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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Major League Baseball Properties, Inc.

Serial No. 78183377¹

Mary L. Kevlin and Heather L. Jensen of Cowan, Liebowitz & Latman, P.C. for Major League Baseball Properties, Inc.

Scott Baldwin, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Hanak, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Major League Baseball Properties, Inc. to register the mark MLB TV THE BASEBALL CHANNEL on the Principal Register for services identified, as amended, as follows:

telecommunication services, namely, broadcasting services, namely, audio broadcasting, television broadcasting, subscription television broadcasting, cable television broadcasting, video broadcasting,

¹ The Board notes that on February 10, 2005 a decision was issued in related application Serial No. 78183353.

radio broadcasting, cable radio broadcasting, broadcasting programs via a global computer network; communication services, namely transmitting streamed sound and audio-visual recordings via the Internet, streaming of audio material on the Internet, streaming of video material on the Internet; electronic mail services; electronic transmission of messages and data; television transmission services; cable television transmission services; cable radio transmission; web casting services; providing multiple-user access to a global computer information network; providing on-line chat rooms for transmission of messages among computer users, providing on-line electronic bulletin boards for transmission of messages among computer users, and providing on-line forums for transmission of messages among computer users, all in the field of baseball.²

Applicant has disclaimed TV and BASEBALL apart from the mark as shown.

Applicant has appealed the trademark examining attorney's final requirement that applicant disclaim THE BASEBALL CHANNEL apart from the mark as shown, and his final refusal to register absent compliance with the final requirement. Section 6(a) of the Trademark Act, 15 U.S.C. 1056(a).

Applicant and the examining attorney have filed briefs. No oral hearing was requested.

² Application Serial No. 78183377, filed November 8, 2002, based on an allegation of a bona fide intention to use the mark in commerce.

The basis of the disclaimer requirement is the examining attorney's contention that THE BASEBALL CHANNEL is merely descriptive of applicant's recited services under Section 2(e)(1) of the Trademark Act.

In particular, the examining attorney contends that the individual words "baseball" and "channel" are descriptive of applicant's television broadcasting services and that "[t]he combined term 'THE BASEBALL CHANNEL' may be used to describe a television channel about the game of baseball or featuring baseball games. Therefore, the broadcasting of television programs under the term 'THE BASEBALL CHANNEL' is merely descriptive of a significant feature, purpose or function of the applicant's services." (Brief, p. 5).

The examining attorney made of record the following definitions from The American Heritage Dictionary of the English Language (4th ed. 2000):

baseball: A game played with a bat and ball by two opposing teams of nine players, each team playing alternately in the field and at bat, the players at bat having to run a course of four bases laid out in a diamond pattern in order to score.

channel: A specified frequency band for the transmission and reception of electromagnetic signals, as for television signals.

Also, the examining attorney submitted copies of sixteen third-party registrations of various "CHANNEL" marks for television broadcasting services. Because all of these registrations issued on the Supplemental Register, the examining attorney argues that these registrations support his position that THE BASEBALL CHANNEL is merely descriptive.

Applicant, in urging reversal of the refusal, asserts that the Patent and Trademark Office has registered many "CHANNEL" marks on the Principal Register which are similar to the phrase THE BASEBALL CHANNEL. In this regard, applicant submitted copies of fifteen registrations of such marks that cover television broadcasting services. Applicant contends that THE BASEBALL CHANNEL is at most suggestive because its services "are not a literal channel," and "there is no single channel that all consumers could 'tune' to in order to locate applicant's services." (Brief, pp. 4-5). Further, applicant argues that the word "channel" has a number of meanings, including "a means of communication or expression"; "a way, course or direction of thought or action"; "a conduit"; and "to direct toward or into some particular course."³ In view of

³ Random House Unabridged Dictionary (2d ed. 1993); Merriam-Webster Online; and Dictionary.com.

these meanings, applicant argues that THE BASEBALL CHANNEL may suggest that its services are like a conduit of baseball-related information and content or that through the provision of applicant's services, consumers are directed toward or into a more heightened interest in the sport of baseball.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term is used or is intended to be used, and the

impact that it is likely to make on the average purchaser of such goods or services. In re Recovery, 196 USPQ 830 (TTAB 1977).

We agree with the examining attorney that THE BASEBALL CHANNEL is merely descriptive of applicant's television broadcasting services. There is no dispute that the word BASEBALL is descriptive of applicant's services. Indeed, it is clear from the recitation of services that applicant's television broadcasting services will be in the "field of baseball." Therefore, a significant and indeed the key characteristic of applicant's television broadcasting services is that they will feature baseball content.

The word CHANNEL is equally descriptive of applicant's television broadcasting services. CHANNEL merely describes the vehicle by which the television broadcasting services are transmitted and received. The dictionary excerpt submitted by the examining attorney shows that a "channel" is a frequency band for the transmission and reception of television signals. In the context of applicant's

television broadcasting services, it is this definition which is relevant. The fact that "channel" might have other meanings in other contexts is immaterial to our Section 2(e)(1) analysis. In re Recovery, supra. Also, the word "THE" has no source-indicating significance in this case.

We also find that the composite phrase THE BASEBALL CHANNEL is likewise merely descriptive. The phrase THE BASEBALL CHANNEL, in the context of television broadcasting services, has a plain and readily understood meaning signifying that the chief aspect of applicant's services is the transmission of baseball-related programming. Neither imagination nor thought is required for a purchaser or user to arrive at this conclusion concerning the nature of the services. We are not persuaded by applicant's arguments to the contrary.

Accordingly, because the phrase THE BASEBALL CHANNEL conveys forthwith the primary characteristic of applicant's television broadcasting services, it is merely descriptive thereof within the meaning of Section 2(e)(1). See, e.g., In re Weather Channel, 229 USPQ 854 (TTAB 1985) [THE WEATHER CHANNEL is merely descriptive of "television programming services, namely, preparation of weather formats for use by television stations"].

As previously noted, both applicant and the examining attorney submitted copies of third-party registrations of marks that include the word CHANNEL for television broadcasting services. The third-party registrations submitted by the examining attorney, all of which issued on the Supplemental Register, support the examining attorney's position that the Office has treated the "CHANNEL" marks therein as merely descriptive.⁴ With respect to the third-party registrations submitted by applicant, we note that most of the marks in these registrations are unlike the phrase THE BASEBALL CHANNEL. That is, the marks do not consist of a word describing the programming content and CHANNEL.⁵ In any event, each case must be decided on its own merits, and neither the Board nor the examining attorney is bound by prior actions of the Office. See *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."].

⁴ For example, among the marks are THE ANIMAL CHANNEL; THE LEARNING CHANNEL; THE AUTO CHANNEL; and THE AFRICA CHANNEL.

⁵ For example, among the marks are CHANNEL YOUR BRAIN; THE CHANNEL THAT CHANGES YOU; CLEAR CHANNEL TELEVISION; and ONE WORLD, ONE CHANNEL.

In view of the foregoing, we find that the mark THE BASEBALL CHANNEL, when used in connection with television broadcasting services in the field of baseball, is merely descriptive as contemplated under Section 2(e)(1) of the Act. Thus, the examining attorney's requirement for a disclaimer of THE BASEBALL CHANNEL is proper.

Decision: The refusal of registration based on applicant's failure to disclaim THE BASEBALL CHANNEL is affirmed. However, if applicant submits the required disclaimer within thirty days of this decision, the refusal of registration based on the disclaimer requirement will be set aside. See Trademark Rule 2.142(g).