

**THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB**

Mailed: June 10, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Swiss Watch International

Serial No. 78409312

Amaury Cruz, Esq. for Swiss Watch International.

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Office 114 (K. Margaret Le, Managing Attorney).

Before Walters, Taylor and Ritchie, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Swiss Watch International has filed an application to register on the Principal Register the standard character mark CABOCHON for, in part, "watches, namely, horological and chronometric instruments, namely, men's and women's wrist watches and chronometers, jewelry, namely, rings being jewelry, bracelets being jewelry, pins being jewelry, brooches of precious metals or imitation jewelry, anklets,

necklaces, and watch chains," in International Class 14.¹ The application also includes goods in International Classes 3 and 9. However, the application has not been refused registration as to these goods; thus, the refusal to register noted below and this appeal are limited to the goods in International Class 14.

The examining attorney issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with the above-identified goods in International Class 14.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The examining attorney states the following (brief, p. 4):

CABOCHON does indeed describe a salient or significant feature of the applicant's Class 14 goods. That is, in all likelihood, average consumers will carefully evaluate and seek out jewelry (including watches) with the expectation that such goods do indeed contain cabochon gems or are in cabochon jewelry style. As a result, such cabochon 'details' will be a significance of the applicant's goods despite applicant's 'alleged' intention not to promote these features or showcase their prominence in the goods. This is supported by the examining attorney's evidence of record culled from a variety of websites, where cabochon gems and cabochon styled jewelry are

¹ Serial No. 78409312, filed April 28, 2004, based on an allegation of a bona fide intention to use the mark in commerce.

extremely popular and sought after items by average consumers in the marketplace.

In support of this position, the examining attorney submitted a definition of "cabochon" as, in relevant part, "[a] highly polished, convex-cut, unfaceted gem...[a] convex style of cutting gems." *The American Heritage® Dictionary of the English Language* (3rd ed., 1992). Additionally, the examining attorney submitted excerpts from numerous retail websites that refer to cabochon jewelry as a category of jewelry. The following are several examples:

- One website is entitled "silver**cabochon**jewelry.com"
- Zimbio.com includes a section entitled "The People's Guide to Gemstone Lapidary, **Cabochon** Jewelry Supply and Discussion Forum," which includes, inter alia, the following statements: "a few gemstone **cabochon** examples are lapis, charoite, ..." and "our individual gemstone directory and our earring **cabochon** pair directory offer a great many gemstone minerals in **cabochon** form."
- Wehug.com contains links to three "pendant galleries" entitled "semi-precious **cabochon**" and individual items in the galleries are entitled "gemstone **cabochon**."
- Espyjewelry.com contains a lengthy discussion about "**cabochon** jewelry."

Applicant acknowledges that its "goods will likely contain details incorporating cabochon gems" (brief, p. 1).

Applicant argues that its goods are not cabochon and the cabochon style is not a significant feature of the goods, stating that cabochon is just a minor ornamentation that will not be promoted by applicant; and that cabochon is a specialized term adopted from the French by experts in the gem industry and it will not be understood by the common consumer. Applicant submitted the declaration of its president attesting to the above points; and copies of the results of searches of the USPTO database of trademark registrations in support of its statement that it is the only company that uses this term as a mark.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending*

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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 mark is 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).

Contrary to applicant's contention, the evidence clearly establishes that the term "cabochon" is widely used in connection with jewelry to indicate a jewelry style or type of stone used in jewelry. The purchasers of applicant's identified goods, watches and jewelry, encompass all types of consumers, i.e., the general public, and the wide use of this term in the website evidence indicates that the public is likely to be aware of the descriptive significance of this term in connection with jewelry. Since watches may be considered a form of jewelry, especially when made of gold or silver and decorated with gemstones, it is of little significance that the evidence does not specifically show common use of the term "cabochon" in connection with watches. Moreover, the fact that applicant may be the first to use the term in connection with watches does not render this term that is clearly merely descriptive in connection with jewelry a registrable trademark in

connection with watches, many of which are likely to be considered by consumers as a form of jewelry.

Therefore, having considered the evidence of record and all of the arguments by both applicant and the examining attorney, including those arguments not addressed herein, we conclude that, when applied to applicant's goods, the term CABOCHON immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods as noted above. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term CABOCHON as it pertains to applicant's goods.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.