

This Opinion is not a  
Precedent of the TTAB

Mailed: October 4, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board

—  
*In re NTVB Media*

—  
Serial No. 86174087

—  
Julie A. Greenberg and John G. Posa of Gifford, Krass, Sprinkle, Anderson &  
Citkowski, PC, for NTVB Media.

Jennifer O'Brien, Trademark Examining Attorney, Law Office 120,  
Michael W. Baird, Managing Attorney.

—  
Before Quinn, Wellington, and Goodman,  
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

NTVB Media ("Applicant") seeks registration on the Principal Register of the  
mark shown below for:

Publications, namely, printed magazines, newspaper inserts, television  
guides, featuring information pertaining to media, television, movies,  
stars, trivia, gossip, media programming guides with information relating  
to video and audio content in television, movies, the Internet, web podcasts  
and radio programming, games, and puzzles, in International Class 16;  
and

Online publications, namely, online articles, guides, magazines relating to  
media, television, movies, stars, trivia, games, puzzles, gossip, media  
programming guides with information relating to video and audio content

in television, the Internet, web podcasts and radio programming, in International Class 41.<sup>1</sup>



The Examining Attorney takes the position that the literal term TV WEEKLY is merely descriptive of Applicant's goods and services, and the design and font elements are insufficient for purposes of making the mark, as a whole, inherently distinctive. Accordingly, the mark was refused registration on the ground that it is merely descriptive under Section 2(e)(1) of the Trademark Act ("the Act"), 15 U.S.C. § 1052(e)(1).

After the Trademark Examining Attorney made the refusal final, Applicant requested reconsideration and simultaneously appealed to this Board. The Examining Attorney denied the request for reconsideration and this appeal

---

<sup>1</sup> Application Serial No. 86174087, filed on January 24, 2014, is based on Applicant's allegation of first use anywhere and in commerce, for both classes, on October 31, 2010, pursuant to Section 1(a) of the Trademark Act. Applicant provided the following description of the mark in the application: "The mark consists of 3 dimensional lower case letters 't' and 'v' in a distinctive tubular 3 dimensional font and the word 'weekly' superimposed on the bar of the letter 't'."

proceeded. Applicant and the Examining Attorney have filed appeal briefs.<sup>2</sup> For the reasons given in this decision, we affirm the refusal to register.

*Whether the wording TV WEEKLY is merely descriptive*

A mark is deemed to be merely descriptive, within the meaning of Section 2(e)(1), if it immediately conveys knowledge of a quality, feature, function, characteristic or purpose of the goods or services for which it is used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987)); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

Here, there is little dispute, and we take little time in concluding that the wording TV WEEKLY is merely descriptive of Applicant's goods and services. TV is a recognized abbreviation for "television" and "weekly" is defined as "a publication issued once a week."<sup>3</sup> Applicant's goods and services, as defined, are publications or providing publications online in the field of television. In its brief, Applicant argues that "it is difficult, or even impossible to infer from the instant mark that the underlying goods are media publications, or that they are related to the Internet, podcasts, or radio programming, all of which are integral features of the goods."<sup>4</sup> This ignores the fact that our analysis regarding whether wording is merely descriptive is not determined in the abstract, but in relation to the goods and services for which

---

<sup>2</sup> The Examining Attorney identified in the caption of this decision was assigned responsibility for the application after the denial of request for reconsideration, and she filed the appeal brief on behalf of the Office.

<sup>3</sup> Definitions attached to Office action issued on May 6, 2014.

<sup>4</sup> 7 TTABVUE 9.

registration is sought and the context in which it is being used on or in connection with the goods and services. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Applicant did not persist with this argument in its reply brief and, at oral hearing, counsel for Applicant acknowledged the descriptiveness of the terminology. In any event, we have no doubt that TV WEEKLY is the combination of two merely descriptive terms in relation to the goods and services, and the composite has no other non-descriptive meaning, but is itself merely descriptive. *See, e.g., In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information services in the food processing industry).

