

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: October 22, 2002
Paper No. 13
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tanabe Tetsundo

Serial No. 76/118,122

James C. Wray for Tanabe Tetsundo.

Daniel S. Brody, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney).

Before Cissel, Hairston and Holtzman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Tanabe Tetsundo to
register SPORTS CHANBARA as a trademark on the Principal
Register for "teaching of arts, sports or knowledge
comprising teaching of short sword, teaching of long sword,

teaching of spear, teaching of halberd, teaching of stick art and teaching of cane art.”¹

Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the mark, if used in connection with the identified services, would be merely descriptive of them.

Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

It is the Examining Attorney’s position that the word “SPORTS” is descriptive of the identified services because applicant is teaching a sport, and that the term “CHANBARA” is descriptive of the services because it describes the sport being taught. Further, the Examining Attorney argues that when the individual terms “SPORTS” and “CHANBARA” are combined to form SPORTS CHANBARA, the combined term is equally descriptive of the identified services. In support of the refusal, the Examining Attorney made of record excerpts of articles taken from the NEXIS data base and the Internet which show that Chanbara is a type of sword fighting and is a type of sport. Thus, the

¹ Serial No. 76/118,122, filed August 25, 2000. The application is based on applicant’s assertion of a bona fide intention to use the mark in commerce. The translation of the term “CHANBARA” is “sword battle.”

Examining Attorney argues that SPORTS CHANBARA is merely descriptive of applicant's services because "the mark describes that applicant is teaching the sport of Chanbara." (Brief, p. 5).

Applicant, in urging reversal of the refusal to register, argues that SPORTS CHANBARA is a "distinctive and unique mark", and that it does not have a "descriptive meaning" as used in connection with the identified services. Applicant maintains that there is nothing in the mark SPORTS CHANBARA that even suggests that the services involve the teaching of the sport of Chanbara. Further, applicant argues that the evidence submitted by the Examining Attorney is not probative of whether the applied-for mark is merely descriptive because none of the excerpts show use of the combined term SPORTS CHANBARA or discuss applicant's specific type of services, which involve the teaching of Chanbara.² Applicant also points out that he is the owner of registrations in Japan and Australia for the mark SPORTS CHANBARA, and U.S. Registration No. 2,049,723

² Although the involved application was filed based on applicant's bona fide intention to use the mark, it appears from the record that applicant has begun use of the mark.

for the mark SPORTS CHANBARA (SPORTS is disclaimed) for "magazines, pamphlets, brochures, and books pertaining to the sport of fencing."

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See *In Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive. Rather, it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would

have to the average purchaser of the goods or services because of the manner of its use. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[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 Corporation, 226 USPQ 365, 366 (TTAB 1985).

The evidence made of record by the Examining Attorney is sufficient to demonstrate that the martial art of chanbara is a sport involving sword fighting. We note in this regard the following excerpts:

The name "chanbara" has a little different ring to it than the names of its relatives karate, judo and aikido. There's another difference too, in this fairly new form of martial art. In chanbara, there is no body-to-body contact. Descended from kenjutsu, the original "real" sword fighting in Japan, and then kendo, fighting with wooden swords, chanbara is a form of sword fighting using foam-covered air cylinders. (The Times-Picayune, January 23, 2000).

Chanbara is a type of martial arts based on the Japanese technique of kendo, or stick fighting, that uses foam equipment. A fast-paced sport that draws from the ancient sword techniques of the samurai warriors, chanbara has caught on in the United States in the past 10 or 15 years, according to instructor David Zaffuto. (The Times-Picayune; April 9, 2000).

Chanbara is the fastest growing combative sport in Japan and is now sweeping across America like wild fire. (<http://www.chanbaratournament.com/>).

Chanbara is a new sport based on goshinjyuta, the art of self-defense. Players fight an opponent using air-filled swords made of cloth. The players fight against each other just like kendo, Japanese martial art fencing, with face masks on to protect their faces.

(www.torii.army.mil/archives/2000/jan/07/sports/story01.htm:)

Moreover, we note that the recitation of services in the involved application states that applicant is teaching "sports" which involve swords and the like. Thus, there is no question that "SPORTS" or "SPORT" is descriptive of applicant's services.

With respect to the term "CHANBARA," applicant acknowledges that its services involve the teaching of "chanbara." Thus, "CHANBARA" is also descriptive of applicant's services because it is the name of the sport that applicant teaches.

Further, the resulting combination SPORTS CHANBARA is likewise merely descriptive when used in connection with applicant's services. As noted by applicant, it is possible that two terms, which separately are merely descriptive, may be combined into a composite term which is not merely descriptive because the combination may result in an incongruous or inventive new composite. However, as the Board stated in *In re Medical Disposables Co.*, 25 USPQ2d 1801, 1804 (TTAB 1992):

[T]he mere act of combining does not in itself render the resulting composite a registrable trademark. Rather, it must be shown that in combination the descriptiveness of the individual words has been diminished, [such] that the combination creates a term so incongruous or unusual as to possess no definitive meaning or significance other than that of an identifying mark for the goods. (citation omitted).

This is not such a case. There is nothing exceptionally unusual or incongruous about combining the words "SPORTS" and "CHANBARA" into the mark SPORTS CHANBARA where the composite is used in connection with teaching the sport or sports of chanbara.

With respect to applicant's assertion that SPORTS CHANBARA is unique, it is well settled that the fact that an applicant may be the first or only user of a term does not justify registration where the only significance projected by the term is merely descriptive, as we find to be the case here. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

Further, the fact that applicant owns registrations for the mark in other countries is not determinative in this case. In addition, it is well settled that in determining the issue of mere descriptiveness, we are not bound by the prior decisions of other Examining Attorneys. Thus, the fact that applicant has registered the mark for magazines and other publications is not controlling.

Ser No. 76/118,122

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