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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sones

Serial No. 78717427

James R. Menker of Holley & Menker, P.A. for Michael Sones.

Michael G. Lewis, Trademark Examining Attorney, Law Office
111 (Craig D. Taylor, Managing Attorney).

Before Hohein, Hairston and Drost, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Michael Sones has applied to register the mark ONE
NATION UNDER GOD for goods identified as "charity
bracelets." Application Serial No. 78717427 was filed on
September 21, 2005 based upon applicant's allegation of a
bona fide intention to use the mark in commerce. The
application was published for opposition on May 23, 2006
and a notice of allowance subsequently issued on August 15,
2006.

On February 15, 2007 applicant filed his statement of use and a specimen described as "web order pages for [the] goods," alleging first use anywhere and first use in commerce on February 14, 2007. On July 23, 2007, the trademark examining attorney issued a final refusal to register on the ground that "the specimen is not acceptable to show trademark use in a display associated with the goods because the electronic catalog page or webpage does not show the mark in close proximity to a picture of the goods." (Final Office Action, p. 1).

The issue for consideration is whether the specimen submitted by applicant with his statement of use is acceptable to show trademark use of the mark in connection with the identified goods. In this regard, we note that Trademark Rule 2.56(b)(1) provides:

A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods.

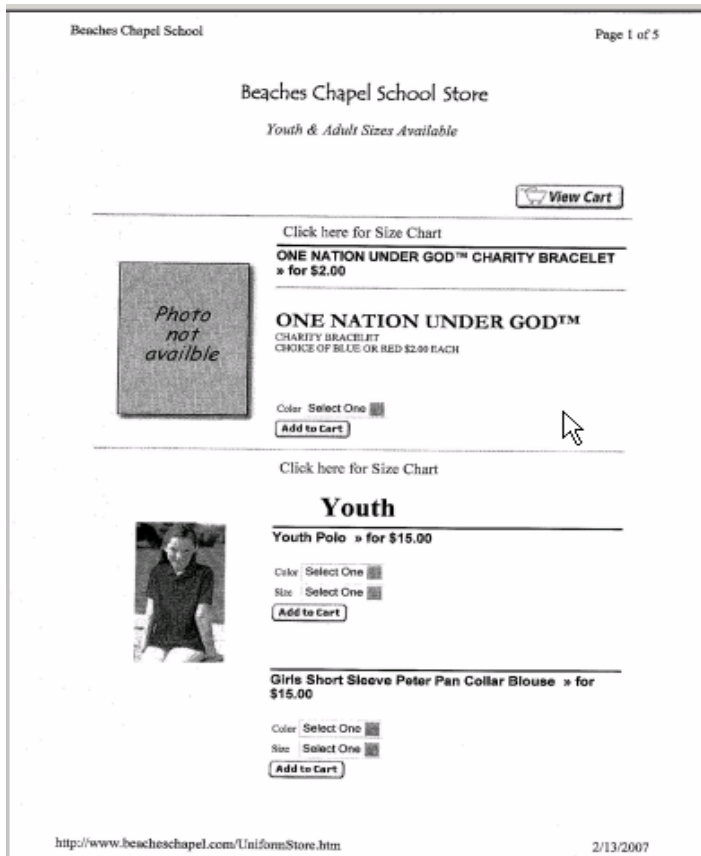
Trademark Rule 2.88(b)(2), applicable to this application because applicant filed his specimen with his statement of use, requires a specimen of the mark as actually used in commerce, and specifically refers to Rule 2.56 for the requirements for specimens.

Further, Section 45 of the Trademark Act states, in pertinent part, that a mark is deemed to be in use in commerce

(1) on goods when -

- (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with goods or their sale, ...

Applicant's specimen, which is shown below, consists of an electronic catalog webpage from the website of "Beaches Chapel School Store" and an electronic check-out webpage for purchasing applicant's goods from this website.



Your Shopping Cart - PayPal Page 1 of 1

Beaches Chapel Church and School

Your Shopping Cart Secure

Item	Options	Quantity	Remove
CHEM NATION UNDER GOD™ Item #102	field is not used: ref:	1	<input type="checkbox"/>

Subtotal:
Shipping & Handling:

PayPal protects your privacy and security.
For more information, read our [User Agreement](#) and [Privacy Policy](#).

<https://www.paypal.com/cgi-bin/webscr> 2/13/2007

Citing *Lands' End Inc. v. Manbeck*, 797 F.Supp. 511, 24 USPQ2d 1314 (E.D. Va. 1992), and *In re Dell, Inc.*, 71 USPQ2d 1725 (TTAB 2004), the examining attorney maintains that a webpage may be an acceptable specimen and constitute a display associated with the goods if it: (1) includes a picture of the relevant goods; (2) shows the mark sufficiently near the picture of the goods to associate the mark with the goods; and (3) contains the information necessary to order the goods. It is the examining attorney's position that the webpages applicant has

submitted are not an acceptable trademark specimen because they do not include a picture of the relevant goods, and fail to show the mark sufficiently near a picture of the goods to associate the mark with the goods.

