

The Examining Attorney has refused registration on the grounds that the mark does not function as a trademark or is ornamental as used on Applicant's specimen, because the mark appears as a decorative feature of the goods. However, Applicant believes that the mark as used on the specimen serves as an indicator of secondary source and therefore functions as a trademark.

It is well settled that:

The "ornamentation" of a T-shirt can be of a special nature which inherently tells the purchasing public the source of the T-shirt, not the source of the manufacture but the secondary source. Thus, the name "New York University" and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt, will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the university, the university's name on the shirt will indicate the sponsorship or authorization by the university. *In re Olin Corporation*, 181 USPQ 182, 182 (TTAB 1973).

Applying this principle, the Trademark Trial and Appeal Board has routinely reversed refusals to register a mark for t-shirts or similar goods based on the ground that the mark is ornamental, where the mark also serves the dual purpose of indicating source or sponsorship. See, e.g., *In re Watkins Glen International, Inc.*, 227 USPQ 727 (TTAB 1985); *In re Astro-Gods Inc.*, 223 USPQ 621 (TTAB 1984); *In re Paramount Pictures Corporation*, 217 USPQ 292 (TTAB 1983); *In re Paramount Pictures Corporation*, 213 USPQ 1111 (TTAB 1982); *In re Expo '74*, 189 USPQ 48 (TTAB 1975); *In re Olin Corporation*, 181 USPQ 182 (TTAB 1973).

In the instant case, there can be no question but that YO GABBA GABBA and the names of its characters BROBEE, FOOPA, PLEX, MUNO and TOODEE serve as indicators of the secondary source of the goods. As set forth in the attached webpages from Wikipedia and IMDb, *Yo Gabba Gabba!* is an American children's television show launched in 2007 and currently airing on the Nick Jr. cable network. The *Yo Gabba Gabba!* series features live-action segments featuring unforgettable cartoonish costumed characters named *Brobee*, *Foofa*, *Plex*, *Muno* and *Toodee*. In addition to the 55 television episodes to date, Applicant has released six (6) DVDs and two (2) CDs containing, respectively, episodes and music from the television show. MP3 demos were available from an official Yo Gabba Gabba site as early as June 2006, before a network had picked up the show.

As set forth in the attached materials, *Yo Gabba Gabba!* was nominated for a Daytime Emmy in both 2008 and 2009 for Best Costume Design. *Time* magazine's James Poniewozik named *Yo Gabba Gabba!* one of the Top 10 new TV series of 2007, ranking it at #8. In November 2008, *Yo Gabba Gabba!* won a BAFTA Children's Award, International.

In May 2009, the cast of *Yo Gabba Gabba!* (including the characters *Brobee*, *Foofa*, *Plex*, *Muno* and *Toodee*) conducted a world premiere live concert tour in Australia. This Australian tour was followed by a 2010 North American tour with 68 performance dates (some for two shows a day) in various American cities between August 27, 2010 and December 12, 2010, as set forth in the *Nickuption* magazine May 20, 2010 article entitled "Yo Gabba Gabba 2010 North American Tour," a copy of which is attached hereto. The North American live tour also was reported in the October 1, 2010 edition of *The Oakland Press* in an article entitled "Yo Gabba Gabba! Live! Comes To Detroit" (copy attached), which contains pictures of the performers performing the live concert in their *Brobee*, *Foofa*, *Plex*, *Muno* and *Toodee* costumes. In addition, the North American live tour was reviewed by *The Miami Herald* ("Kid-hip 'Yo Gabba Gabba!' Takes Live Show To Next Level," October 31, 2010, copy attached).

However, the most convincing evidence that YO GABBA GABBA and its BROBEE, FOOPA, PLEX, MUNO and TOODEE characters have secondary meaning was presented by *The New York Times* on November 19, 2009 (copy of article entitled "Nickelodeon's Stepchild,

Eager for More Love" attached). In addition to reporting that the **Yo Gabba Gabba!** television show is shown three times a day, seven days a week on Nick Jr. and draws approximately 524,000 viewers per episode, and that "Yo Gabba Gabba!" videos average more than 1.3 million streams per month at the nickjr.com website, The New York Times reported that Yo Gabba Gabba and its costumed characters would have **its own float in the 2009 Macy's Thanksgiving Day Parade!** Not only that, but in 2009 Brad Pitt dressed up as a **Yo Gabba Gabba!** character for Halloween! In noting the 44 merchandising deals for **Yo Gabba Gabba!** in the United States and Canada (from action figures to CDs to dinnerware), The New York Times stated:

These milestones highlight how rapidly "Yo Gabba Gabba!," a show aimed at a preschool audience and broadcast on Nickelodeon's Nick Jr. channel, has built a fan base of young (and not-so-young) viewers with a mix of charming characters, catchy music and hip celebrity guests.

As a result, Applicant is seeking to register its trademark rights in the terms YO GABBA GABBA, BROBEE, FOOPA, PLEX, MUNO and TOODEE, all of which now are uniquely associated with Applicant and its **Yo Gabba Gabba!** show and related goods and services, as supported by the foregoing evidence.

An individual viewing the specimen submitted in this matter would immediately recognize that item as coming from or being authorized by Applicant because it bears the name of its famous television show or one of its primary characters. Just as one would recognize a t-shirt with "New York University" on it as coming from or being authorized by N.Y.U., so would one recognize this specimen as coming from Applicant. In fact, in a virtually identical case, the Trademark Trial and Appeal Board held that the mark MORK & MINDY, as used on t-shirts, served a source-identifying function. *In re Paramount Pictures Corporation*, 213 USPQ 1111 (TTAB 1982).

Not only is Applicant the owner of a hit television show, which has had awards, DVDs, CDs, live tours and a Macy's parade float, but Applicant also has made use of these marks on a variety of products, as demonstrated by Applicant's trademark registrations and applications (for which Applicant has filed Statements of Use, of which the Examining Attorney can take notice) summarized below:

<u>Mark & App./Reg. No.</u>	<u>Goods/Services</u>	<u>First Use</u>	<u>Specimen</u>
YO GABBA GABBA 77/115180	Class 9: Electrical and scientific apparatus, namely, CD ROMs, compact discs, and digital versatile discs featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the fields of science fiction, mystery, fairy tales, comedy and drama; audio speakers	10/31/2008	DVD cover
YO GABBA GABBA 77/115185	Class 16: Paper goods and printed matter, namely, comic books; a series of fiction books featuring stories on comic strips and science fiction themes, stories and characters in illustrated forms; stickers; posters; calendars	01/31/2009	Poster
YO GABBA GABBA 3,951,067	Class 21: Housewares, namely, beverage ware, lunch boxes, paper cups, and paper plates	10/31/2008	Lunch box photo

