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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re T.M. Shea Products, Inc.

Serial No. 76/209,075

Douglas J. McEvoy of Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. for T.M. Shea Products, Inc.

Richard F. White, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Simms, Cissel and Chapman, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

T.M. Shea Products, Inc. (applicant), a Michigan corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark PROMOPANELS for cardboard and plastic merchandising displays for use with existing gondola displays for merchandising products.[1] The Examining Attorney has refused

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[1] Application Serial No. 76/209,075, filed February 12, 2001, based upon applicant's allegation of a bona fide intention to use the mark in commerce. According to Webster's Third New International Dictionary of

registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's mark is merely descriptive of a type of display used for promotional purposes. Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

The Examining Attorney argues that "promo" is a well-recognized short form of the word "promotional," while a "panel" is defined as "A flat, usually rectangular piece forming a raised, recessed, or framed part of the surface in which it is set."[2] The Examining Attorney contends that the combination of these individually descriptive words does not result in any incongruity or form a term with a different non-descriptive meaning in connection with the goods set forth in the application. Considered in relation to the relevant goods, and not in the abstract, applicant's asserted mark is merely descriptive of applicant's promotional or merchandising displays, according to the Examining Attorney.

Among other things, the Examining Attorney relies upon a dictionary definition of the term "promo" ("A promotional presentation, such as a television spot, radio

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the English Language Unabridged (1993), of which we take judicial notice, "gondola" is defined as: "6: an island fixture used in self-service retail stores to display merchandise."

[2] The American Heritage Dictionary of the English Language, Third Edition (1992).

announcement, or personal appearance… Often used to modify another noun: *a promo piece; an author's promo tour*");[3] and various excerpts from the Nexis computer search system as well as the Internet, all attached to the final refusal ("…the network set up three of the promotional panels, complete with customized recordings, in a men's room at the Ritz-Carlton hotel…" (The Florida Times-Union, July 20, 2000); "Offer its retail customers a dramatically redesigned and reorganized wall unit featuring a more focused product and shade lineup, trial-size cosmetics offerings, and an eye-catching interactive lighted promotional panel that showcases seasonal promotions and provides devices to simplify shade selection" (Chain Drug Review, October 25, 1999); "There were also a couple of cutaways and promotional panels. But most exhibits were still in disarray" (Star Tribune, March 16, 1996); "Naturally, you will want to have suitable slide-in or mounted graphics done for the promotional panels" (Automotive Marketing, March 22, 1988); "Also available was a 50-oversized-card factory tin set and 16 special cards available with refreshment purchase at theatres. The 9-up promo panel is not the same as the 9-up sheet that was included in binders sold at Disney stores" (emphasis in

[3] *Id.*

original)(Jeff Alexander's House of Checklists!, undated); and "Two-card promo panel for the 1995 Ultra X-Men set" (Internet evidence, undated).

In response, applicant states that its merchandising displays will be hung from the existing gondola by a metal bracket or extending arm, and that the advertising and product-carrying display face will be made of cardboard or plastic. Applicant argues that its mark is only suggestive of many different types of products and that an element of thought or perception is necessary before an association will be made between the mark and its goods. For example, applicant maintains that its mark could be applied to products other than merchandising displays, such as non-merchandising displays carrying advertising billboards.

A mark is merely descriptive if it immediately describes the ingredients, qualities or characteristics of the goods or services with which it is used, or is intended to be used, or if it conveys information regarding a function, purpose or use of the goods. *In re Abcor Development Corp.,* 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also *In re Nett Designs,* 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). One must look at the mark in relation to the goods or services, and not in the abstract, when considering whether the mark is merely

descriptive. *In re Omaha National Corp.,* 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) and *Abcor*, 200 USPQ at 218. It is well settled that, to be "merely descriptive," a term need only describe a single significant quality or feature of the goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987).

Upon careful consideration of this record and the arguments of the attorneys, we conclude that the Examining Attorney has satisfactorily demonstrated that the asserted mark PROMOPANELS immediately describes a characteristic or feature of the goods with which applicant intends to use it. The evidence shows that promotional panels or "promo panels" display various materials including advertising or merchandising materials. The very term which applicant seeks to register has been used by others to describe similar items of merchandise. Moreover, the elimination of the space between the two words does not change their descriptiveness. See, for example, *In re Wells Fargo & Co*., 231 USPQ 95 (TTAB 1986)(EXPRESSERVICE held to be merely descriptive of banking and trust services). We hold that PROMOPANELS merely describes applicant's merchandising displays.

Decision: The refusal of registration is affirmed.