

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 20, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jerome Bettis

Serial No. 75/196,637

Leland P. Schermer of Sweeney Metz Fox McGrann & Schermer
LLC for Jerome Bettis

Mark T. Mullen, Trademark Examining Attorney, Law Office
101 (Jerry Price, Managing Attorney)

Before Cissel, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

On November 12, 1996, Jerome Bettis filed an
application to register the mark THE BUS for "entertainment
services in the nature of football performances," claiming
first use and first use in commerce in 1993. In the
method-of-use clause applicant stated that: "The mark is
used to refer to Applicant in connection with football
performances and in other ways customary in the trade."

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Registration has been finally refused on the ground that the specimens submitted by applicant do not show use of the mark for the services for which registration is sought.

Applicant has appealed, and briefs have been filed. An oral hearing was not requested by applicant.

The original specimens submitted by applicant are three copies of a Pittsburgh newspaper story about the Pittsburgh Steeler's defeat of the Rams in a football game. Within the story, the writer refers to Jerome Bettis as "the Bus." Applicant later submitted substitute specimens in the form of (1) a photocopy identified by applicant as the front of a t-shirt, which is partially reproduced below (the very top of the photocopy is not included),

(2) an advertisement from the Steeler's Digest, which is reproduced below,

and (3) an audio cassette tape of a radio broadcast of a game between the Pittsburgh Steelers and the Baltimore Ravens in September 1996 in which the announcers refer to Jerome Bettis as "the bus."

Applicant argues that applicant has signed a personal service contract obligating him to render entertainment services in the nature of football performances and in so doing he is selling his services. Applicant argues therefrom that any of the four types of specimens are legally sufficient. Specifically, applicant contends that the newspaper article is coverage of and identifies applicant's services; that the t-shirt also depicts applicant rendering those services; that the advertisement for the fan club services includes a photograph of applicant which is sufficient evidence of proper service mark usage for the service identified in the application; and that the radio broadcast clearly refers to the

individual applicant as "THE BUS" while he is rendering his entertainment services.

The Examining Attorney's position is that the newspaper article merely refers to applicant by a nickname and does not evidence advertisement or sale of any service; that the t-shirt usage is, at best, usage of a mark for goods, not services; that the advertisement in the Steeler's Digest would be a proper specimen for fan club services, but does not relate to or evidence the services set forth in this application (and the slogan in the advertisement, which is "DON'T MISS THE BUS," differs from the applied-for mark, THE BUS); and that the audio cassette tapes are merely the broadcast of a football game wherein, when Jerome Bettis makes a noteworthy play in the game, the announcers refer to him as "the bus," but the public would view this as merely reference to his nickname and not as an advertisement for the sale of any service.

The requirements for service mark specimens differ from the requirements for trademark specimens for goods. Although service marks are used in connection with the services, trademarks appear directly on the goods or the containers or labels for the goods. Implicit in the statutory definitions of a "service mark" is the requirement that there be some direct association between

the mark and the services, i.e., that the mark be used in such a manner that it would readily be perceived as identifying the source of such services. See *In re Advertising & Marketing Development, Inc.*, 821 F.2d 614, 2 USPQ2d 2010 (Fed. Cir. 1987); and *In re Adair*, 45 USPQ2d 1211 (TTAB 1997).

In this case, we agree with the Examining Attorney that the specimens submitted by applicant do not show the mark sought to be registered used by applicant as a service mark for the services identified in the application. Applicant's individual participation as a player on a team in football games may be a service, but that question is not before us. The fact is that none of the specimens submitted by applicant shows *applicant's* use of the mark THE BUS to identify the source of his entertainment services.

Applicant relies on the cases of *In re Ames*, 160 USPQ 214 (TTAB 1968), and *In re Carson*, 197 USPQ 554 (TTAB 1977), but these cases are distinguishable from the circumstances herein. In the Ames case, the Board found that advertisements for a record album made by a group in fact promoted the entertainment services of the applicant; and in the Carson case, the Board found that a group of advertisements for "Johnny Carson in concert" demonstrated

technical service mark use of the name in close association with a clear reference to entertainment services to be performed by him. Both of these situations are distinct from the case now before us, where applicant is a player on a football team, and the specimens show that a sports writer, a sports announcer, and applicant's fan club refer to him by his name and by his apparent nickname, "the bus," but these specimens do not show *his* use of the nickname as a mark to identify his "entertainment services in the nature of football performances." The use of the mark on a t-shirt could be a trademark for goods, but it is not service mark usage.

Decision: The refusal to register on the basis that the specimens do not show use by applicant of the mark as a service mark for the services set forth in the application is affirmed.

R. F. Cissel

G. D. Hohein

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board