

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 4/6/00
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re June McIntyre

Serial No. 75/218,564

Richard G. Martin and Donald R. Fraser of MacMillan,
Sobanski & Todd for applicant.

Raul F. Cordova, Trademark Examining Attorney, Law Office
114 (Margaret Le, Managing Attorney).

Before Quinn, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by June McIntyre to
register the mark QUIET HEART SPACE for "pre-recorded audio
cassettes and compact discs featuring meditations and
music."¹

The Trademark Examining Attorney has refused
registration under Sections 1, 2 and 45 of the Trademark

Act on the ground that the proposed mark does not function as a source indicator because it is the title of a single work.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have submitted briefs.² An oral hearing was not requested.

In urging that the refusal to register be reversed, applicant argues that the proposed mark identifies a series of pre-recorded audio cassettes and compact discs. In connection therewith, the declaration of June McIntyre has been filed. Ms. McIntyre asserts the following:

The mark sought to be registered is being used in connection with a series of pre-recorded audio cassettes and compact discs featuring meditations and music. The specimens supplied in connection with the application comprise the first offering in the series. Development is underway on the second and subsequent sets of pre-recorded audio cassettes and compact

¹ Application Serial No. 75/218,564, filed December 26, 1996, alleging first use in September 1996.

² Attached to applicant's appeal brief is a copy of the file wrapper of applicant's Registration No. 1,727,089. The Examining Attorney has objected to the submission as untimely. Trademark Rule 2.142(d) provides that the Board will ordinarily not consider additional evidence filed with the Board after the appeal is filed. Accordingly, the Examining Attorney's objection is sustained and the evidence has not been considered. Nonetheless, Ms. McIntyre's November 4, 1997 declaration submitted in support of that registration was made of record in the present application by way of its submission on October 23, 1998 with a request for reconsideration. Accordingly, that portion of the registration record, which is the most significant paper therein, has been considered.

disks [sic] in the series. Additional music has been composed and other development activity is in progress in connection therewith.

Applicant highlights the fact that "[t]his appeal presents the unusual and incongruous case where one of two identical applications was allowed for registration and the other was not." (brief, p. 1) More specifically, applicant points to the fact that a different Examining Attorney, when confronted with the identical declaration of Ms. McIntyre, allowed applicant's other applied-for mark (LIVING AS THE LIGHT) for registration (issued as Registration No. 1,727,089).

The Examining Attorney maintains that the mark sought to be registered is the title of a single work and that applicant's intention regarding future use is speculative and not controlling in this case. The Examining Attorney also asserts that he is not bound by the actions of another Examining Attorney.

It is well settled, as recognized both by applicant and the Examining Attorney, that titles of single works are not registrable as trademarks. In re Cooper, 254 F.2d 611, 117 USPQ 396 (CCPA 1958); and In re Posthuma, 45 USPQ2d 2011 (TTAB 1998) and cases cited therein.

The specimens of record leave no doubt that QUIET HEART SPACE, at least at this point in time, is the title of a single recording. As Ms. McIntyre indicated in her declaration, it identifies the "first offering" in a purported series. Clearly, as used on the specimens of record, the purchasing public would likely perceive QUIET HEART SPACE as the title of a single musical work, as opposed to perceiving it as a trademark identifying source or origin. In re Scholastic Inc., 23 USPQ2d 1774 (TTAB 1992). That applicant is developing a second recording as a part of a series under the mark is too speculative and simply falls short in establishing that applicant is entitled to a registration for a series of pre-recorded audio cassettes and compact discs. Future plans and events are always subject to change and should not control in these types of cases.

In finding that the applied-for mark is unregistrable here, we are aware, of course, of the Office's issuance of a registration of a different mark to applicant based on an identical declaration.³ We hasten to add, however, that neither the present Examining Attorney nor the Board is

³ In saying this, we note that the goods in the registration are identified as a "continuing series of pre-recorded audio cassettes and compact discs featuring meditations and music."

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bound by the prior Examining Attorney's actions. In re
BankAmerica Corporation, 231 USPQ 873 (TTAB 1986). While

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uniform treatment under the Trademark Act is highly desirable, our task here is to determine, based upon the record before us, whether applicant's mark is registrable.

We conclude that QUIET HEART SPACE, as the title of a single pre-recorded audio cassette and/or compact disc, is unregistrable because it does not function as a trademark.

Decision: The refusal to register is affirmed.

T. J. Quinn

B. A. Chapman

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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