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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
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Paper No. 12
EJS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wesley Snipes

Serial No. 75/733,332

Lori M. Stockton of Blakely, Sokolff, Taylor & Zafman for
Wesley Snipes

Wm. Patrick Shanahan, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Acting Managing Attorney)

Before Seeherman, Wendel and Drost, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Wesley Snipes has applied to register LYRICAL PASSION
PLAY as a trademark for goods identified, as amended, as a
"series of short films in the fields of drama, comedy, and
action that are thematically motivated by the stories that
inspire popular songs."¹ Registration has been finally
refused pursuant to Section 2(e)(1) of the Trademark Act,

¹ Application Serial No. 75/733,332, filed June 21, 1999, and
asserting a bona fide intention to use the mark in commerce.

15 U.S.C. 1052(e)(1), on the ground that the mark is merely descriptive of applicant's goods.²

The appeal has been fully briefed;³ an oral hearing was not requested.

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

It is the Examining Attorney's position that LYRICAL PASSION PLAY is merely descriptive of the identified goods because it "readily describes dramatic films that are thematically motivated by the stories that inspire popular song." Brief, p. 3. In particular, the Examining Attorney maintains that the term PASSION PLAY describes through cinematic representations the life, sufferings and death of religious, spiritual and tragic figures, and that when

² During the course of examination the Examining Attorney had also refused registration on the ground of deceptive misdescriptiveness. However, this refusal was subsequently withdrawn. Consequently, the only ground for refusal which is before us on appeal is that of mere descriptiveness.

³ With its reply brief applicant has submitted the complete copy of an article from "The New Republic," an excerpt of which had been submitted by the Examining Attorney with the first Office action. Although the better practice would have been for applicant to have submitted the article with his response to that action, out of fairness we have considered the article.

viewed in its entirety, LYRICAL PASSION PLAY "merely indicates that the passion play themes have a lyrical characteristic attributed to them." Brief, p. 6. He continues that the mark "readily describes that the Applicant's films include passion play themes with lyrical characteristics." Id.

In support of the refusal the Examining Attorney has made of record dictionary definitions for "Passion play," i.e., "a play representing the Passion of Christ"⁴ and "lyric", which is defined variously as "lyrical" and "Music. Of, relating to, or being musical drama, especially opera: *the lyric stage*."⁵ "Passion" is further defined as "the sufferings of Christ in the period following the Last Supper and including the Crucifixion" and "A gospel narrative, musical setting, or serial pictorial representation of the Passion."⁶ With his brief the Examining Attorney has also submitted the following definitions of "passion play"⁷ and "lyric":⁸

Passion play: *Often cap 1st P.:* a dramatic representation of the scenes connected with the passion of Jesus; a dramatic representation of the

⁴ New Riverside University Dictionary, © 1994.

⁵ The American Heritage Dictionary of the English Language, 3d ed. © 1992).

⁶ New Riverside University Dictionary, *supra*.

⁷ Webster's Third New International Dictionary, unabridged © 1986.

⁸ The Random House College Dictionary, revised ed. © 1982.

sufferings and death of an outstanding religious or spiritual leader.

Lyric: also, lyrical. Pertaining to, rendered by, or employing singing.

We grant the Examining Attorney's request that we take judicial notice of these definitions.⁹

The Examining Attorney has also made of record a number of excerpts taken from the NEXIS database. Applicant has objected to those excerpts which indicate they are from wire service reports or foreign publications. Because there is no evidence that these articles circulated in the United States, we have not considered them.

The remaining excerpts show use of "passion play" in its traditional sense, i.e., a dramatic representation of the Passion of Jesus, as follows:

Otto Huber, director and script editor for the Oberammergau "Passion Play," will speak at a public forum at 7:30 tonight at BMH-BJ Congregation, 560 S. Monaco Parkway.

The "Passion Play" dates to 1634 when villagers in Oberammergau vowed they would stage the play every 10 years if they were spared from the Black Plague. "The Denver Post," May 27, 1999

⁹ The Board may take judicial notice of dictionary definitions. **University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Two films based on the passion of Christ appeared in 1897: "Lear Passion" (France) and "The Horitz Passion Play" (United States, but filmed in Bohemia). The next 20 years saw other passion plays, lives of Christ and epics like the Judean episode of D.W. Griffith's "Intolerance" (1916).
"America," May 8, 1999

Since the medium's emergence in the late 1890s, filmmakers have been inspired time and again by stories from the Old and New Testaments. Packed with film clips, this one-hour documentary takes us from some of the earliest attempts at filmed passion plays through D.W. Griffith's "Intolerance,"...
"Los Angeles Times," March 30, 1999

The most interesting thing about the hour for this viewer is the way that early biblical dramatizations - the passion plays - influenced later film depictions of biblical stories.
"The Times Picayune," March 30, 1999

The longest running of such dramas is the Passion Play at Oberammergau, Germany. Begun in the mid-1600s as fulfillment of a vow made in seeking a divine...
"The Salt Lake Tribune," April 22, 2000

And then there's the 2,000-year controversy of the Passion Play interpretation of the Crucifixion. While the film does not skirt the issue of Jewish complicity in Christ's death...
"Newsday," May 14, 2000

The excerpts also show use of "passion play" as what appears to be an analogy to the traditional Passion play, but in connection with a figure other than Jesus:

Spielberg offers us important clues that elevate "Saving Private Ryan" above mere film to something like the status of a passion play.

