

9/20/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 13  
EJS

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re **Pharmacia & Upjohn Company**

Serial No. 75/642,693

**Roberta Jacobs-Meadway and Jay K. Meadway of Ballard Spahr  
Andrews & Ingersoll, LLP for Pharmacia & Upjohn Company<sup>1</sup>**

**Angela M. Micheli**, Trademark Examining Attorney, Law Office  
108 (David Shallant, Managing Attorney)

Before Seeherman, Hanak and Quinn, Administrative Trademark  
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Pharmacia & Upjohn Company has appealed from the final  
refusal of the Trademark Examining Attorney to register  
STOMP for the following services:

Animal health care management services  
in the nature of consulting services  
provided to farmers, ranchers, breeders  
and veterinarians regarding disease  
identification, disease prophylactics,

<sup>1</sup> Applicant's revocation and appointment of attorney, filed  
May 3, 2001, is noted.

and disease control programs;  
veterinarian services, namely, disease  
research and testing for animals,  
preventive healthcare and disease  
control services for animals, and  
animal health care counseling.<sup>2</sup>

Registration has been refused pursuant to Sections 1,  
2, 3 and 45 of the Trademark Act, 15 U.S.C. 1051, 1052,  
1053 and 1127, on the ground that applicant's specimens  
fail to show use of STOMP as a service mark.<sup>3</sup>

Applicant and the Examining Attorney have filed appeal  
briefs; an oral hearing was not requested.

We reverse the refusal of registration.

The original specimen applicant submitted is "a  
printed promotional piece distributed by Applicant to both  
explain and promote its 'STOMP' program." Response filed  
February 16, 2000. Applicant further states that the  
specimen is distributed to swine producers and/or  
veterinarians to promote applicant's STOMP services. The  
specimen consists of a large sheet of paper which is folded  
in half to create 4 8½ x 11" pages of text, and which is  
"three-hole punched" so that it may be put into a

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<sup>2</sup> Application Serial No. 75/642,693, asserting first use on  
February 1, 1998 and first use in commerce as early as  
February 20, 1998.

<sup>3</sup> A requirement that applicant reclassify certain of its  
identified services in Class 42, rather than Class 35, was  
complied with by applicant in its appeal brief, and is no longer  
an issue in this appeal.

loose-leaf binder. The paper indicates that it represents "proceedings from the next generation swine practitioner conference." The word STOMP, in capital letters and within parentheses, appears prominently on the front page, as well as within the text, where it is also depicted in all capital letters.

Applicant also submitted, as a substitute specimen, a PowerPoint presentation which "was and continues to be presented to swine producers and veterinarians who have engaged or who may engage 'STOMP' services." Declaration in support of substitute specimens. The first sheet is captioned "Using Diagnostics to Target Medication Programs." The second sheet depicts the term STOMP prominently at the top, in capital letters and in a size larger than the text below it. That text begins, "Serological Targeting of Medication Programs," and includes such bullets as "determine the major pathogens," "determine the disease dynamics," and "determine whether medication is indicated."

Because of the manner in which it is depicted in the specimens, STOMP will clearly be perceived as a service mark. Moreover, although not a traditional advertisement such as a newspaper ad, the PowerPoint presentation is being used in the promotion of applicant's services. The

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text in the PowerPoint program indicates that the services include determining pathogens and whether medication is indicated. Such activities fall under the broad identification of veterinarian services, namely, disease testing for animals and disease control services for animals.

Decision: The refusal of registration is reversed.