

**This Opinion is Not a
Precedent of the TTAB**

Mailed: December 28, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re SCSW, Inc.
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Serial No. 86450668
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Scott Anthony Smith of Polster, Lieder, Woodruff & Lucchesi, L.C.,
for SCSW, Inc.

Susan R. Stiglitz, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

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Before Quinn, Wolfson and Shaw,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

SCSW, Inc. (“Applicant”) seeks registration on the Principal Register of the mark
SUPER CHEVY SHOW (in standard characters) for

Entertainment and educational services in the nature of
automobile racing events, swap meets and car shows
showcasing vehicles,

in International Class 41.¹

¹ Application Serial No. 86450668 was filed on November 11, 2014, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and in commerce since January 1, 1980.

In her initial Office Action, the Trademark Examining Attorney refused registration of Applicant's mark under Section 2(a), 15 U.S.C. § 1052(a), on the ground that Applicant's mark, when used in connection with Applicant's goods, falsely suggests a connection with General Motors, LLC² ("General Motors"); asserting that "General Motors [is] the institution that owns Chevrolet and makes motor vehicles known by its famous nickname, Chevy."³ The Examining Attorney also refused registration in the initial Office Action under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of the services. The Section 2(e)(1) refusal was withdrawn following Applicant's showing of acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).

Accordingly, the sole issue for appeal is whether Applicant's mark falsely suggests a connection with General Motors. The Examining Attorney made the Section 2(a) refusal final, and Applicant appealed to this Board. We affirm the refusal to register.

² We construe the Examining Attorney's informal use of "General Motors" as a specific reference to General Motors LLC, the entity listed as the current owner of the registrations that have been made of record. Further, while her characterization of "Chevrolet" as "a division of General Motors," 6 TTABVUE 9, 10, is not supported by evidence of record, we may take judicial notice of a listing in the Encyclopedia Britannica of "General Motors Corporation (GM)" which states that Chevrolet is one of "five main automotive divisions" of the enterprise known as General Motors. At <https://www.britannica.com/topic/General-Motors-Corporation>, accessed December 26, 2016. The Board may take judicial notice of encyclopedia entries, census data, standard reference works and of commonly known facts. See TBMP § 1208.04 (2016) and authorities cited in that section.

³ Examining Attorney's Brief, 6 TTABVUE 4.

Applicable Law

Section 2(a) prohibits registration of “matter which may ... falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols.” 15 U.S.C. § 1052(a). Following our principal reviewing court’s decision in *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), *aff’g* 213 USPQ 594 (TTAB 1982), the Board utilizes the following four-part test to determine whether a false suggestion of a connection has been established:

1. The mark is the same as, or a close approximation of, the name or identity previously used by another person or institution;
2. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
3. The person or institution named by the mark is not connected with the activities performed by the applicant under the mark; and
4. The fame or reputation of the person or institution is such that, when the mark is used with the applicant’s goods or services, a connection with the person or institution would be presumed.

In re Pedersen, 109 USPQ 2d 1185, 1188-89 (TTAB 2013) (LAKOTA falsely suggests a connection with the Lakota Native American people); *see also In re Nieves & Nieves LLC*, 113 USPQ2d 1629 (TTAB 2015) (PRINCESS KATE falsely suggests a connection with Catherine, Duchess of Cambridge, also known as “Kate Middleton”); *In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985) (WESTPOINT falsely suggests a connection with an institution, namely, the United States Military Academy). *See also Buffett v. Chi-Chi’s, Inc.*, 226 USPQ 428, 429 (TTAB 1985) (MARGARITAVILLE falsely suggests a connection with musician Jimmy Buffett).

To establish that Applicant's mark falsely suggests a connection with General Motors, the Examining Attorney must prove that the term "CHEVY" is a known name or identity for General Motors; that SUPER CHEVY SHOW is a close approximation of CHEVY, points uniquely and unmistakably to General Motors, and is being used by Applicant in association with services that are not connected to General Motors but would be presumed to be so connected, given the fame of the designation CHEVY as General Motors' name or identity. We examine each of these factors in turn.

A. Whether SUPER CHEVY SHOW is the same as, or a close approximation of a name or identity previously used by General Motors?

There are two prongs to this inquiry. First, we determine whether CHEVY is a name or identity of General Motors. Next, we determine if SUPER CHEVY SHOW is a close approximation of CHEVY.

Applicant acknowledges that the term CHEVY "is a well-known nickname for CHEVEROLET [sic]."⁴ The evidence of record shows that "Chevrolet" is a well-known brand of automobile, that General Motors manufactures Chevrolet automobiles, and that CHEVY is recognized and used as an abbreviation for Chevrolet.

