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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gazette Communications, Inc.

Serial No. 78/019,371

James C. Nemmers, Esq. for Gazette Communications, Inc.

Steven R. Berk, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Simms, Hanak and Holtzman, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Gazette Communications, Inc. (applicant), an Iowa corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark HOGCAM for "agricultural information services, namely, creating and distributing via the global computer network data and information relating to the raising of hogs."¹ The Examining Attorney has refused registration under Section

¹Application Serial No. 78/019,371, filed August 2, 2000, based upon an allegation of applicant's bona fide intention to use the mark in commerce.

2(e)(1) of the Act, 15 USC §1052(e)(1), on the basis that applicant's asserted mark is merely descriptive of applicant's services. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.²

We affirm.

It is the Examining Attorney's position that applicant's asserted mark combines two merely descriptive words into a descriptive composite which merely describes a feature or characteristic of applicant's services. More particularly, the Examining Attorney argues that the term "hog" refers to any type of domestic swine while the term "cam" refers to a camera or, more specifically, a Web camera. While the description of applicant's services does not explicitly indicate that they involve the use of a camera, the Examining Attorney notes that applicant has stated in its July 20, 2001, response that:

It is presently intended that the
website over which the services will be

² While another Examining Attorney had earlier submitted definitions of the term "cam," including the meaning "camera," in his brief the new Examining Attorney handling this case requests that we take judicial notice of other dictionary definitions, apparently from an online dictionary, of the term "cam," including the meaning "A video camera that is used to send periodic images or continuous frames to a Web site for display..." Applicant has not objected to this in its reply brief. Accordingly, we shall take judicial notice of these definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd* 701 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). The Examining Attorney also does not object to the introduction of material from applicant's Web site, attached to applicant's appeal brief, similar to other evidence of record, because it further helps demonstrate use of other similar marks by applicant, such as "CornCam" and "SoybeanCam."

provided will, in part, use a video camera.

Further, the Examining Attorney notes the following statement from applicant's brief, 3:

Applicant's services are not simply video cameras showing live animals or growing plants, but are quite detailed informational services directed towards consumers who are farmers or other agriculture-industry professionals...

...The examining attorney has identified other situations where the term "CAM" is combined with an animal name in zoo or other situations. However, these are used in a descriptive sense when used only in connection with video cameras showing live animals. Applicant's services are so much more than that since they provide agricultural information and the videos showing live animals or growing plants is [sic] only a small part of the services and certainly not the primary purpose of the services.

In this connection, the Examining Attorney contends that it is not necessary that a term describe all of the purposes, functions, characteristics or features of applicant's services in order for it to be merely descriptive. The Examining Attorney argues that, although applicant will apparently provide other information on its Web site, if applicant uses the asserted mark in the same manner that it is using its other "-CAM" marks, the video images will be a prominent feature of applicant's Web site. The Examining

Attorney contends that, when a user of applicant's services sees the mark HOGCAM in connection with live Web-casted images of hogs, the user will immediately understand the significance of applicant's mark and a significant purpose of applicant's services--that applicant is showing images of hogs via the Internet through a Web camera.

The Examining Attorney also notes applicant's uses of the terms "CornCam" and "SoybeanCam" from applicant's Web sites. See below (reduced):

Iowa Farmer Today's CORN CAM

10:31:16 18-JUL-2001

Other IFT Web Cams
SoybeanCam
DairyCam

Ear-mail
from
CornCam fans
(Updated June 26)

Corn Cam Chronicle
Take a peek here for a close-up look at the field and a summary of plant growth from Sharon Greif

Corn Poll
CornCam fans vote here on whether you would rather watch corn grow or paint dry. It's a close race. Be sure to cast your ballot.

Garst
Modern Science
Traditional Values

PLAY
The Garst CornCam

CornCam planting
Jim Greif planted the CornCam field May 11. This field sets adjacent to last year's CornCam field. Soybean stubble from last season's crop covers this field. Last year's CornCam field will become a soybean field, soon to be visible on SoybeanCam. Soybean planting is expected in

15:06:32 11-MAY-2001

15:16:14 11-MAY-2001

Corn stalk trophy

The screenshot shows a website interface for 'Iowa Farmer Today's SOYBEAN CAM'. At the top right, there is a logo for 'SOYBEAN CAM' with an illustration of a camera and soybean pods. Below this, a large video frame shows a soybean field with a timestamp '9:35:46 18-JUL-2001'. To the left of the video frame, there is a sidebar with the text 'IFT Cams', 'CornCam', 'DairyCam', 'Jim's Beans-Talk', a small portrait of a man, and 'A running commentary with photos on plant progress in this Iowa soybean field'. Below the video frame, the text reads 'Watch soybeans grow' and 'This field was planted to soybeans Friday afternoon, May 18. This was the site of last year's CornCam.' To the right of the video frame, there is a logo for 'AgriPro SEEDS' with the tagline 'One Pro to Another' and a smaller video frame below it.