Mark & App./Reg. No.	Goods/Services	First Use	Specimen
YO GABBA GABBA 3,951,068	Class 24: Bedding, namely, bed linens; curtains; bath mitts; beach towels; and bed blankets	9/30/2008	Bed linen packaging
YO GABBA GABBA 3,951,069	Class 25: Clothing, namely, t-shirts, sweatshirts, warm-up suits, clothing belts, footwear, socks, gloves, hats, pajamas, nightgowns, masquerade costumes, and underwear	11/30/2008	Pajamas
YO GABBA GABBA 3,951,070	Class 28: Toys and sporting goods, namely, play figures and accessories therefor, action figures and accessories therefor, toy figures, plush toys, board games, dominoes, jigsaw puzzles, balloons, kites and accessories therefor, namely, kite boards, kite handles, kite string, kite tails and kite reels, toy vehicles and accessories therefor, toy boxes, toy construction blocks, musical toys, foam rubber balls, Christmas tree decorations, beach balls, and playing cards	8/31/2008	Mega Blocks packaging
YO GABBA GABBA 77/115204	Class 41: Entertainment services, namely, production and distribution of television programs featuring animated and live-action entertainment in the fields of science fiction, comedy, drama, mystery, sports, variety, education, recreation, live performances, individual entertainers, cultures and cultural events, and music; entertainment in the nature of theater productions featuring live-action entertainment in the fields of science fiction, comedy, drama, mystery, sports, variety, education, recreation, live performances, individual entertainers, cultures and cultural events, and music; publication of books and comic books; providing a website featuring musical performances and music; providing online electronic publications, namely, newsletters, bulletins, and online blogs in the field of entertainment; providing a website featuring digital music from MP3 Internet web sites	08/31/2007	Advertisement for live performances
BROBEE 3,951,071	Class 9: Electrical and scientific apparatus, namely, audio speakers	12/31/2008	Audio speakers packaging
BROBEE 77/115212	Class 16: Paper goods and printed matter, namely, stickers and posters	01/00/2009	Poster
BROBEE 77/115216	Class 24: Bedding, namely, bed linens; bed blankets	12/00/2008	Bedding packaging
BROBEE 3,917,327	Class 25: Clothing, namely, t-shirts, sweatshirts, socks, hats, pajamas, underwear and masquerade costumes	11/00/2008	Pajamas
BROBEE 3,951,072	Class 28: Toys and sporting goods, namely, play figures and accessories therefor, action figures and accessories therefor, toy figures, plush toys, dominoes, jigsaw puzzles, toy vehicles and accessories therefor, toy construction blocks, musical toys, beach balls, and playing cards	8/31/2008	Mega Blocks packaging

<u>Mark & App./Reg. No.</u>	<u>Goods/Services</u>	<u>First Use</u>	<u>Specimen</u>
FOOFA 77/115315	Class 9: Electrical and scientific apparatus, namely, audio speakers	1/31/2009	Audio speakers packaging
FOOFA 77/115318	Class 16: Paper goods and printed matter, namely, stickers, and posters	1/31/2009	Poster
FOOFA 77/115321	Class 24: Bedding, namely, bed linens; bed blankets	12/00/2008	Bedding packaging
FOOFA 77/115322	Class 25: Clothing, namely, t-shirts, sweatshirts, warm-up suits, socks, pajamas, underwear and masquerade costumes	11/00/2008	T-shirt
FOOFA 77/115324	Class 28: Toys and sporting goods, namely, play figures and accessories therefor, action figures and accessories therefor, toy figures, plush toys, dominoes, jigsaw puzzles, toy vehicles and accessories therefor, toy construction blocks, musical toys, beach balls, and playing cards	8/31/2008	Mega Blocks packaging
MUNO 77/115294	Class 9: Electrical and scientific apparatus, namely, audio speakers	1/31/2009	Audio speakers packaging
MUNO 77/115298	Class 16: Paper goods and printed matter, namely, stickers; posters	01/00/2009	Poster
MUNO 77/115307	Class 24: Bedding, namely, bed linens; bed blankets	12/00/2008	Bedding packaging
MUNO 77/115310	Class 25: Clothing, namely, t-shirts, sweatshirts and socks	11/00/2008	Socks
MUNO 77/115312	Class 28: Toys and sporting goods, namely, play figures and accessories therefor, action figures and accessories therefor, toy figures, plush toys, dominoes, jigsaw puzzles, toy vehicles and accessories therefor, toy construction blocks, musical toys, beach balls, and playing cards	8/31/2008	Mega Blocks packaging
PLEX 77/115231	Class 16: Paper goods and printed matter, namely, stickers; posters	01/00/2009	Poster
PLEX 77/115238	Class 24: Bedding, namely, bed linens; bed blankets	12/00/2008	Bedding packaging
PLEX 77/115250	Class 28: Toys and sporting goods, namely, play figures and accessories therefor, action figures and accessories therefor, toy figures, plush toys, board games, dominoes, jigsaw puzzles, toy vehicles and accessories therefor, toy construction blocks, musical toys, beach balls, and playing cards	8/31/2008	Mega Blocks packaging
TOODEE 77/115327	Class 9: Electrical and scientific apparatus, namely, audio speakers	1/31/2009	Audio speakers packaging

<u>Mark & App./Reg. No.</u>	<u>Goods/Services</u>	<u>First Use</u>	<u>Specimen</u>
TOODEE 77/115333	Class 16: Paper goods and printed matter, namely, stickers and posters	01/00/2009	Poster
TOODEE 77/115337	Class 24: Bedding, namely, bed linens; bed blankets	12/00/2008	Bedding packaging
TOODEE 77/115338	Class 25: Clothing, namely, t-shirts, sweatshirts, underwear and socks	11/00/2008	Underwear
TOODEE 77/115341	Class 28: Toys and sporting goods, namely, play figures and accessories therefor, action figures and accessories therefor, toy figures, plush toys, dominoes, jigsaw puzzles, toy vehicles and accessories therefor, toy construction blocks, musical toys, beach balls, and playing cards	8/31/2008	Mega Blocks packaging

Applicant's use of these marks on all of these different goods and services further underscores the fact that these marks serve as indicators of secondary source. *See In re Olin Corporation*, 181 USPQ 182 (TTAB 1973) (finding letter "O" displayed in a highly stylized form on a t-shirt served as an indication of source where the mark had previously been registered for skis).

Because Applicant's use of its mark on this specimen serves not only to ornament the item, but also as an indicator of secondary source to identify Applicant as the source of the goods, Applicant respectfully requests that the Examining Attorney's refusal to register the mark as not functioning as a trademark or being only ornamental be withdrawn.

Copies of the evidence referred to above and the cited cases are attached.