With its initial Office Action, the Examining Attorney submitted copies of the following CHEVROLET and CHEVY registrations owned by General Motors:⁵

⁴ Applicant's Brief, 4 TTABVUE 29.

⁵ Attached to the March 6, 2015 Office Action, pp. 41-50.

Reg. No. 0216070 for the mark **CHEVROLET** for “automobiles”;⁶

Reg. No. 1661627 for the mark CHEVROLET for “motor land vehicles; namely, automobiles, passenger vans, cargo vans, sport utility vehicles, pick-up trucks, commercial land vehicles; namely, automobiles, buses, trucks, vans, sport utility vehicles, chassis for the foregoing and any combination thereof and structural parts therefor, engines therefor, and structural parts thereof; cabs and chassis for trucks, motor homes, and recreational vehicles; chassis for vans”;⁷

Reg. No. 1494385 for the mark CHEVY for “toys and playthings; namely, toy vehicles, toy cars, toy model battery-operated remote and radio-controlled toy vehicles, friction powered toy vehicles and hobbycraft kits”;⁸

Reg. No. 2308986 for the mark CHEVY for “shirts, sweaters, jackets, hats and shorts”;⁹ and

Reg. No. 2555071 for the mark  for “non-luminous and non-mechanical metal street signs and parking signs, metal license plates, and metal key rings.”¹⁰

The Examining Attorney further submitted evidence showing that General Motors promotes CHEVY as its name or identity. For example, General Motors’ website *chevrolet.com* contains links to “Chevy Culture/Chevy Life,” where Chevy enthusiasts can read about news and events taking place around the country

⁶ Registered August 3, 1926; renewed.

⁷ Registered October 22, 1991, renewed.

⁸ Registered June 28, 1988; renewed.

⁹ Registered January 18, 2000; renewed.

¹⁰ Registered April 2, 2002; renewed.

sponsored by General Motors. One of these internal links refers to its partnership with the American Cancer Society; another promotes a Chevrolet pickup truck that will be presented to the Achilles Freedom Team of Wounded Veterans; a third announces a sweepstakes including the prize of a “2015 Chevy Silverado HD” and another, that General Motors donated a “2013 Chevy Traverse” as part of its sponsorship of the CMA (Country Music Association) awards.¹¹

Third parties use “Chevy” to identify General Motors. For example, Hendrick Chevrolet Shawnee Mission advertises “new Chevy cars and trucks,” listing several as “Popular Chevy Models.”¹² Media usage further corroborates “Chevy” as an abbreviation for Chevrolet and a name for General Motors. Making this connection is an article from *Mashable.com* entitled “Spending a Week With an Electric Car: Is the 2013 Chevy Volt Worth It?” which describes the author’s experience test-driving the car after “GM brought a lovely burgundy Chevy Volt to my driveway....”¹³ Applicant’s own website describes Applicant’s “Super Chevy Show tour” as

the premier national event for all Chevrolet enthusiasts offering something for everyone. From high-powered Chevy racing action to the spectacular show cars....[t]he Series boasts one of the nation’s finest Performance & Restoration Midways for GM products....¹⁴

In light of the above, we find that CHEVY is a name or identity of General Motors.

¹¹ At <http://www.chevrolet.com/culture/category/life.html>; attached to March 6, 2015 Office Action, pp. 16-28.

¹² At <http://www.chevyusa.com/index.htm>, attached to March 6, 2015 Office Action, pp. 30-32.

¹³ At <http://mashable.com/2012/11/14/chevy-volt-worth-it/>; attached to March 6, 2015 Office Action, pp. 6-13.

¹⁴ At <http://superchevyshow.com>, attached to March 6, 2015 Office Action, p.2.

We next must decide whether the phrase SUPER CHEVY SHOW is a close approximation to CHEVY. “[T]he similarity required for a ‘close approximation’ is akin to that required for a likelihood of confusion under § 2(d) and is more than merely ‘intended to refer’ or ‘intended to evoke.’” *Bd. of Trs. of Univ. of Ala. v. Pitts*, 107 USPQ2d 2001, 2027 (TTAB 2013). In other words, Applicant’s mark must do more than simply bring General Motors’ CHEVY identity to mind. *See also Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB 2008) (test for false suggestion of a connection more stringent than in disparagement, where reference to persona suffices). In this respect, we find that SUPER CHEVY SHOW is a close approximation of CHEVY. Because “SUPER” is merely laudatory and “SHOW” is generic for the services, they are less significant than the term CHEVY in Applicant’s mark, which is its dominant, salient feature. As in the likelihood of confusion context, we give more weight to the dominant feature in a mark when determining the commercial impression created by the mark. *Cf. Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion); *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (for rational reasons, more or less weight may be given to a particular feature of a mark). Considering Applicant’s mark in its entirety, we conclude that it is a close approximation of General Motors’ CHEVY name or identity.

