

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
May 15, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

Personal Liberty Media Group, LLC
—

Serial Nos. 85468736 and 85468795
—

C. Brandon Browning of Maynard Cooper & Gale PC for Personal Liberty Media Group, LLC.

James MacFarlane, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).
—

Before Quinn, Lykos, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

On November 9, 2011, Applicant Personal Liberty Media Group, LLC applied to register the marks PERSONAL LIBERTY¹ and PERSONAL LIBERTY DIGEST,² in standard characters, for services identified after amendment as “providing a website featuring information in the fields of economics and politics” in

¹ Application Serial No. 85468795, filed on an intent-to-use basis under Trademark Act Section 1(b).

² Application Serial No. 85468736. Applicant alleged first use anywhere and first use in commerce in June 2008 for the services in International Class 35 pursuant to Trademark Act Section 1(a), while the services in International Class 36 are on an intent-to-use basis.

International Class 35 and “providing a website featuring information in the field of wealth management” in International Class 36. The former application also identifies “newsletters in the fields of current events, economics, politics, wealth management and personal management” in International Class 16, while the latter disclaims the term “digest” apart from the mark as a whole.

The Examining Attorney has refused both of the applications on the ground that they are merely descriptive of the identified goods and services pursuant to Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). The appeals were consolidated on December 13, 2013, and are fully briefed.³

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). Whether a term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term is used, and the possible significance that the term is likely to have to the average purchaser encountering the goods or services in the marketplace. *See In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

It is settled that “[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is

³ We accept the Examining Attorney’s brief although it was filed four days late, based on his explanation that he made a calendaring error when the deadline for his brief was set earlier than the 60 days requested in his motion to consolidate. *See* Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 1203.02(b) (3d ed. rev. 2 June 2013).

Serial Nos. 85468736 and 85468795

whether someone who knows what the goods or services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

The same rules used to make determinations about trademarks for other goods and services under Section 2(e)(1) apply to the titles of periodicals. Where the goods in an application comprise a periodical such as the newsletter identified in Applicant’s application to register the mark PERSONAL LIBERTY, wording in the mark which describes the subject matter of the publication is deemed to be merely descriptive of the publication as well, since it merely describes a feature or characteristic of the goods. *See, e.g., In re Waverly Inc.*, 27 USPQ2d 1620 (TTAB 1993) (MEDICINE merely descriptive for a medical journal); *In re Gracious Lady Service, Inc.*, 175 USPQ 380, 382 (TTAB 1972) (CREDIT CARD MARKETING merely descriptive for “a periodical pamphlet devoted to subjects of interest to those engaged in the credit card merchandising field”); *In re Medical Digest, Inc.*, 148 USPQ 570 (TTAB 1965) (OB/GYN DIGEST merely descriptive for a periodical magazine dealing with subjects in the field of obstetrics and gynecology).

Applicant’s marks are PERSONAL LIBERTY and PERSONAL LIBERTY DIGEST. The Examining Attorney made of record evidence demonstrating that the phrase “personal liberty” is a noun with an established meaning in the fields of economics and politics. The evidence includes, for example, the following three dictionary definitions of “personal liberty”:

- “the liberty of an individual to do his or her will freely except for those restraints imposed by law to safeguard the physical, moral, political, and economic welfare of others”⁴
- “Freedom to behave as one pleases, circumscribed by the laws and codes of conduct of the society in which one lives.”⁵
- “the freedom of the individual to do as he pleases limited only by the authority of politically organized society to regulate his action to secure the public health, safety, or morals or other recognized social interests”⁶

Other record evidence demonstrating use of the phrase “personal liberty” in the fields of economics and politics includes:

- a listing of “landmark Supreme Court cases” on “personal liberty”;⁷
- a blog entry titled “Personal Liberty Issue Update: How the Candidates Define Liberty” analyzing views of the 2012 presidential candidates on economic and political issues;⁸
- a Pinterest “Personal Liberty” board stating: “Individuals should be free to make choices for themselves and to accept responsibility for the consequences of the choices they make. No individual, group, or government may initiate force against any other individual, group, or government. Our support of an individual’s right to make choices in life does not mean that we necessarily approve or disapprove of those choices.”⁹
- a book listing titled: “On Liberty: John Stuart Mill’s 5 Legendary Lectures on Personal Liberty.”¹⁰

⁴ February 28, 2013 Office action at 2 (from Dictionary.com). Except where otherwise specified, citations to the briefs and record are the same for both applications.