ATTACHMENTS

Yo Gabba Gabba!

From Wikipedia, the free encyclopedia
(Redirected from Yo Gabba Gabba)

Yo Gabba Gabba! is an American children's television show currently airing on the Nick Jr. cable network in the United States and the Nick Jr. networks in the United Kingdom & Ireland, Italy and Australia as well as Treehouse TV network in Canada. Created by Christian Jacobs (lead singer of the Aquabats) and Scott Schultz, the program is produced by The Magic Store and Wildbrain Entertainment. The series premiered August 20, 2007 on Nick Jr. and began broadcasting February 23, 2008 on Noggin, now Nick Jr..

On April 30, 2008 the television show received a Daytime Emmy nomination for Outstanding Achievement in Costume Design/Styling.^[1] Although "Yo Gabba Gabba" was created as a show for young children, it has slowly become a sensation among teenagers, college students and even some parents who are entertained by its retro style, bright colors, simplicity, and entertaining music from many of the popular bands featured on the show.

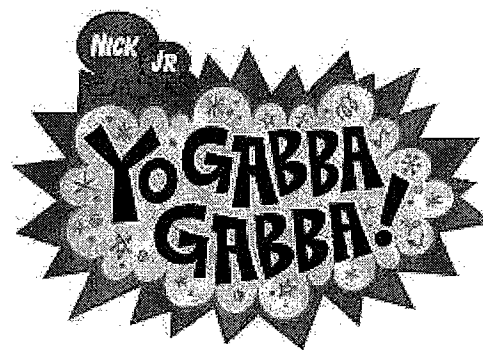
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Overview

Hosted by a character named DJ Lance Rock, the series features a mix of live-action segments featuring cartoonish costumed characters - Muno, Foofa, Brobee, Toodee and Plex - and many short animated sketches and musical numbers.^[2]

Yo Gabba Gabba!



Genre	Children's Television Series
Created by	Christian Jacobs Scott Schultz
Developed by	Kay Wilson Stallings
Written by	Christian Jacobs Scott Schultz
Directed by	Christian Jacobs Scott Schultz
Presented by	Lance Robertson
Country of origin	United States
No. of seasons	3
No. of episodes	55 (List of episodes)
	Production
Executive producer(s)	Michael Polis Jon Berrett
Producer(s)	Rita Peruggi
Running time	23-24 minutes
	Broadcast
Original channel	Nick Jr.
Original run	August 20, 2007 – present
Status	Returning Series
	External links
	Website

In its first two seasons, the show featured a wide variety of guests, including Jack Black, Leslie Hall, The Shins, The Aggrolites, Andy Samberg, Cornelius, Biz Markie, Shiny Toy Guns, Supernova, Mark Mothersbaugh, Rahzel, The Postmarks, Sugarland, Tony Hawk, The Roots, Low, Laila Ali, Elijah Wood, Mýa, The Salteens, Sean Kingston and series co-creator Jacobs' band, The Aquabats. In the second season guests included such bands as Enon, The Clientele, Joy Zipper, Of Montreal, Chromeo, Hot Hot Heat, Mates of State, MGMT, and The Ting Tings.

Among the varied animation sequences during the show is *Super Martian Robot Girl*, designed by indie cartoonists Evan Dorkin and Sarah Dyer.^[3]

The show also featured regular use of visuals reminiscent of retro video games and TV shows.

The toy models of the characters that appear at the beginning and end of each show were made by Kidrobot.

MP3 demos were available from an official Yo Gabba Gabba site as early as June 2006, before a network had picked up the show.

The world premiere live concert tour of Yo Gabba Gabba took place in Australia in May 2009. DJ Lance Rock, Muno, Foofa, Brobee, Toodee and Plex performed in Melbourne, Brisbane and Sydney with an indie house-band and secret, special guests at each show. The concerts were produced by Australian promoter, Entertainment Store Group.

Taking Back Sunday recently filmed an episode for the upcoming season, as did "Weird Al" Yankovic, The Killers, The Roots, Weezer, and Devo.^[4]

History

Unlike most educational children's shows, *Yo Gabba Gabba* was not developed by network executives. Instead the show was developed by two Southern California fathers with no previous experience writing for television let alone children's broadcasting. They simply shared a mutual disappointment in kids' television. They both wanted to design a kids' show that was both educational and entertaining while featuring real artists and real performers. The pair first started working together as teenagers, producing and directing skateboarding videos.^[5] After doing some odd jobs here and there, Jacobs and Schultz decided to try something different.

In 1999, after becoming parents themselves, the pair started playing around with ideas for children television. They later produced a pilot independently financed by small loans from friends and family. Even after producing the pilots, *Yo Gabba Gabba* did not get much attention until it started circulating on the internet. It happened to get viewed by Jared Hess, the director of *Napoleon Dynamite* and *Nacho Libre*, who then phoned Brown Johnson, the executive vice president and executive creative director of Nickelodeon Preschool and told her to check it out.^[6] As soon as she saw it she said, "Lordy nothing else looks like this on TV".^[citation needed] *Yo Gabba Gabba* finally found its home on Nickelodeon on August 20, 2007.

Cast

Note that the voice cast is ordered by US and UK versions.

- DJ Lance Rock - Lance Robertson (voice overdubbed by Ortis Deley in UK version)
- Muno - Josh Bally / David Crespin (voiced by Adam Deibert/Bob Golding)
- Foofa - Cortney Cook (voiced by Emma Jacobs/Teresa Gallagher)
- Brobee - Erin and Tara Pearce (voiced by Amos Watene/Simon Feilder)
- Toodee - Melissa Rossiter / Charne Morales (voiced by Erin Pearce/Jonell Elliot)



- Plex - Lindsay Kraus / Amos Watene (voiced by show creator Christian Jacobs/Simon Feilder)

DJ Lance in his Yo Gabba Gabba! outfit posing for a photo with a young fan.