*Whether the mark, in its entirety, is distinctive*

The main issue before us is whether the stylization and placement of the lettering in which TV WEEKLY appears in Applicant's mark create a separate and inherently distinctive commercial impression apart from the words themselves, such that the mark as a whole is not merely descriptive. That is, it is not possible for an entire mark to be disclaimed and also registered; however, there are situations where the literal components of a mark are combined in a distinctive design such that it is possible to disclaim those literal components and still have a mark which is registrable as a whole. *In re Jackson Hole Ski Corporation*, 190 USPQ 175, 176 (TTAB 1976). In order for this to occur, the design features of the proposed mark must create an impression on purchasers separate and apart from the descriptive meaning of the words, or if it can be shown by evidence that the particular display which the applicant has adopted has acquired distinctiveness. *In re Guilford Mills Inc.*, 33 USPQ2d 1042, 1043 (TTAB

1994). In the present case, Applicant has not made a claim of acquired distinctiveness. Therefore our focus rests solely on whether the stylization and placement of the wording TV WEEKLY creates a separate and inherently distinctive impression. Our determination in this regard involves subjective matter that is based on what a consumer's first impression of the mark is likely to be. *In re Grande Cheese Co.*, 2 USPQ2d 1447, 1449 (TTAB 1986); *In re Jackson Hole Ski Corporation*, 190 USPQ at 176 (“[D]istinctive display’ is in the eyes of the beholder, and usually depends upon the viewer's first impression of the matter in question.”).

In making the argument that its mark is inherently distinctive, Applicant references previous Board decisions involving marks found to have distinctive design elements and the Examining Attorneys’ refusals were reversed. We have reviewed these decisions as well as several others not cited by Applicant; the Board strives for consistency and it behooves us to have a sense of the stylizations that were (or were not) found to create separate and inherently distinctive impressions. We do not discuss these decisions herein,<sup>5</sup> except for an unpublished decision that Applicant, in its reply brief, states is “*extremely close in facts to the instant case.*”<sup>6</sup> That decision, *In re HCA International Limited*, Serial No. 85103030 (TTAB 2013), involved the following mark:

---

<sup>5</sup> For a discussion of decisions involving marks containing stylizations that were (or were not) found to create separate and inherently distinctive impressions, see *In re Sadoru Group Ltd.*, 105 USPQ2d 1484 (TTAB 2012).

<sup>6</sup> 10 TTABVUE 2, emphasis in italics in original.



However, we find a major distinction may be made between the mark in *HCA International* and the mark Applicant seeks to register. As to the former (shown above), the Board concluded that the letters “LOC,” based on their prominence and vertical arrangement, made a separate and distinct element within the mark having the appearance of an acronym. This “LOC” element or acronym was deemed a coined term with no shown descriptive significance in relation to the identified goods and services. In contrast, there is no arbitrary acronym or distinct element found in Applicant’s mark. As discussed *supra*, both “TV” and “weekly” are merely descriptive terms.

Based on our review of Applicant’s mark, and keeping in line with previous decisions, we find it to be “relatively ordinary.” *In re Bonni Keller Collections, Ltd.*, 6 USPQ2d 1224, 1227 (TTAB 1987). We disagree with Applicant’s assertion that “the distinctive, bold, tubular design of the word ‘TV’ unquestionably gives it a separate and inherently distinctive commercial impression.”<sup>7</sup> Rather, we find nothing out of the ordinary with regard to the font, and any three-dimensional aspect to the lettering is hardly noticeable. Moreover, the placement of the descriptive word WEEKLY within the letter T appears to be nothing more than an aesthetic placement of the term. We do not believe consumers will view an additional or separate

---

<sup>7</sup> 10 TTABVUE 2.

commercial impression created by the mark other than the merely descriptive meaning of the literal terms.

*Conclusion*

Because we have found the wording TV WEEKLY to be merely descriptive of Applicant's goods and services and there is no additional inherently distinctive element present in the mark, we find the entire mark is merely descriptive.

**Decision:** The refusal to register Applicant's mark is affirmed.