

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC. 22, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cedro Group, Inc.

Serial No. 74/707,129

Mark B. Harrison of Spencer & Frank for Cedro Group, Inc.

Farah Bhatti, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney)

Before Simms, Seeherman and McLeod, Administrative
Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Cedro Group, Inc. (applicant), a California
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark SPORTSITE
for "providing multiple user access to a global computer
information network for the transfer and dissemination of
information in the fields of sporting goods, sporting
equipment and consumers['] purchasing habits and on-line
computer use habits, all relating to sporting goods and

sporting equipment; retail store services, available through computer communications, featuring sporting goods and sporting equipment.”¹ While applicant originally sought registration on the Principal Register, after receiving repeated refusals under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), applicant amended this application to seek registration on the Supplemental Register. At that time, the Examining Attorney refused registration on the ground that the asserted mark was generic for applicant’s services and was therefore incapable of distinguishing applicant’s services from those of others. Applicant has appealed from this refusal and applicant and the Examining Attorney have submitted briefs. No oral argument was requested.

We reverse.

It is the Examining Attorney’s position that “sport site” or “sports site” is a widely used term to describe Internet Web pages that provide information concerning various sports, athletes, sports equipment, etc. According to the Examining Attorney, because applicant’s services feature information concerning sports equipment and because applicant’s services are provided via the Internet, the asserted mark is generic. In this regard, the Examining

¹ Application Serial No. 74/707,129, filed July 28, 1995, based upon allegations of use since June 1, 1995.

Attorney argues that consumers would view sporting goods and equipment as a part of the umbrella term "sports." The Examining Attorney states, Final Refusal, 2:

The examining attorney also refers to the attached excerpted results from the examining attorney's search on the internet for "sports sites" that feature information about and the ability to purchase sports equipment. A site located at <http://www.coollinks.com/sports.htm> labeled as "The 100 Best Sports Sites on the Net" (emphasis added) lists various sports related web sites. A random visit to eight of them (including all of the most popular major professional sports -- baseball, football, basketball, golf and tennis) shows that each of these "sports sites" also offers information about and/or the ability to purchase sporting goods. The examining attorney has attached print-outs from each of these eight sites detailing their services regarding sporting goods... Clearly, consumers exposed to the term "sport site" will know without any doubts that the term describes any web sites where sports equipment can be studied and/or purchased since the term is so widely used for this specific purpose.

The Examining Attorney argues that applicant has merely combined two descriptive words to form a proposed mark wherein the combination is the common name for the services provided -- a Web site that provides information on sports-related equipment. As additional support for her position that the record supports the genericness refusal, the Examining Attorney refers to nine stories from the Lexis/Nexis computer database in which the term "sports site" or "sport site" was used in connection with sporting

goods or sports equipment. She cites the following references in her brief:

"Hubsites" catalogs the general sports sites that encompass everything from the latest news to trivia to memorabilia.

If I am looking at a sports site, I'll see ads on sports equipment.

The Word [sic] Wide Web, a standardized system of viewing information on the Internet, also offers hundreds of recreation sports sites.

Surfing sport sites on the World Wide Web.

(Emphasis added.) The Examining Attorney contends that consumers seeing applicant's asserted mark will know that they will encounter sports-related information on the site, including information on sporting goods and equipment.

Applicant, on the other hand, while conceding that the term "sports sites" may be generic for Web sites dealing with sports, sporting news, sports scores, etc., maintains that its mark is, at most, only merely descriptive of its services, but is not generic. Accordingly, consumers will only know from the mark that applicant's site is sports-related. Applicant points out that its Web site does not deal with sports per se but rather with sporting goods and outdoor apparel, the manufacturers of these products and consumers of them. Applicant contends, therefore, that its

Web site (and its services) are not of a type for which the terminology SPORTSITE would be generic.

All of the references [of record] have a common theme, they deal with sports. While some may include the sale of retail products, the primary purpose of the noted web sites and hence, the class of services, is the dissemination of sports information and information about games and contests over a global computer network.

The primary purpose of the applicant's web site is not the dissemination of sports information or information about games and contests. Rather, the applicant's web site features information about sporting goods and outdoor apparel, the manufacturers of sporting goods and outdoor apparel, the consumers for sporting goods and outdoor apparel, the ability to purchase such goods...

...The fact that a so-called sport site may - as an ancillary service - offer retail products for sale, is not sufficient to support a finding that applicant's mark is generic for the applicant's services. The mere fact that a term may be generic when used to identify a web site featuring information about "games and contests" does not clearly place Applicant's mark, used for different services, in the category of a generic term...

Applicant's brief, 5-6.

We agree with applicant's reasoning.

According to the U.S. Court of Appeals for the Federal Circuit, the test for determining whether a mark is generic involves determining the class of goods or services at issue and whether the relevant public understands the designation sought to be registered to refer primarily to that class of goods or services. H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., 782 F.2d

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987, 228 USPQ 528, 530 (Fed. Cir. 1986). We agree with applicant that the record herein, while perhaps adequate to support the conclusion that the asserted mark may be generic for a Web site relating to sports in general, sports news and scores, for example, is not sufficient to support the conclusion that this term is commonly used and understood as one to designate a Web site which features sports equipment and sporting goods as well as information about consumer purchasing habits concerning these goods. The fact that some sports sites feature advertisements for sporting equipment and apparel and the fact that merchandise may incidentally be available for purchase on some of these sites are not sufficient, in our view, to support a refusal that the asserted mark is commonly understood to refer to sites that provide information concerning sporting goods and equipment.

Decision: The refusal of registration is reversed.

R. L. Simms

E. J. Seeherman

L. K. McLeod
Administrative Trademark Judges,
Trademark Trial and Appeal