language words as combined in the mark clearly and unequivocally informs the potential purchaser of a

---

<sup>2</sup> "Pay: [t]o give money to in return for goods or services rendered"; "half: [o]ne part approximately equal to the remaining part" The American Heritage Dictionary of the English Language, (3d ed. 1992, electronic edition).

significant feature of applicant's services - namely, that "... shoppers in applicant's establishment will PAY approximately HALF of what is charged in other stores for the identified goods." (brief, p. 5).

Applicant argues that the mark does not immediately convey any specific attribute of its services, and that at worst, it is suggestive because it will take imagination, thought or perception on the part of consumers to arrive at a conclusion as to the nature of applicant's services. Applicant argues that the Trademark Examining Attorney has made no showing of use by other retailers of the term "Pay Half" in a promotional manner and hence contends that competitors would not be harmed should this mark proceed to registration. Applicant also points to the third-party registrations for PAYLESS shoes and retail shoe store services. Finally, applicant notes that under Section 2(e)(1) of the Act, all doubts as to descriptiveness must be resolved in applicant's favor.

In this case, applicant's services are retail store services, which necessarily include retail store services offered by discounters. We agree with the conclusion of the Trademark Examining Attorney that consumers will immediately and unequivocally understand, when they view the mark in connection with the identified services, that this mark

describes a discount store where one can expect to pay approximately half the retail price being asked for the same items at a non-discount store.

As for applicant's argument that the Trademark Examining Attorney has failed to make a showing of use by other retailers of the term "Pay Half" in a promotional manner, it is not necessary that the Trademark Examining Attorney present such evidence to support a refusal based on mere descriptiveness. The fact that the applicant may be the first or only user of a descriptive designation does not justify registration if that term is merely descriptive. See In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983). Moreover, the issue here is not whether the term is generic, but whether, as applied to the identified services, it is merely descriptive because it immediately conveys information about them. As discussed above, applicant's mark does just that.

Applicant also argues that the United States Patent & Trademark Office should treat this mark in the same manner as the mark PAYLESS, for which it issued federal trademark registrations for shoes and for retail shoe store services. However, each case must be decided on its own facts, and clearly the records supporting the PAYLESS trademark registrations are not before us. Furthermore, we would note

in passing that the terminology "pay less" is fairly vague, not imparting any definite information about how much one would pay, and therefore may have been found to be only suggestive of discount retail store services and goods. PAYHALF, on the other hand, is much more specific, directly telling consumers that the products are sold at half price.

The Trademark Examining Attorney cites to In re Half Price Books, Records, Magazines, Inc., 225 USPQ 219 (TTAB 1984) [HALF PRICE BOOKS RECORDS MAGAZINES (in special form) for retail book and record store services was found to be so highly descriptive as to be incapable of registration]. In that case, the Board noted that the addition "... of the term HALF PRICE to BOOKS RECORDS MAGAZINES, serves only to tell people that one may purchase applicant's books, records and magazines at half the price one might have to spend somewhere else." *supra*, 225 USPQ at 221.

Accordingly, we have no doubt that the term PAYHALF is merely descriptive for applicant's retail store services.

Decision: The refusal of registration is affirmed.