Regular segments

- *Mark's Magic Pictures*, featuring Mark Mothersbaugh, drawing simple pictures that often come alive at the end of the segment.
- *Biz's Beat of the Day*, starring Biz Markie, demonstrating new beatboxing beats
- *The Super Music Friends Show*, featuring musical guests
- *Dancey Dance Time*, featuring celebrity guests (which Plex brings down to Gabbaland using his special ray) performing dance moves with the characters
- *Cool Tricks*, in which a child or adult demonstrates a special talent (e.g. gymnastics, breakdancing, playing a theremin or cup stacking)
- *Storytime*, where a child narrates a story (e.g. Goon Fishin, Goodnight Moon')
- *Super Martian Robot Girl*, featuring a helpful comic book-style superhero battling crime.
- *Learn with Plex*, a solo segment in which Plex teaches basic daily skills like brushing your teeth, going to the bathroom, getting changed, and etc. (saying how they are fun) in songs, using four repeated steps. (It should be noted that each character's solo segment only appears in Season 1.)
- *Play Pretend with Muno*, in which Muno encourages viewers to pretend along with him, as he imagines himself as various creatures and objects.
- *Listen with Toodee*, in which Toodee listens to sounds and she encourages the viewer to help her identify them.
- *Color with Brobee*, in which the viewer guesses what color Brobee is thinking of by the examples he gives.
- *Play Games with Foofa*, in which Foofa solves simple puzzles, such as mind benders, and she encourages the viewer to help her find the solution.
- *DJ Lance Dance*, in which DJ Lance Rock teaches the viewers a different dance.
- *Funny Faces*, in which DJ Lance Rock encourages viewers to make funny faces.
- *Knock-Knock Joke of the Day*, a segment where Jack McBrayer and Paul Scheer tell knock-knock jokes. This segment first appeared in season 2.
- *Look Back At Today*, each episode ends with a music video recap of that episode, featuring awesome effects, and a remix of every song featured in that episode. (Season 2 and Season 3 have DJ Lance remembering the things he and the gang did in that episode before the music video starts.)
- *Jingles*, each episode has animated music videos featuring music by a guest musician and animation by guest artists, designers, and animators. They always happen after the first Gabba Gang and My name is ... I like to dance segment in an episode. (One episode does not have the segment.)

DVDs

DVD	Release Date	Episodes
The Dancey Dance Bunch	October 14, 2008	Friends Eat Dance Happy
New Friends	April 7, 2009	New Friends Share Find Greetings
Halloween!	August 25, 2009	Halloween Scary Fun Careful
		Family

Meet My Family	October 20, 2009	Games Together Imagine
Birthday Boogie	February 2, 2010	Birthday Dress Up Talent Ride
Clubhouse	June 15, 2010	Clubhouse Adventure Summer Animals

[7]

CDs

Two albums have been released featuring songs from the show performed by the cast and the "Super Music Friends Show" segment.

- Music is Awesome! - 2009
- Music is Awesome! Volume 2 - 2010

Characters

- DJ Lance Rock - A male DJ who is the narrator and a friend of the other characters.
- Muno - A male friendly red cyclops. He's the tallest and is somewhat clumsy and he has a close bond with Foofa, whom he bit unintentionally in one episode. He is also the band's guitarist. In the episodes "Family" and "Baby" his family makes an appearance. During Super Bowl XLIV, he appeared in a commercial for the Kia Sorento. His realm is a mountainous/cavernous style area.
- Foofa - A cute female flower bubble character who's pink and happy. She loves rainbows and unicorns and can play the tambourine. She was once bitten by Muno. Her realm is a summer meadow.
- Brobee - A male little green monster. In one episode, he is tired of being short. Plex accidentally makes Brobee DJ Lance-size and Brobee soon finds that being big isn't very fun for him. He is the drummer for the Gabba band. He is the only "primary" character whose facial expression changes depending on what situation he is in, his normal smile turning into a frown, and vice-versa. He is often subjected to trying new foods. His realm is a vast forest. It is mentioned he is four years old in the series.
- Toodee - A blue female arctic cat-dragon who likes to have fun. She has a close bond with Brobee and is the bassist for the Gabba band. Her realm is an arctic realm, with icicles.
- Plex - A male magic yellow robot. He is really smart and the leader of the Gabba Land and usually gives the lessons to his friends and is a father figure to the gang. He can also use his special ray to bring things into existence. He can play the keytar. He has no realm in particular, though he seems to have a 'docking station' between Foofa and Brobee's realms. Plex sleeps and stands up in Gabba Land in the Episode "Sleep".

Supporting characters

- Muno's parents - Muno's parents appear in the episodes "Family" and "Baby". His father likes computers and cowboy movies. His mother likes dogs and Chinese noodles, possibly attributing to Muno's liking for them (the noodles). Muno's father is a darker red than Muno, and has a mustache and a hat. His mother has blue hair and no bumps (same as the other girls in Muno's family).
- Cheebo - Muno's older sister who likes school and baby owls. She is pink and wears a blue winter hat. She, like

the mother and the other girls in Muno's family, has no bumps.

- GoGo - Muno's baby brother. Almost like a younger version of Muno, he has Muno's bumps and is orange in color. GoGo likes being happy and is almost always seen in his carriage. He also appeared in the episodes "Family" and "Baby".
- Kemba - DJ Lance's younger sister. Like Lance, she too is also a DJ, and appeared in the episode "Family". She wears orange and likes the Super Music Friends Show.
- Plexee - Plex's niece who appears to be a toddler or baby. Plexee cries when Toodee and Foofa meet her. She sleeps after Toodee, Foofa, and Plex sing. She first appeared in episode "Baby".
- Gooble - An unhappy creature similar to Muno, who first appeared in the episode "Happy" for the Super Music Friends Show. He cries all of the time. Often when he is seen in Gabba Land, some of the characters do not understand why Gooble cries, and they get upset with him because of it.
- Archibald - A giant purple worm puppet and friend of DJ Lance. He appears in the episode "Happy". Has two worm babies: Annie (girl) and Armand (boy).
- Foofle - A blue water drop bubble character who was first introduced in the episode "Mystery" as Foofa's older brother. He is an avid surfer and spends most of his time at the beach.

Playtime Actions on Yo Gabba Gabba Episodes

Pilots: 2006

#	Title	Airdate	Guests	Remix	Jingle ^[8]
P2	<i>Short Story</i>	January 1, 2006	Biz Markie Paul Frank's Julius The Monkey dances with cast	Digital Unicorn	"Please, Thank You" by Parker Jacobs Music by Chad VanGalen
P1	<i>Play</i>	December 30, 2006	Biz Markie Ashley 1st	Lance Robertson	Music by Chad VanGalen "La La Doodles" by Lifelong Friendship Society

Season 1 : August 20, 2007-September 21, 2008

#	Title ^[9] [10]	Airdate	Guests	Remix	Jingle	Story Time
1	<i>Eat</i>	August 20, 2007	Elijah Wood - "The Puppet Master" ^[11] (Dancey Dance - "The Puppet Master") Mark Mothersbaugh (Mark's Magic Pictures)	Digital Unicorn	"Be Nice To Animals" Animation by Kangaroo Alliance Music Performed by The Salteens Songwriter: Jarond Gibbs	"Goon Fishin" Animation by Parker Jacobs and Kris Boban Music by Parker Jacobs and Gail Hill
2	<i>Summer</i> (similar to "Swim")	August 21, 2007	The Aquabats - "Pool Party!" (Super Music Friends Show) Adrian Turner (Cool	Broken Spindles	"This Is What The Summer Brings" Animation by Joel Trussell Music Performed	Super Martian Robot Girl "Jumbo Shrimp"

