

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Atlas Media Corp.

Serial No. 76685286

Myron Amer, Esq. for Atlas Media Corp.

Rudy R. Singleton, Trademark Examining Attorney, Law Office
102 (Karen M. Strzyz, Managing Attorney).

Before Hairston, Grendel and Bergsman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Atlas Media Corp. has filed an application to register
the mark HOW NOT TO DIE (standard character form) for
services ultimately identified as "television entertainment
and education, namely, a continuing program about longevity
accessible by television" in Class 41.¹

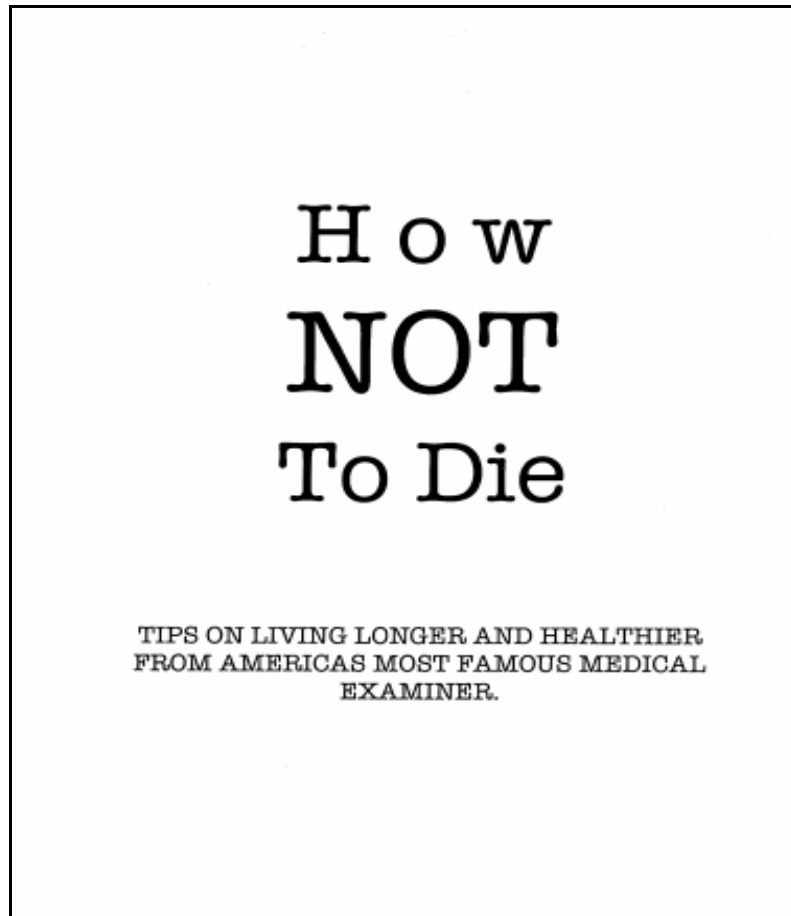
¹ Application Serial No. 76685286, filed December 26, 2007,
alleging a date of first use and first use in commerce of March
1, 2007.

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The trademark examining attorney has refused registration on the ground that the specimen of record is unacceptable because it fails to show service mark use of HOW NOT TO DIE for applicant's identified services. Sections 1 and 45 of The Trademark Act.

When the refusal was made final, applicant appealed. Briefs have been filed. We affirm the refusal to register.

Applicant's specimen, reproduced below, consists of a sheet of paper upon which the mark and other wording is stamped. Applicant characterizes the specimen as promotional material.



The examining attorney maintains that the specimen makes no reference to rendering a program about longevity accessible by television, and consumers, therefore, will not perceive the involved mark as identifying the source of such services.

Applicant, on the other hand, argues that the specimen is an acceptable as it shows use of the mark in connection with the identified services. Applicant has submitted the declaration of its president, Bruce David Klein, who states, in pertinent part, that:

2. [T]he business of applicant is to broadcast on television service mark-identified ongoing series of television programs as exemplified by Reg. Nos. 2,193,349; 2,597,638 and 3,265,541 in the plastic folder annexed hereto;

3. The specimen of record is the practice in the trade of carrying on the business of the registrations of the plastic folder; ...

Accompanying Mr. Klein's declaration are copies of the registrations referenced therein. Each of the registrations is owned by applicant and covers television entertainment related services.

Trademark Rule 2.88 provides, in part, that a statement of use must include one specimen showing the mark as used on or in connection with the sale or advertising of the goods or services in commerce. Further, Trademark Rule 2.56(b)(2) specifies that a "service mark specimen must

show the mark as actually used in the sale or advertising of the services." Section 45 of the Trademark Act provides, in part, that a service mark is used in commerce "when it is used or displayed in the sale or advertising of services and the services are rendered in commerce ..."

To be an acceptable specimen of use of the mark in the sale or advertising of the identified services, there must be a direct association between the mark sought to be registered and the services specified in the application, and there must be sufficient reference to the services in the specimen to create this association. In re Monograms America Inc., 51 USPQ2d 1317 (TTAB 1999). It is not enough that the term alleged to constitute the mark be used in the sale or advertising; there must be a direct association between the term and the services. In re Johnson Controls Inc., 33 USPQ2d 1318 (TTAB 1994); and Peopleware Systems, Inc. v. Peopleware, Inc., 226 USPQ 320 (TTAB 1985). The mark must be used in such a manner that it would be readily perceived as identifying the source of such services. In re Advertising & Marketing Development, Inc., 821 F.2d 614, 2 USPQ2d 2010 (Fed. Cir. 1987); In re Adair, 45 USPQ2d 1211 (TTAB 1997); and In re Metrotech, 33 USPQ2d 1049 (Com'r Pats. 1993).

Applicant seeks registration of HOW NOT TO DIE for "television entertainment and education, namely, a continuing program about longevity accessible by television," but nowhere is a television program mentioned on the specimen. Although the specimen also includes the wording "TIPS ON LIVING LONGER AND HEALTHIER FROM AMERICAS MOST FAMOUS MEDICAL EXAMINER," again, there is nothing on the specimen to indicate that such "tips" will be presented by way of a television program. Thus, the required direct association between applicant's mark HOW NOT TO DIE and the identified services cannot be made by consumers. In sum, there is no reference of any kind to the identified services, and no association between the alleged mark and the identified services. Thus, we agree with the examining attorney that the specimen is not acceptable because it fails to show use of HOW NOT TO DIE in connection with the identified services.

Applicant's president states that applicant is in the business of broadcasting television programs. However, the issue before us is not whether applicant in fact offers a continuing program about longevity accessible by television. We will presume that it does. The question is whether the specimen shows use of the mark for the identified services. Again, the specimen is a sheet of

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paper upon which the mark HOW NOT TO DIE and TIPS ON LIVING LONGER AND HEALTHIER FROM AMERICAS MOST FAMOUS MEDICAL EXAMINER is stamped; it makes no reference to a television program.

Furthermore, the fact that applicant owns other registrations for marks which cover television entertainment related services is not persuasive of a different result in this case. Our task in this ex parte appeal is to determine whether the specimen of record evidences service mark use of HOW NOT TO DIE for the identified services. Applicant's other registrations are irrelevant to the issue of the acceptability of the specimen in this case.

In view of the foregoing, we find that the specimen of record does not evidence service mark use of HOW NOT TO DIE for the identified services.

Decision: The refusal to register is affirmed.