Applicant, on the other hand, maintains that the examining attorney misapprehends the holdings in *Lands' End* and *Dell*. Specifically, applicant argues that these cases do not require that a webpage specimen include a picture of the goods. According to applicant, in finding that the catalog page in *Lands' End* was an acceptable specimen, the court focused on the fact that the catalog page contained a description of the goods, not on the fact that it included a picture of the goods.

Similarly, applicant argues that in finding that the webpage in *Dell* was an acceptable specimen, the Board focused "at least as much on the written description of the product being sold as it did in [sic] the inclusion of a picture of the product on the specimen of use." (Brief, p. 7).

Furthermore, applicant argues that the webpages in this case contain a description of his goods, namely, the wording "CHARITY BRACELET CHOICE OF BLUE OR RED," which renders a picture of the goods unnecessary because this description conveys sufficient information about

applicant's goods for a consumer to associate the goods with the mark on the webpages. Applicant maintains that charity bracelets are ubiquitous and that the purchasing public would clearly understand what applicant's goods are. In this regard, applicant submitted several Internet printouts which discuss the popularity of charity bracelets.

While we have carefully considered applicant's arguments, we are not persuaded thereby. In finding that the catalog page submitted in *Lands' End* constituted a display associated with the goods, the court pointed to the picture of the goods in the catalog and the mark used to identify them when it stated that:

...use of the term KETCH with the picture of the purse and corresponding description constitutes a display associated with the goods.

24 USPQ2d at 1316. (emphasis added)

Similarly, in finding that the webpage submitted in *Dell* constituted a display associated with the goods, the Board pointed to the display of the goods on the webpage and the mark used in connection with them when it stated that "a website page which displays a product, and provides a means of ordering the product, can constitute a 'display associated with the goods,' as long as the mark appears on the webpage in a manner in which the mark is associated

with the goods." 71 USPQ2d at 1727. (emphasis added) In short, contrary to applicant's arguments, the picture of the goods in the catalog in *Lands' End* and the display of the product at the website in *Dell* were important factors in the holdings in those cases.

Further, we note that the *Trademark Manual of Examining Procedure* (TMEP) (5th ed. 2007) §904.03(g), relying on *Lands' End*, provides that a catalog or similar display associated with the goods may be an acceptable specimen of use under the criteria previously set forth by the examining attorney. In addition, TMEP §904.03(h), relying on *Dell*, provides that "[a] website page that displays a product, and provides a means of ordering the product, can constitute a 'display associated with the goods,' as long as the mark appears on the web page in a manner in which the mark is associated with the goods, and the web page provides a means for ordering the goods."

Applicant has offered no persuasive reasons as to why these criteria should not be applied to the webpages submitted in this case. Upon examination of the webpages, it is readily apparent that they do not include a picture of the goods. Indeed, the webpages contain the statement: "PHOTO NOT AVAILABLE." In the absence of a picture of the goods, the mark does not appear on the webpage in a manner

in which the mark is associated with the goods. The mere reference to "CHARITY BRACELETS" and "CHOICE OF RED OR BLUE" does not suffice, and the purported ubiquitousness of charity bracelets does not obviate the requirement for a picture of applicant's particular charity bracelets.

Finally, applicant argues that the Board's decision in *In re Shipley*, 230 USPQ 691 (TTAB 1986) supports his position that the webpages herein constitute a display associated with the goods. In the *Shipley* case, the applicant therein submitted as specimens of use photographs of one of its trade show booths which displayed its mark. The Board held that applicant's display of its mark on trade show booths where the goods were sold was a display associated with the goods, even though the goods identified by the mark were not present at the trade show booths. Applicant maintains that the webpages submitted in this case are displays associated with the goods, even though the webpages do not include a picture of the goods.

The *Shipley* case is readily distinguishable on its facts. As noted above, the *Shipley* case involved the display of an applicant's mark on trade show booths, not on webpages. Also, the applicant in *Shipley* submitted a declaration explaining the circumstances of use of the mark in the specimens.

Ser No. 78717427

Under the circumstances, we find that applicant's specimen does not satisfy the criteria set forth in *Lands' End* and *Dell* that the specimen (1) include a picture of the relevant goods and (2) show the mark sufficiently near the picture of the goods to associate the mark with the goods; and therefore the specimen is not acceptable to show trademark use of applicant's mark.

Decision: The refusal to register is affirmed.