The Examining Attorney has also made of record excerpted articles from the Nexis database showing use of such terms as "Penguin cam," "Gorilla cam," "elephant-cam," "zebra-cam," "Chicken Cam," "Rhino Cam," "lion cam," "tiger cam" and "bear cam." The Examining Attorney points to this evidence to show awareness of the term "cam" preceded by an animal name indicating the viewing of animals through a camera from a remote location. One of the articles apparently refers to applicant:

...Who would have thought that watching crops grow would generate such interest? Focused day and night on a cornfield in Monticello, Iowa, this site has generated up to 20,000

hits and 500 e-mails a day from bored office workers and science-teacher-prompted school-kids. Coming soon from the Hawkeye State: spinoff cams trained on soybeans, cattle and hogs.

Newsday, June 28, 2000. The Examining Attorney also points to the following statement from the first page of applicant's CornCam Web site: "Last year's CornCam field will become a soybean field, soon to be visible on SoybeanCam." While the Examining Attorney concedes that there are a number of definitions of the term "cam," it is the Examining Attorney's position that, in relation to applicant's services, the viewer will understand that "CAM" in applicant's mark means "camera."

It is applicant's position, on the other hand, that, while there is no question that the term "hog" is descriptive and that one of the definitions of "cam" is "camera" (brief, 3), "cam" has a number of meanings so that applicant's asserted mark conveys no immediate knowledge of the characteristics or features of applicant's services. Applicant argues, therefore, that its mark as a whole is suggestive of "a wide assortment of products and services," brief, 4, and that an exercise of imagination, thought or perception is required before a consumer can make a conclusion about the nature of applicant's services whereby applicant provides a broad range of agricultural

Serial No. 78/019,371

information and not merely the viewing of hogs via a camera. According to applicant, the mark HOGCAM has no single, immediate or clear meaning and that one seeing or hearing applicant's mark has virtually no idea of the related agricultural services applicant offers, except that they might have to do with hogs.

Applicant states that it is using different marks for providing similar services directed to different segments in the agricultural industry. Applicant indicates that while its application to register CORNCAM was initially rejected by the Office, it was eventually allowed.

In response to this argument, the Examining Attorney contends that he is not bound by decisions of other Examining Attorneys, that a mark which is merely descriptive is not to be registered merely because other similar marks may have been placed on the Register, and that each case must be considered on its own merits.

A mark is merely descriptive if it immediately describes the ingredients, qualities, characteristics or features of the goods or services, or if it immediately conveys information regarding a function, purpose or use of the goods or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). *See also In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed.

Serial No. 78/019,371

Cir. 2001). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is merely descriptive. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and *Abcor*, 200 USPQ at 218. Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *Meehanite Metal Corp. v. International Nickel Co.*, 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959); and *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982).

Upon careful consideration of this record and the arguments of the attorneys, we conclude that applicant's mark HOGCAM immediately informs users and prospective users of applicant's services of a significant feature of those services--that applicant's services involve the images of hogs via a camera. In this regard, we are convinced that the "CAM" portion in applicant's mark HOGCAM, when used in connection with applicant's services, will have the significance which the Examining Attorney contends. Further, as the Examining Attorney has noted, it is not a requirement that a mark describe all of the features of a product or service in order for it to be determined to be merely descriptive. It is only necessary that the term in

Serial No. 78/019,371

question describe a significant feature or characteristic of a product or service. Moreover, the evidence of record tends to demonstrate that the public may have become accustomed to the use of the word "cam" with an animal name. This reinforces our belief that when the relevant public encounters applicant's mark in connection with applicant's services, the term will have a readily understood meaning.

Concerning applicant's recently obtained registration of the mark CORNCAM, what the U.S. Court of Appeals for the Federal Circuit has said is relevant:

Needless to say, this court encourages the PTO to achieve a uniform standard for assessing registrability of marks. Nonetheless, the Board (and this court in its limited review) must assess each mark on the record of public perception submitted with the application.

In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). See also *In re Scholastic Testing Service, Inc.*, 196 USPQ 517 (TTAB 1977).

Decision: The refusal of registration is affirmed.