			Tricks - Cup stacking)		by Tony Goddess & The Silver Lining	
3	<i>Fun</i>	August 22, 2007	The Aggrolites - "Banana" (Super Music Friends Show) Kirsten Dorn (Cool Tricks - Gymnastics)	Sukho Lee	"Listen" Animation by Lori D Music Performed by Paco	"Toot Your Own Horn" Animation by Parker Jacobs and Kris Boban Music by Parker Jacobs
4	<i>Dance</i>	August 23, 2007	Héctor Jiménez (Dancey Dance) Yuko Araki (Drums) John and Sean Scott (Cool Tricks - Tap dancing)	Ricky Fitness	"Dancin' Fun" Animation by Hobo Divine Music Performed by Sizzle Me This	Super Martian Robot Girl "Dance Party"
5	<i>Sleep</i>	August 27, 2007	Smooosh - "Pajama Party Time" Songwriter: Jarond Gibbs (Super Music Friends Show) Mark Mothersbaugh (Mark's Magic Pictures)	DJ Nobody There is an animated character that appears in the characters dreams	"Bedtime Lullabye" Animation by Lippy Music Performed by Mark Kozelek Songwriter: Jarond Gibbs	Moochy and Pooty "Monster Truck" Music by Scott Bucsis
6	<i>Happy</i>	August 28, 2007	The Salteens and Gooble- "I'm So Happy I Can Dance" (Super Music Friends Show) Mark Mothersbaugh (Mark's Magic Pictures) Sukho Lee (Cool Tricks; playing a theremin)	Adventure Time	"Kites Are Fun" Animation by Nick Cross Music Performed by The Parallelograms (Originally by The Free Design)	Super Martian Robot Girl "Where's My Mama?"
7	<i>Friends</i>	August 29, 2007	Mýa (Dancey Dance - "Peanut Butter Stomp") Mark Mothersbaugh (Mark's Magic Pictures) Marshall Hough (Cool Tricks- Hanging a spoon from his nose)	Otis Fodder	"Share" Animation by The Unibros Music Performed by The Aquabats	"Faldarz and the Yellow Alien" by The Brothers Chaps
8	<i>Careful</i>	August 30, 2007	Supernova - "Up & Down" (Super Music Friends Show) Biz Markie (Biz's Beat of the Day) Evan Wasser (Counting Segment: "Skatin")	Frequent Flyer feat. Ricky Fitness	"Family Tree" Animation by Mumbleboy Music performed by Low	Moochy and Pooty "Gettin' Messy" Counting Segment: Skatin' Animated and directed by Scott Windes Music by: Jarond Gibbs

9	<i>Move</i>	September 24, 2007	Tony Hawk (Dancey Dance) Ricky Fitness (Drums) Venom Break Dancers (Cool Tricks)	Weird Science	"Pick It Up" by Parker Jacobs Animation by Willy Heartland and Craig Patches Music Performed by GOGO13 featuring Alex Desert of Hepcat	"Bruce The Moose" Animated by Wild Brain
10	<i>Greetings</i>	September 25, 2007	The Wolfgramms - "YGG Medley" (Super Music Friends Show) Biz Markie (Biz's Beat of the Day)	La Casa Azul	"Hello, Goodbye" Animation by Aaron Stewart Music performed by I'konà "Please, Thank You" by Parker Jacobs Music by GOGO13 Animation by Tyler Jacobs	Super Martian Robot Girl "Do You Like My Haircut?"
11	<i>Together</i>	September 26, 2007	Nikki Flores (Dancey Dance) Mark Mothersbaugh (Mark's Magic Pictures)	Mark DeNardo	"Love Every Living Thing" Animation by Joel Trussell Music performed by Call Sound Call Noise	Super Martian Robot Girl "Dance of the Cobra Man"
12	<i>Scary</i>	September 27, 2007	Leslie Hall, DJ Dr. Laura and the Junior Gems (Dancey Dance) Mark Mothersbaugh (Mark's Magic Pictures) Adam Deibert (Cool Tricks - Playing Twinkle Twinkle Little Star with his hands)	Turbo Funky	"Shapes" Animation by Ben Jones and Jacob Ciocci of Paper Rad Music performed by Frequent Flyer Songwriter: Jarond Gibbs	N/a
13	<i>Halloween</i>	October 29, 2007	Shiny Toy Guns (aka "The Shynys") Rebecca Gallo (Cool Tricks - Taekwondo)	DJ Sifa	"It's Halloween" Animation by Kluncklick Music performed by I Monster with vocals by Philly Songwriter: Jarond Gibbs	Super Martian Robot Girl "Be Good Big Kitty"
14	<i>Car</i>	November 26, 2007	Biz Markie (Biz's Beat of the Day) Sugarland (Dancey Dance) Ian Fowles from The Aquabats & Jodey	Mouse on Mars	"Look Both Ways" Animation by Arthur Jones Music by The Aggrolites	"Naughty Gordie" by Kristin Arnold Animated by Parker Jacobs

			Lawrence from Supernova (Cool Tricks - Playing Guitar)		Songwriter: Jarond Gibbs	and Kris Boban
15	<i>Share</i>	November 27, 2007	Cornelius "Count Five or Six" (Super Music Friends Show)	Ann Shenton	"Sometimes You Win" Designed and Directed, and Animated by Justin Fines @ DEMO Music performed by Dean and Britta Songwriter: Jarond Gibbs	Super Martian Robot Girl "Sounds of the Dolphin"
16	<i>Find</i>	November 28, 2007	Sean Kingston (Dancey Dance) Mark Mothersbaugh (Mark's Magic Pictures) Rahzel (Cool Tricks - Beatboxing)	Languis	"Hey, Won't Somebody Come and Play" Animation by Jesse Ledoux and PUNY Music Performed by The Little Ones	Super Martian Robot Girl "Funny Bunny"
17	<i>Train</i>	November 29, 2007	Laila Ali (Dancey Dance) Biz Markie (Biz's Beat of the Day)	Twink	"Train Ride" Animation by PandaPanther Music performed by Tahiti 80 Songwriter: Jarond Gibbs	Moochy and Pooty "Up Down"
18	<i>Christmas</i>	December 21, 2007 (premiere) December 25, 2007	The Snow Princess (Dancey Dance) Mark Mothersbaugh (Mark's Magic Pictures)	Mike Relm	"Christmas Time" Animation by Agency Collective Music performed by Jason Lytle	"Santa's Helpers" by Parker Jacobs; Illustrated by Wildbrain
19	<i>Love</i>	February 14, 2008	The Postmarks "Balloons" (Super Music Friends Show) Songwriter: Jarond Gibbs Mark Mothersbaugh (Mark's Magic Pictures) Alex Knost (Counting Segment: "Surfing")	The Salteens Designed by Chris McD	"I Found Love" Animation by Bran Dougherty-Johnson Music performed by Trembling Blue Stars (Originally by The Free Design)	"Alfcore" Animation by Kangaroo Alliance Narrated by Penelope Jacobs Counting Segment: Surfing Written by Tiffany and Thomas Campbell Music by Jarond Gibbs
						Charlie C