B. Whether CHEVY points uniquely and unmistakably to General Motors?

“Under concepts of the protection of one’s ‘identity,’ ... the initial and critical requirement is that the name (or an equivalent thereof) claimed to be appropriated by another must be unmistakably associated with a particular personality or ‘persona.’” *Univ. of Notre Dame*, 217 USPQ at 509. The evidence establishes that the term CHEVY points uniquely and unmistakably to General Motors. Applicant has not presented any evidence that would suggest the term CHEVY has any other meaning or connotation. To the contrary, Applicant uses the name CHEVY to tell the public that its own events feature CHEVY cars. For example, Applicant touts its SUPER CHEVY SHOW as the “nation’s largest single-make car show.”¹⁵ The media also promotes Applicant’s car show as “the best brand-specific event in the country,”¹⁶ referring to General Motor’s CHEVY vehicles.

C. Whether General Motors is connected with Applicant’s activities performed under its mark SUPER CHEVY SHOW?

If General Motors is connected with Applicant’s activities, there is no violation of Section 2(a). Applicant asserts that

there is a substantial connection between the Applicant and CHEVEROLET [sic]. ... In fact, Applicant has used the mark continuously for twenty five years, to the direct benefit of CHEVERLOT [sic], prominently at different raceways across the country.¹⁷

¹⁵ At <http://superchevyshow.com/about/>, attached to March 6, 2015 Office Action, p.2.

¹⁶ At <http://www.charlottespeedway.com/fans/news/641977.html>, attached to Applicant’s October 14, 2015, Response to Office Action, pp. 6-9.

¹⁷ Applicant’s Brief p. 4, 6 TTABVUE 8.

The type of “connection” contemplated by Section 2(a) is “a commercial connection, such as an ownership interest or commercial endorsement or sponsorship of applicant’s services.” *In re Sloppy Joe’s International Inc.*, 43 USPQ2d 1350, 1354 (TTAB 1997) (Ernest Hemingway’s friendship with original owner of applicant’s bar, his frequenting of bar, and his use of back room of bar as office is not the kind of “connection” contemplated by 15 U.S.C. § 1052(a)). That Applicant’s activities may have indirectly increased consumer awareness of General Motors and its products is not enough, there must be a specific endorsement, sponsorship or the like. Applicant argues that it is acceptable “if that endorsement is merely implied.”¹⁸ As noted in *In re Sloppy Joe’s*, such implied endorsement, if one exists, must be in the nature of a consent to *register* the involved mark. *Id.* Applicant has not shown that General Motors has consented to its use, let alone registration, of SUPER CHEVY SHOW. In this regard, Applicant’s reliance on *In re Los Angeles Police Revolver & Athletic Club, Inc.*, 69 USPQ2d 1630 (TTAB 2004) is misplaced. In that case, although there was no formal written agreement between the applicant and the Los Angeles Police Department (“LAPD”), the Board found the LAPD openly advanced the commercial activities of the applicant; an actual commercial connection existed based on an extensive mutual relationship that had lasted for decades, and which was “publicly acknowledged and endorsed by both parties.” *Id.*, at 1633. Here, we have no showing of any relationship between General Motors and Applicant, or even that General Motors is aware of Applicant’s activities.

¹⁸ Applicant’s Brief p. 4, 6 TTABVUE 8.

Accordingly, we find Applicant has not established a connection with General Motors which entitles it to register the involved mark.

D. Whether the fame or reputation of CHEVY is such that a connection with General Motors would be presumed?

The term CHEVY is iconic. It is listed in two online dictionaries, the Oxford Dictionaries and the Macmillan Dictionary: each define “Chevy” as “A Chevrolet car.”¹⁹ Moreover, Applicant describes its entertainment and educational services as promoting Chevrolet vehicles and its intent is to suggest a connection with General Motors. “Evidence of such intent would be highly persuasive that the public will make the intended false association.” *In re Sloppy Joe’s*, 43 USPQ2d at 1354 (citing *Univ. of Notre Dame*, 217 USPQ at 509). We have no doubt that prospective purchasers of Applicant’s services will recognize that the term CHEVY identifies General Motors. We find, therefore, that when CHEVY is used as part of the mark SUPER CHEVY SHOW for Applicant’s entertainment and education services, prospective purchasers would presume a connection between General Motors and Applicant’s services.

Decision: The refusal to register Applicant’s mark SUPER CHEVY SHOW under Trademark Act Section 2(a) is affirmed.

¹⁹ At <http://www.oxforddictionaries.com>, and <http://www.macmillandictionary.com>, attached to March 6, 2015 Office Action. The Macmillan reference notes that this “is the American English definition of Chevy.”