

THIS OPINION  
IS NOT A PRECEDENT OF  
THE TTAB

Hearing:  
5/6/10

Mailed:  
7/12/10

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Florida State University Credit Union

Serial No. 77415033

Theodore A. Breiner of Breiner & Breiner for Florida State University Credit Union.

Matt Einstein, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Quinn, Zervas and Walsh, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Florida State University Credit Union filed, on March 6, 2008, an intent-to-use application to register the mark COLLEGIATE COMMUNITY FINANCIAL for "credit union services."

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark, as proposed to be used in connection with applicant's services, is merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.<sup>1</sup> Applicant's counsel and the examining attorney appeared at an oral hearing before this panel.

Applicant contends that its mark is a coined name, a composite of three unrelated words that are not normally used together. Thus, applicant claims, the mark is not needed by others to describe their credit union services and, in this connection, applicant points to the absence of evidence of any third-party uses of "collegiate community financial." Further, applicant argues, the mark is subject to a number of different meanings (although it fails to identify any of them). In support of its position that the mark is just suggestive, applicant submitted copies of six third-party registrations of marks (covering financial services) that include at least one of the words present in

---

<sup>1</sup> Applicant submitted, for the first time with its appeal brief, an exhibit of which, according to applicant, the Board may take judicial notice. The examining attorney objected to the evidence as being untimely submitted. Although the submission was untimely under Trademark Rule 2.127(d), applicant requested, in any event, that the Board take judicial notice of the document retrieved from the website of the World Council of Credit Unions showing that, as of 2008, there were 7,969 credit unions in the United States. This information is not proper subject matter for judicial notice. TBMP §704.12 (2d ed. rev. 2004). Accordingly, the request is denied, and we have not considered this evidence in making our determination. We hasten to add, however, that even if considered, this evidence does not mandate a different decision on the merits.

applicant's mark, yet none of the registrations issued under Section 2(f) with a claim of acquired distinctiveness or included a disclaimer. Applicant also referenced seven additional third-party marks (covering a variety of goods and/or services far removed from the financial sector) found by the Board, in precedential decisions, to be not merely descriptive. Applicant urges that the third-party marks create, at the very least, doubt as to the mere descriptiveness of applicant's mark.

The trademark examining attorney maintains that the applied-for mark immediately describes the intended users and function of applicant's services, namely "applicant offers money services to people living in the area of, and related to a college." That is, "the mark merely describes that applicant offers financial services to a collegiate community." (Brief, p. 5). The examining attorney submitted nineteen registrations covering financial services wherein the words "collegiate," "community" and/or "financial" are disclaimed apart from the mark. Additional registrations show the same words disclaimed apart from marks specifically for credit union services.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products and/or

services it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods and/or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is not whether someone presented only with the mark could guess the goods and/or services listed in the identification of goods and/or services. Rather, the question is whether someone who knows what the goods and/or services are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

The following dictionary definitions (all retrieved from [www.encycarta.msn.com](http://www.encycarta.msn.com)) are of record:

**collegiate:** of college: belonging to, appropriate to, or being a college, including its students and their pursuits.

**community:** people in an area: a group of people who live in the same area, or the area in which they live; people with a common background: a group of people with a common background or with shared interests within society.

**financial:** connected with money: relating to or involving money or finance.

Based on the commonly understood and readily recognized meanings of the words comprising applicant's mark, we find that COLLEGIATE COMMUNITY FINANCIAL is merely descriptive of credit union services. The mark immediately describes the fact that applicant's financial services, namely credit union services (obviously a type of financial service) are offered to a collegiate community, that is, a community affiliated with a college. Nothing in the mark is incongruous, indefinite or ambiguous when considered in relation to applicant's credit union services and, consequently, no imagination, cogitation or gathering of further information would be necessary in order for customers to perceive the merely descriptive significance of COLLEGIATE COMMUNITY FINANCIAL.

The competing evidence of third-party registrations submitted by applicant and the examining attorney is of little probative value in determining whether the mark involved herein is merely descriptive. Although the number

of registrations falls in favor of the examining attorney's position, as often stated, each case must stand on its own record and, in any event, the Board is not bound by the actions of prior examining attorneys. 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."). See also *In re International Taste Inc.*, 53 USPQ2d 1604, 1606 (TTAB 2000) ("With respect to third-party registrations which include disclaimers...we do not have before us any information from the registration files as to why an Examining Attorney required and/or why the applicant/registrant offered such disclaimers."). The lack of probative value is especially true when considering the third-party marks for services far removed from credit union services.

We also are not persuaded by applicant's claim that no other entity has a need to use the mark and that, indeed, no other entity uses it. The fact that applicant may be the first and/or only user of a merely descriptive designation does not justify registration if the only significance conveyed by the term is merely descriptive. See *In re National Shooting Sports Foundation, Inc.*, 219

**Ser No.** 77415033

USPQ 1018 (TTAB 1983). Moreover, it is not necessary that the term be in common usage in a particular industry before it can be found merely descriptive. See *In re Sun Microsystems Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001).

Anyone marketing financial services, including credit union services, to a community affiliated with a college might well have occasion to use the words "collegiate community financial" to describe their services.

**Decision:** The refusal to register is affirmed.