20	<i>Imagine</i> ^[12]	May 23, 2008	The Shins (Super Music Friends Show) Mark Mothersbaugh (Mark's Magic Pictures) Alex Knost (Counting Segment: "Surfing, Part 2")	Majestic	"Some Things Are Big, Some Things Are Small" Animation by Christopher Palazzo Music performed by Jason Falkner Songwriter: Jarond Gibbs	Written by Shanna Jacobs Animation by Joel Trussell Counting Segment: Surfing, Part 2 Written by Tiffany and Thomas Campbell Directed and photographed by Thomas Campbell Music by: Jarond Gibbs
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Season 2 : September 22, 2008 - February 1, 2010

#	Title	Airdate	Guests	Remix	Jingle	Story Time
21	<i>Birthday</i>	September 22, 2008	Biz Markie (Biz's Beat of the Day) Melora Hardin (Dancey Dance) Parker Jacobs (Cool Tricks - Baking special birthday cakes) The Ting Tings "Happy Birthday" (Super Music Friends Show) Mark Mothersbaugh (appears during Brobee's birthday party)	Tyger Ryder	"Birthday Song" Animation by CUPCO! Music Performed by Tyger Ryder	
22	<i>Games</i>	September 23, 2008	Mark Mothersbaugh (Mark's Magic Pictures) Jaclyn Parls Jacobs (Cool Tricks - Playing the recorder through her nose) Mates of State "No One Wants To Be Left Out" (Super Music Friends Show) Songwriter: Jarond Gibbs	Mark Denardo	"Come & Play" Animation by Merijn Hos & Jurriaan Hos Music Performed by The Clientele Songwriter: Jarond Gibbs	"Bayou Boat Race" Animation by I am 8-bit
23	<i>Talent</i>	September 24, 2008	Mark Mothersbaugh (Mark's Magic Pictures) Hot Hot Heat "Time To Go Outdoors" (Super Music Friends Show) Biz Markie (Biz's Beat of the Day)	The Parallelograms	"What Are Your Talents?" Directed by Kristofer Ström Animation by Eric Buchholtz, Viggo Mörck, and Nicolas	

			Amar'e Stoudemire (Dancey Dance/playing basketball) Logan Knight (Cool Tricks - the belly roll)		Wakeham (producer) Music Performed by Joy Zipper Songwriter: Jarond Gibbs	
24	<i>Animals</i>	September 25, 2008	Jack McBrayer and Paul Scheer (Knock-Knock Joke of the Day - "Interrupting Cow") Jimmy Eat World "Beautiful Day" (Super Music Friends Show)	Tommie Sunshine	" Animal Sounds " Animation by Overture Music Performed by The Aggrolites Songwriter: Jarond Gibbs	" Cammy, Jenny, & Slater " Directed by Chris "Elio" Eliopoulos Animation by Nate Miller Written by Tiffany Campbell Numbers Segment: "Counting Birds" Directed by Joel Fox and Christian Jacobs
25	<i>Weather</i>	October 20, 2008	Jack McBrayer and Paul Scheer (Knock-Knock Joke of the Day - "Can I Come in?") Paul Williams "Rainbow Connection" (Super Music Friends Show)	Tyger Ryder	" I Love The Rain " Animation by Andreas Nilsson Music Performed by Frequent Flyer Songwriter: Jarond Gibbs	" Water Drops & Oil " Directed by King Mini Animation by PUNY Numbers - A Day In The Park Directed by Scott Schultz, produced by Nate Rogers
26	<i>Differences</i>	October 21, 2008	I'm From Barcelona "Just Because It's Different Doesn't Mean It's Scary" (Super Music Friends Show) Mark Mothersbaugh (Mark's Magic Pictures - Drawing a carrot) With guest star Leslie Hall	Guilie Milkyway	" Glasses " Animation by Augenblick Studios Inc Music Performed by I'Kona	" Argyle the Octopus " Written and directed by Colt Bowden Animation by Keri Rainock Narration by Ollie Shultz Music by: Jarond Gibbs Numbers - Love Me

						Produced by Nate Rogers
27	<i>Robot</i>	October 22, 2008	Mark Mothersbaugh (Mark's Magic Pictures) Rhys Darby (Cool Tricks - Pretending to be a Robot) Money Mark "Robodancing" (Super Music Friends Show)	Blake Miller	" We Are The Robots " Animation by Mixtape Club Music Performed by Enon	" Prof. Whizbang and Robot Planet " Directed by Nawoki and Yoshiko Karasawa Animation by Asahi Production Co. Narrated by Brandt Bucher
28	<i>Teeth</i>	October 23, 2008	Mark Mothersbaugh (Mark's Magic Pictures; drawing a tooth) Amy Sedaris (Tooth fairy) Datarock "Smile For The Camera" (Super Music Friends Show) Shannon Edwards and Strawberry the donkey (Cool Tricks - Making Strawberry smile)	Twink	" Brush Brush Brush " Animation by Kangaroo Alliance Music Performed by of Montreal Songwriter: Jarond Gibbs	" The Alligator & the Tiny Ugly Cavities " Directed by Parker Jacobs Animation by PUNY
29	<i>Clean</i>	February 27, 2009	Ahmir "Questlove" Thompson and Frankie "Knuckles" Walker of The Roots- playing snare drums and percussion Chromeo "Nice 'n' Clean" (Super Music Friends Show) Rachel Dratch (Dancey Dance Time - "The Groovy Cat")	Tyger Ryder featuring DJ Game Kid	" Cover Your Mouth " Animation by Augenblick Studios Music Performed by The Bird and the Bee Songwriter: Jarond Gibbs	Numbers: " Happy Computer " Directed by Christian Jacobs and Joel Fox
30	<i>New Friends</i>	April 3, 2009	Jack Black (singing "It's Not Fun to Get Lost", "Friends" and "Goodbye Song") (Dancey Dance Time - "The Disco Roll") and Rob Schrab (voice of Jack Black's mini-bike) The Yo-Dazzlers "You Can't Always Get What You Want" (Super Music Friends Show) Jack McBrayer & Paul Scheer (Knock-Knock Joke of the Day - "Cargo")	Cowboy Fluesmith featuring Tyger Ryder	" In a Safe Land " Animation by Tanya Haden Music by Tanya Haden and Petra Haden "	

