

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

SEPT 10, 98

Paper No. 9

BAC

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fisheye, Inc.

Serial No. 74/731,211

Clark Puntigam of Jensen & Puntigam, P.S. for applicant

Cheryl Goodman, Trademark Examining Attorney, Law Office
102 (Myra Kurzbard, Managing Attorney)

Before Hairston, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Fisheye, Inc. has filed an application to register the
mark FISHEYE and design, in the form reproduced below

for "underwater video cameras".¹

Registration has been finally refused under Section 6 of the Trademark Act on the basis of applicant's failure to comply with a requirement to disclaim the word 'FISHEYE'. Such word, according to the Examining Attorney, is merely descriptive of applicant's goods within the meaning of Section 2(e)(1) of the Trademark Act, and therefore must be disclaimed.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm.

It is the Examining Attorney's position that the term 'FISHEYE' is merely descriptive of a feature of applicant's goods, namely, an underwater video camera which utilizes a wide-angle lens (as shown on applicant's specimens of record). As evidence in support of this position, the Examining Attorney submitted (1) the following dictionary definition of the term FISHEYE from Webster's Ninth New Collegiate Dictionary: "being, having, or produced by a wide-angle photographic lens that has a highly curved protruding front, that covers an angle of about 180 degrees, and that gives a circular image <a ~ lens>"; and (2) excerpts from several Nexis stories which discuss

¹ Application Serial No. 74/731,211, filed September 19, 1995, alleging dates of first use and first use in commerce of February

'fisheye' lenses used with video cameras.

Applicant maintains that the term 'FISHEYE' when used alone, without the word 'lens', is suggestive because the word FISHEYE does not immediately convey the meaning of a particular type of lens; and that applicant's trademark 'FISHEYE' does not refer to the lens per se, but rather, "is intended to suggest an 'underwater view', like a 'fish eye' view of underwater scenes, as well as adding emphasis to the 'fisheye' feature of the design portion of the mark". In support of its contention that the term 'fisheye lens' refers to a camera lens, whereas the term 'fisheye' alone does not so refer, applicant submitted a different dictionary definition stating the source to be Webster's New World Dictionary, wherein the term 'fisheye lens' is defined as "a camera lens designed to record a full 180-degree field of vision"; and there is no listing or excerpt for only the term 'fisheye' in that dictionary.

The Examining Attorney has established the significance or meaning of the term 'FISHEYE', namely, that it is a wide-angle lens. In fact, the dictionary definition submitted by applicant also supports that fact. Also, it would appear from the evidence of record that the

1993 and December 1994, respectively.

addition of the term 'lens' is immaterial to the connotation of 'FISHEYE' as a camera lens.

Applicant's specimens of record indicate that its goods, underwater video cameras, have a fixed focus wide-angle lens, which when connected to a television bring in "sharp, clear pictures", and if connected to a camcorder or VCR allows the underwater action to be taped. That is, applicant's underwater video cameras allow the consumer to watch or to record the underwater wide-angle scene. Thus, the word 'FISHEYE' describes a significant characteristic or feature of applicant's goods, i.e., the wide-angle lens which is the lens in applicant's underwater video cameras.

Applicant's argument that the term may be construed to refer to a 'fish eye' view of underwater scenes is not persuasive, and does not overcome the Examining Attorney's evidence of the ordinary meaning of the term in relation to applicant's goods. See *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). The design feature of applicant's mark, namely, the depiction of a fish with a large eye, does not mitigate the descriptive significance of the word 'FISHEYE' as applied to underwater video cameras which utilize wide-angle lenses.

Based on the above, we find that the term 'FISHEYE' is an unregistrable component of the composite mark, and that

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the requirement for a disclaimer under Section 6 was proper.

Decision: The requirement under Section 6 for a disclaimer of the term 'FISHEYE' is affirmed. However, this decision will be set aside and the mark published for opposition if applicant, no later than thirty days from the mailing date hereof, submits an appropriate disclaimer of 'FISHEYE'. See Trademark Rule 2.142(g).

P. T. Hairston

C. E. Walters

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board