

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 3, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re McCaffrey & Associates, Inc.

Serial No. 74/496,104

Arnold B. Silverman attorney for applicant.

Doritt Carroll, Trademark Examining Attorney, Law Office 106
(Mary Sparrow, Managing Attorney)

Before Simms, Hanak and Hairston, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

McCaffrey & Associates, Inc. (applicant) seeks
registration of HAPPY HOLIDAYS FROM for "postcards." The
intent-to-use application was filed on March 3, 1994.

On May 19, 1995 applicant submitted a statement of use
along with three specimens (i.e. identical postcards)
showing use of the mark which applicant stated first
occurred on November 11, 1994. Reproduced below are both
the "picture" side of the postcard and the "address" side of
the postcard.

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Subsequently, the Examining Attorney refused registration pursuant to sections 1, 2 and 45 of the Lanham Trademark Act on the basis that "the proposed mark does not function as a trademark." (Office Action No. 1, page 1). The Examining Attorney noted that "the intended mark merely serves as a holiday greeting message. Because holiday messages are commonly conveyed by postcards, the public would not recognize HAPPY HOLIDAYS FROM as a source identifier or as a mark..." (Office Action No. 1, page 1).

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

It has been noted that "as a matter of competitive policy, it should be close to impossible for one competitor to achieve exclusive rights" in common phrases or slogans.

1 J. McCarthy, McCarthy on Trademarks and Unfair Competition, Section 7:23 at page 7-33 (4th ed. 1997).

Applicant has never disputed that HAPPY HOLIDAYS is a very widely used greeting. However, applicant appears to be of the view that this widely used expression is limited to greeting cards. At page two of its supplemental brief, applicant states that "greeting cards ... [are] adapted to be mailed in an envelope ... [and hence are] totally different from a postcard." (original emphasis). In addition, applicant contends that the widespread "holiday greeting

card use of HAPPY HOLIDAYS by others is different from the trademark HAPPY HOLIDAYS FROM, as the former is a self contained message, whereas the latter is an arbitrary usage." (Supplemental brief page 3).

We disagree with both of applicant's contentions. While it is true that most greeting cards are indeed inserted in envelopes, by the same token, postcards can serve as greeting cards. For example, the Examining Attorney has made of record from the NEXIS database an article appearing in the Houston Chronicle of December 20, 1992 which references a "Happy Holidays postcard." As for applicant's contention that HAPPY HOLIDAYS is different from HAPPY HOLIDAYS FROM because "the former is a self-contained message, whereas the latter is an arbitrary usage," we note that applicant has simply made of record no evidence supporting this contention. We do acknowledge that the phrase HAPPY HOLIDAYS can stand alone, whereas the phrase HAPPY HOLIDAYS FROM is almost always followed by the name of the person (John Smith), a family (the Jones), a company/institution or a geographic location (San Francisco, New York etc.). However, merely because the phrase HAPPY HOLIDAYS FROM is followed by an additional word(s) by no means causes the phrase HAPPY HOLIDAYS FROM to be an arbitrary expression when applied to postcards functioning as greeting cards. We note that the Examining Attorney has

made of record evidence showing what are, obviously, cards using the very common expression HAPPY HOLIDAYS FROM followed by one of the aforementioned types of designations. For example, a story appearing in The Boston Globe of December 23, 1993 references a postcard bearing the message "Happy Holidays from NBC" where the words "From NBC" were replaced with "From CBS."

Before concluding, we wish to address two final arguments raised by applicant. First, applicant notes that on the address side of its postcard it depicts "in very small print" HAPPY HOLIDAYS FROM followed by the TM designation as well as the generic term "postcards." (Applicant's supplement brief page 2). Even assuming that consumers would notice the forgoing on the address side of the card, which applicant concedes is depicted "in very small print," the fact that applicant is making "proper" trademark use of HAPPY HOLIDAYS FROM does not mean that consumers would view HAPPY HOLIDAYS FROM as a source indicator, and it certainly does not mean that applicant can appropriate to the exclusion of its competitors the right to use the common greeting HAPPY HOLIDAYS FROM. See 1 J. McCarthy, McCarthy on Trademarks and Unfair Competition, Section 3:3 at page 3-7 (4th ed. 1997). Following applicant's logic, presumably applicant could obtain trademark rights to the expression MERRY CHRISTMAS for

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postcards merely by affixing it to the card and placing after it the designation TM and the generic term "postcard."

Finally, as for applicant's argument that "there is direct precedent supporting applicant's position in the present case" because applicant owns Reg. No. 1,906,522 for PEACE AND JOY FROM for postcards, suffice it to say that we have no knowledge as to the record in that case; that each case must be decided on its own merits; and that in any event, the Board is not bound by the actions of an Examining Attorney in allowing the registration of PEACE AND JOY FROM for postcards. (Applicant's initial brief page 7).

Decision: The refusal is affirmed.

Rany L. Simms

Elmer W. Hanak

Paula T. Hairston
Administrative Trademark
Judges, Trademark Trial
and Appeal Board