31	<i>Green</i>	April 22, 2009	Mark Mothersbaugh (Mark's Magic Pictures) Sal Masekela "Hello World" (Super Music Friends Show)		"Fruit Song" Animation by Buddy System Studios Directed by John Harvatine IV Music by YMCK Songwriter: Jarond Gibbs	"Coudie The Cloud" Animation by Augenblick Studios
32	<i>Family</i>	October 12, 2009	Biz Markie (Biz's Beat of the Day) Kemba Russell (DJ Lance Rock's sister) The Roots "Lovely, Love My Family" (Super Music Friends Show) Emilee Ann, Jakob and Jeremy Keppelmann (Cool Tricks - playing music together as a family) Mark Mothersbaugh	Mark Denardo	"That's My Family" Animation by Joel Trussell Music by Apples in Stereo	
33	<i>Art</i>	October 13, 2009	Andy Samberg (Dancey Dance) Mark Mothersbaugh (Mark's Magic Pictures) Ray Barbee (Cool Trick) MGMT "Art is Everywhere" (Super Music Friends Show)		"Favorite Colors" Music Performed by Neil Halstead Songwriter: Jarond Gibbs	
34	<i>Boat</i>	October 14, 2009	Mark Mothersbaugh (Mark's Magic Pictures) Reeve Oliver "I Like Sandwiches" (Super Music Friends Show) Songwriter: Jarond Gibbs Jaliala (Cool Trick)		"Sea Friends" Music Performed by Mason Jennings Songwriter: Jarond Gibbs	
35	<i>Band</i>	October 15, 2009	Biz Markie (Biz's Beat of the Day) Lady Tigra "When I Hear Music" (Super Music Friends Show; with the Gabba Gang as a back-up band)	"Patience"	"Ollie The Musician"	
36	<i>Dress Up</i>	October 16, 2009	Mark Mothersbaugh (Mark's Magic Pictures) The Little Ones "Let's Dress Up" (Super Music Friends Show)			
						"Sprinkles & The Bake Off"

37	<i>Big</i>	October 16, 2009	Mark Mothersbaugh (Mark's Magic Pictures) Gumpelstiltskin (Cool Tricks) Jem & The Yo Dazzlers "Some Things Are Big, Some Things Are Small" (Super Music Friends Show) Songwriter: Jarond Gibbs	Rafter	" Grow " Animation by Darin Bendall Music by Rafter	Animation by Sean Dicken and Gooby Herms Written & Directed by Evan Dorkin and Sarah Dyer Narration by Alex Arnold
38	<i>Mystery</i>	February 1, 2010 (Un-aired in USA)	Biz Markie (Biz's Beat of the Day) Jack McBrayer & Paul Scheer (Knock-Knock Joke of the Day) Ladytron (Super Music Friends Show)	Ursula 1000	" Some Things Are A Mystery " Animation by PUNY Music by Autolux Songwriter: Jarond Gibbs	
39	<i>Space</i>	February 8, 2010 (Un-aired in USA)	Biz Markie (Biz's Beat of the Day) Jack McBrayer & Paul Scheer (Knock-Knock Joke of the Day) Electrocute (Super Music Friends Show)		" Deep in Space " Animation by Widlbrain Director Unknown	" Space Man Sam " Animation by 394
40	<i>Ride</i>	Un-aired in the USA Available on DVD	Dean and Britta "Let's Ride" (Super Music Friends Show) Songwriter: Jarond Gibbs			

Season 3 : March 8, 2010 - present

#	Title	Airdate	Guests	Remix	Jingle	Story Time
41	<i>Circus</i>	March 8, 2010	"Weird Al" Yankovic as the Ringmaster Sarah Silverman (Dancey Dance) Mark Mothersbaugh (Mark's Magic Pictures) Jack McBrayer & Paul Scheer (Knock-Knock Joke of the Day) Black Kids (Called Dance Kids) "We Love Clowns" (Super Music Friends Show)	Parellograms	Mates of State	n/a
			Weezer "All My Friends Are Insects" (Super Music		"Bugs Are A	

42	<i>Bugs</i>	March 9, 2010	Friends Show) Mark Mothersbaugh (Mark's Magic Pictures) Tim Armstrong Mr. Cactus (VO) Mix Master Mike (Cool tricks)	Travis Barker	Curious Fellow" by Black Moth Super Rainbow Songwriter: Jarond Gibbs	Bee
43	<i>Doctor</i>	March 10, 2010	Anthony Bourdain as Dr. Tony of Montreal "Bananas, Rice, Applesauce, Toast" (Super Music Friends Show) Biz Markie (Biz's Beat of the Day)	Digital Unicorn	"New Day" by Swound!	n/a
44	<i>Superhero</i>	March 11, 2010	Mos Def as Super Mr. Superhero Devo "Watch Us Work It" (Super Music Friends Show) The Aquabats (Counting Segment)	Warren Fitzgerald	"We R Super Heroes" by Robbert Bobbert (of The Apples in Stereo	Super Martian Robot Girl "Snowboard"
45	<i>Baby</i>	May 7, 2010	Solange Knowles (Super Music Friends Show)	Game Kid	"Little Baby" by Hunter Revenge	TBA
46	<i>Pets</i>	September 10, 2010 ** Note this date is tentative, Delivery is TBD for all DTO platforms **	Mark Mothersbaugh (Mark's Magic Pictures) Taking Back Sunday (Super Music Friend Show) Rob Dyrdek (Dancey Dance)	Adrian Michna	"My Special Friend" by The Pepper Pots	TBA
47	<i>School</i>	September 19, 2010	Angela Kinsey as Ms. Angela The Faint "Teach Me Teacher" (Super Music Friend Show)	Frequent Flyer	"What Story Do You Want To Hear?" by Dr. Dog	

In Canada, Treehouse has aired School, Clean, Clubhouse, Nature, Pet, Superhero, Baby, Adventure, Space, Circus, Treasure, Doctor, Flying, Fairytale, The Best Of Brobee From Yo Gabba Gabba episodes.

Critical reception

Nominated for a Daytime Emmy in both 2008 and 2009 for Best Costume Design.

Time magazine's James Poniewozik named *Yo Gabba Gabba!* one of the Top 10 new TV series of 2007, ranking it at #8.^[13]

In November 2008, *Yo Gabba Gabba!* won a BAFTA Children's Award, International.^[14]

The show has also become popular among some college-age young adults because of the artists often featured.^[15]

Due to the show's popularity amongst both adults and children, they performed at the 11th installment of Coachella as special guests.