"Star Tribune," August 9, 1998

May 17-June 24: "The Harvey Milk Show - A Passion Play," book and lyrics by Dan Pruitt...

"The New York Times," May 7, 2000

...Its manhunt takes on a rabid despair as a tense neighborhood watch... turns into a seething lynch mob of theatrical proportions...

One of Lee's unsung gifts as a filmmaker in his discovery of that place between eye-popping surrealism and wrenching Greek tragedy. His films are cinematic passion plays sometimes given to rambling, such is the case in "Summer of Sam" on one or two occasions. But it climaxes almost biblically, avoiding the discursive commentary that fractured "Jungle Fever's" most allegorical moments, and draws its archetypes into the passion play that closes the film.

"The San Francisco Examiner," July 2, 1999

Finally, the excerpts appear to use the term "passion play" in reference to the meaning of "passion" as "a

powerful emotion or appetite, as love, joy, hatred, anger, or greed; ardent, adoring love; strong sexual desire."¹⁰

Like the Oshima film [In the Realm of the Senses] and Bertolucci's Last Tango, Breillat's passion plays unfold in emotional belljars almost entirely insulated from the concerns of the mundane world. In the hermetic atmosphere of these movies, both lovers and those of us marking time in the dark lose sight of any horizon but that of the flesh. So intense are their immolating embraces, it's sometimes hard to remember whether these men and women have names or public faces.
"Film Comment," September 1, 1999

Throughout much of his career, director Bernardo Bertolucci has been interested in the passions that can arise between near strangers.

In 1973, he dealt with such a theme in his signature film, "Last Tango in Paris," with Marlon Brando playing a man deeply obsessed with a woman he barely knew.

There's a similar passion play in Bertolucci's latest film, "Besieged," with the newly entwined lovers this time played by Davis Thewlis as Mr. Kinsky, a pianist, and Thandie Newton as Shandurai, a medical student...
"Milwaukee Journal Sentinel," July 23, 1999

...he wanders into a Gypsy enclave in Romania, searching for the singer Nora

¹⁰ New Riverside University Dictionary, supra.

Luca - he has a tape of a song by her that was his dead father's favorite tune. His search isn't rewarded, except by digression, as he's virtually adopted by a fiddler named Izidor (Isidor Serban), falls for Sabina (Rona Hartner), and watches many a Gypsy passion play of love and loss. Gatlif's film is rude and raw and musical...

"Seattle Weekly," August 20, 1998

...Roth's understanding of just how easily public sentiment can inform private crises, turning our most personal dramas into passion plays. The truth about us is endless," he declares. "As are the lies."

"Literary Supplement," May 19, 2000

Passion Play

Revival of a 1981 drama about an adulterous relationship, with onstage troubles representing the main characters' secret selves. By Peter Nichols.

"Facts on File World News Digest,"
May 18, 2000

When the mark LYRICAL PASSION PLAY is applied to a "series of short films in the fields of drama, comedy, and action that are thematically motivated by the stories that inspired popular song," we cannot say, based on this record, that the mark is merely descriptive of the identified goods. On the contrary, the record shows that the term PASSION PLAY has a variety of meanings, and does not have a precise meaning when applied to these goods.

The word LYRICAL does not serve to clarify the meaning of PASSION PLAY. Consumers would not immediately understand whether LYRICAL PASSION PLAY, used in the context of applicant's goods, refers to films about the last days of Jesus, or about figures undergoing suffering and death, or about depictions of powerful emotions.

The Examining Attorney contends that the word LYRICAL, when combined with PASSION PLAY in the mark LYRICAL PASSION PLAY, indicates that the passion play themes "have a lyrical characteristic attributed to them" and that applicant's films "include passion play themes with lyrical characteristics." Brief, p. 6. The only indication the Examining Attorney provides of what these "lyrical characteristics" are is his references to "lyrical" as meaning "having the form and general effect of a song" and "employing singing," and his contention that a song or singing could be a characteristic or feature of applicant's films.

It is not clear to us, simply from the dictionary definitions, that LYRICAL immediately and directly conveys information about a characteristic of applicant's short films. Even if we accept the Examining Attorney's contention that singing could be a characteristic of applicant's films, LYRICAL has a double entendre because

the films are inspired by the lyrics of popular songs, and these "lyrics" are "lyrical" (characterized by strong feeling). In this connection, we take judicial notice of an additional definition of "lyric", which was part of the dictionary excerpt submitted by the Examining Attorney with his brief, as meaning "expressing or characterized by strong, spontaneous feeling."

Thus, both parts of the mark, LYRICAL and PASSION PLAY, have a multiplicity of meanings when used with the identified goods. When these words are combined as LYRICAL PASSION PLAY, and the resulting mark is viewed in connection with the identified goods, LYRICAL PASSION PLAY does not immediately and directly convey to consumers information about the characteristics of applicant's goods. Rather, imagination, thought or perception would be required to reach a conclusion as to the nature of the goods. See **Philip Morris v. R.J. Reynolds**, 207 USPQ 451 (TTAB 1980) (SOFT SMOKE not merely descriptive, only suggests characteristics of smoking tobacco). Thus, we find that LYRICAL PASSION PLAY is not merely descriptive, but only suggestive of applicant's goods.

Decision: The refusal of registration is reversed.