

**This Opinion is Not a
Precedent of the TTAB**

Mailed: October 27, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Wison

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Serial No. 85788703

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Luke Brean of Breanlaw LLC for Dan Wison.

Jill I. Prater, Trademark Examining Attorney, Law Office 119,
J. Brett Golden, Managing Attorney.

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Before Bucher, Kuhlke and Masiello,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Dan Wison (“Applicant”) seeks registration on the Principal Register of the mark POLITICS FUNNIEST RAP BATTLES (in standard characters) for “entertainment services, namely, the provision of continuing shorts, episodes, programs and segments featuring scripted and improvised rap battles between political figures featuring actors and animations delivered by the internet or other digital broadcast media; entertainment services, namely, the provision of continuing shorts, episodes, programs and segments featuring scripted and improvised rap battles between

political figures featuring actors and animations delivered over television, satellite, audio, and video media,” in International Class 41.¹

The Trademark Examining Attorney has refused registration of Applicant’s mark on the ground that POLITICS FUNNIEST RAP BATTLES is merely descriptive of Applicant’s services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

When the refusal was made final, Applicant appealed and the Examining Attorney and Applicant filed briefs. We affirm the refusal to register.

Mere Descriptiveness

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (internal citations omitted). *See also In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), *quoting, Estate of P.D. Beckwith, Inc. v. Commissioner*, 252 U.S. 538, 543 (1920) (“A mark is merely descriptive if it ‘consist[s] merely of words descriptive of the qualities, ingredients or characteristics of the goods or services related to the mark.’”) The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought.

¹ Application Serial No. 85788703 was filed on November 27, 2012, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Chamber of Commerce of the U.S., 102 USPQ2d at 1219. It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). “Marks that are merely laudatory and descriptive of the alleged merit of a product [or service] are ... regarded as being descriptive” because “[s]elf-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods [or services].” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1759 (Fed. Cir. 2012).

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. *In re Phoseon Tech., Inc.*, 103 UPQ2d 1822, 1823 (TTAB 2012); and *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *Oppedahl & Larson LLP*, 71 USPQ2d at 1371. However, a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. *See In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968); *In re Shutts*, 217 USPQ 363 (TTAB 1983).

The Examining Attorney asserts that “[a]s shown in the evidence of record, [A]pplicant’s services, *as identified in the application*, include ‘rap battles between political figures.’ Applicant does not argue that the terms ‘rap battles’ and ‘politics’ are not descriptive of his services, and [A]pplicant even uses the terms to describe his own services. ... [A]pplicant appears to concede in [his] Response to Office Action on September 20, 2013, that ‘Applicant’s services are such that they are suggestive *and descriptive at the same time.*’” Ex. Att. Br. p. 5 (emphasis in original). In support of her position that the proposed mark POLITICS FUNNIEST RAP BATTLES is merely descriptive of the services, the Examining Attorney submitted the following dictionary definitions for each word in the mark:

Politics – 1) the ideas and activities involved in getting power in a country or over a particular area of the world
2) the profession of being a politician;

Funny – someone or something that makes you laugh;

Rap - a way of talking using rhythm and rhyme, usually over a strong musical beat;

Battle – a situation in which different people or groups compete with each other in order to achieve something or get an advantage.²

The Examining Attorney contends that Applicant’s “proposed mark immediately refers to a primary feature of [A]pplicant’s goods/services, namely that [A]pplicant’s services include programming containing politics funniest rap battles. Because [A]pplicant’s services include providing access to videos in which politicians are engaging in rap battles intended to be funny, [A]pplicant’s proposed service mark

² MACMILLAN DICTIONARY (2009-2013), www.macmillandictionary.com, attached to March 21, 2013 Office Action.

‘POLITICS FUNNIEST RAP BATTLES’ is merely descriptive and laudatory of the [A]pplicant’s services.” Ex. Att. Br. p. 7.

Applicant argues:

The characteristics of Applicant’s services are such that they are suggestive and descriptive at the same time. Upon perception of the mark, the consumer may recognize that [it] is for video content. However, the mark only suggests at the show’s format. The mark suggests that [sic] show involves politics and rap battles, but it does not reveal much about the content, how it is structured, or who is performing.

App. Br. p. 5.

As noted above, a term need not immediately convey an idea of each and every specific feature of an applicant’s services in order to be considered merely descriptive; it is enough that the term describes one single, significant feature or attribute. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219.; *In re Oppedahl & Larson LLP*, 71 USPQ2d at 1371 (“A mark may be merely descriptive even if it does not describe the full scope and extent of the applicant’s goods or services.”) (quotation omitted). In addition, as noted above, we must consider the context in which the mark is used in connection with the services and understand the significance that the mark would have to the average purchaser of the goods or services in the marketplace. *See Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. As explicitly stated in the identification of services, the entertainment services feature “rap battles between political figures,” thus, the phrase POLITICS FUNNIEST RAP BATTLES immediately informs potential consumers of Applicant’s entertainment services about the subject matter or content of the

material, namely funny rap battles involving politics or in Applicant's words, "rap battles between political figures."

Applicant argues that there "are any number of other alternative marks that a competitor could use to describe a similar service." App. Br. p. 4. However, the fact that other words or phrases exist for competitors to use does not redeem an otherwise merely descriptive word or phrase. *See Roselux Chem. Co. v. Parson Ammonia Co.*, 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962).

Finally, Applicant argues that competitors do not use POLITICS FUNNIEST RAP BATTLES to describe their services and that he is not aware of any other party that uses the phrase for entertainment services. It is well-established that even if an applicant may be the first and only user of a merely descriptive designation, if the combination remains merely descriptive of a significant feature of these services, as here, then it is merely descriptive under Section 2(e)(1) of the Trademark Act. *See In re Nat'l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983).

We find that POLITICS FUNNIEST RAP BATTLES immediately describes a significant feature of the services, namely that the subject matter of the digital and video services is "rap battles between political figures."

Decision: The refusal to register Applicant's mark POLITICS FUNNIEST RAP BATTLES as merely descriptive under Section 2(e)(1) is affirmed.