⁵ *Id.* at 10 (from BusinessDictionary.com).

⁶ *Id.* at 13 (from Merriam-Webster.com).

⁷ *Id.* at 20 (from BillofRightsInstitute.org).

⁸ *Id.* at 34-35 (from Headcount.org).

⁹ September 30, 2013 final Office action at 5 (from Pinterest.com).

¹⁰ *Id.* at 14 (from Amazon.com).

Applicant submitted screen shots and printouts from its website personalliberty.com as a specimen of use for Application Serial No. 85468736. The subtitle of the site's home page is "Live Free in an Unfree World," and one of the headings on the home page is "Liberty Alerts." A list of article categories on the second page of the printout includes "2nd Amendment Under Fire," "Ageless Wisdom Of The Founders," and "Conservative Politics," the latter with subcategories "Civil Liberty," "Freedom Concerns," "Government," "Liberty," "Privacy," and "Religion." The specimen demonstrates that Applicant's website features information on political issues relating to personal liberty as defined in the record evidence.

Applicant argues that the Examining Attorney has interpreted the meaning of the phrase "personal liberty" too broadly, such that its marks would be

merely descriptive of any and all goods and services that relate to any field of human endeavor since the freedom of people to *do* as they please applies to essentially all legal human activities. Following the Examiner's logic there is essentially no *context* involving the action of humans that is not encompassed by the meaning of "personal liberty."¹¹

Applicant also argues that its marks do not immediately describe its goods and services because the words "personal" and "liberty" have several different meanings, as shown by dictionary definitions it made of record during prosecution.¹²

¹¹ Reply Brief at 2.

¹² See August 20, 2013 response to Office action, Application Serial No. 85468795, at 11-21; August 20, 2013 response to Office action, Application Serial No. 85468736, at 10-20. We have given no consideration to Exhibits 1 through 7 attached to Applicant's appeal brief, which are untimely. See Trademark Rule 2.142(d), 15 U.S.C. § 2.142(d); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1990-91 (TTAB 2011). See also TBMP § 1207.01.

Therefore, Applicant asserts, “the phrase ‘personal liberty’ can create in the minds of consumers a multitude of meanings, and none of these meanings immediately tells consumers that Applicant’s goods/services are providing a website featuring information in the fields of economics and politics.”¹³ Nonetheless, we find that PERSONAL LIBERTY and PERSONAL LIBERTY DIGEST describe forthwith a key characteristic of Applicant’s goods and services: the political and economic information that is the subject matter of Applicant’s newsletters and website. A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods. *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

Applicant also made of record registrations incorporating the term “liberty” without disclaimer, none of which also includes the word “personal.” The issue before us is not the descriptiveness of the term “liberty” alone, but rather whether the phrase “personal liberty” conveys information about Applicant’s goods and services. That a term may have other meanings in different contexts is not controlling. *In re Franklin County Historical Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012).

Based on the evidence of record, we find that the phrase “personal liberty” immediately conveys knowledge of the contents of Applicant’s identified website services “featuring information in the fields of economics and politics” in Class 35 as

¹³ Appeal Brief at 5.

Serial Nos. 85468736 and 85468795

well as its Class 16 goods, “newsletters in the fields of current events, economics, politics, wealth management and personal management.”

We find, however, that the Examining Attorney has not demonstrated that the marks are descriptive with respect to Applicant’s services in Class 36, “providing a website featuring information in the field of wealth management.” Although the phrase “personal liberty” conveys information with regard to economics in general, we find no record evidence establishing that the average purchaser encountering Applicant’s services in the marketplace would view the marks PERSONAL LIBERTY or PERSONAL LIBERTY DIGEST as conveying specific information about “wealth management.”

Decision: The refusals to register Applications Serial Nos. 85478795 and 85468736 under Section 2(e)(1) are affirmed as to the goods and services in International Classes 16 and 35. The refusals to register Applicant’s services in International Class 36 are reversed. Both applications will proceed to publication for the services in International Class 36.