In other media

In 2009, the cast was featured in their own float in the Macy's Thanksgiving Day Parade. Muno was featured in a commercial for the Kia Sorento that aired during the 2010 Super Bowl.

The cast has also featured in the *Big Time Rush* episodes "Big Time Audition" and "Big Time Halloween."

Yo Gabba Gabba featured in True Jackson VP in the episode "Trapped in Paris."

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- ↑ Friedman, Emily "Nickelodeon Cartoon Draws Unusual Fans", ABC News, May 7, 2008

External links

- Official website (Flash-enabled browser required)
- Yo Gabba Gabba! Live!: There's a Party In My City! Website
- Nick Jr. Yo Gabba Gabba Website
- Yo Gabba Gabba! on Myspace
- Yo Gabba Gabba!* at the Internet Movie Database
- Yo Gabba Gabba!* at TV.com
- Gabbafriends.com - Yo Gabba Gabba (unofficial) fansite
- Yo Gabba Gabba* website on Treehouse TV

Retrieved from "http://en.wikipedia.org/wiki/Yo_Gabba_Gabba!"

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Yo Gabba Gabba!

(TV Series 2007–)
23 min - Family

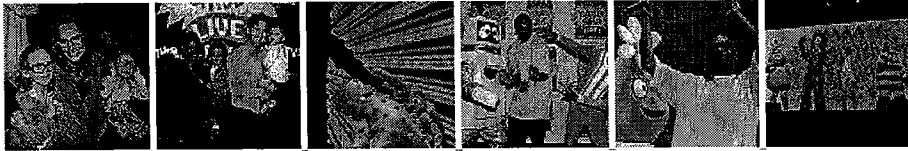
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Yo Gabba Gabba! is a fun live-action program for young children ages 1 and up. Join our host DJ Lance Rock as he introduces us to friendly toy monsters in a magical land full of music... [See full summary »](#)

Stars: [Lance Robertson](#), [Biz Markie](#) and [Erin Pearce](#)



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Cast

Edit

Series cast summary:

- Lance Robertson** ... [DJ Lance Rock](#) (34 episodes, 2007-2010)
- Biz Markie** ... [Himself](#) (29 episodes, 2007-2010)
- Erin Pearce** ... [Brobee](#) (20 episodes, 2007-2008)
- David Crespin** ... [Muno](#) (18 episodes, 2007)
- Adam Deibert** ... [Muno](#) (18 episodes, 2007)
- Christian Jacobs** ... [Plex](#) (18 episodes, 2007)
- Emma Jacobs** ... [Foofa](#) (17 episodes, 2007)
- Amos Watene** ... [Brobee](#) (17 episodes, 2007)
- Lindsey Kraus** ... [Plex](#) (16 episodes, 2007)
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-  **Josh Bally** ... [Muno](#) (15 episodes, 2007)
-  **Charme Morales** ... [Toodee](#) (15 episodes, 2007)
-  **Melissa Rossiter** ... [Toodee](#) (15 episodes, 2007)

[Full cast and crew »](#)

Storyline

Yo Gabba Gabba! is a fun live-action program for young children ages 1 and up. Join our host DJ Lance Rock as he introduces us to friendly toy monsters in a magical land full of music, dance, colorful cartoons and simple life lessons that will get you and your children up off the floor to learn and dance along. Muno, the red cyclops, Foofa the pink flower bubble, Brobee the green little one, Toodee the blue cat-dragon, and Plex the robot are ready to sing, play and teach whenever you're ready. Just say the magic words! YO GABBA GABBA!!

Written by Scott Schultz

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Language: [English](#)

Filming Locations: [Long Beach, California, USA](#)

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Production Co: [Magic Store, The, Wild Brain Productions](#) [See more »](#)

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Did You Know?

Trivia

Adam Deibert, who voices Muno, used to play with co-creator Christian Jacobs in The Aquabats under the name Prince Adam. The Aquabats still perform, but Adam left in October of 2004. [See more »](#)

Connections

Referenced in "[Psych: Ferry Tale \(#5.7\)](#)" (2010) [See more »](#)




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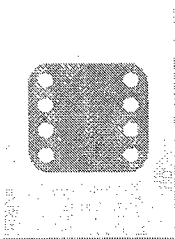
Really cute, fun, entertaining, and educational show

4 September 2007 | by [Grace Zeh](#) ([filmgirlgz@gmail.com](#)) (Chantilly, Virginia, USA) - [See all my reviews](#)

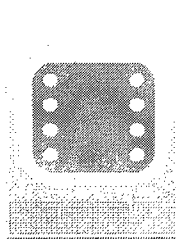
Wow! This is a really cute, fun, entertaining, and educational show. I said that because I watch this on Nickelodeon and the Noggin network with my 2½-year-old nephew from time to time. It's hard to say which show on Nickelodeon and the Noggin network is the best. If I had to pick, this would definitely be one of the cutest. Still it's really cute, fun, entertaining, and educational. My favorite episode would have to be the one with the magic shop mishaps, though. Before I wrap this up, I'd like to say that the people at Nickelodeon and the Noggin network really know how to reach a toddler's developing mind. Now, in conclusion, if you have children, nieces, or nephews, I strongly recommend this really cute, fun, entertaining, and educational show. I guarantee you that they will enjoy it.

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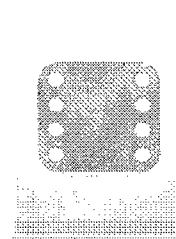
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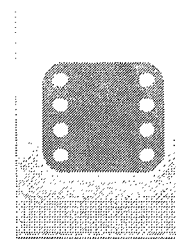
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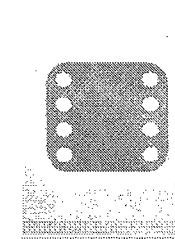
Jack's Big Music Show
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The Adventures of
Pete & Pete (1993)



Imagination Movers
(2008)



Willy Wonka & the
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The cast of [Yo Gabba Gabba](#) is heading back on tour in North America beginning on August 27th and ending on December 12th. The show is produced by S2BN Entertainment in association with Wildbrain Entertainment and The Magic Store. The tour is called "2010 Yo Gabba Gabba! Live!: There's A Party In My City."

In the cities they visit, the cast of Nickelodeon's hit show will participate in various service projects aimed at building homes. In addition, \$1 from every ticket sold will be donated to the Habitat for Humanity local affiliate in each tour city.

~~Presale tickets~~ were released today (May 20) to American Express Card members. A special Gabba Tix pre-sale offer for members of the Gabba community begins on May 26th. For more information visit www.yogabgabbalive.com

Here are the tour dates:

Friday, August 27, 2010 – Bethel, NY (Bethel Woods)
 Saturday, August 28, 2010- Bristow, VA (Jiffy Lube Live)
 Sunday, August 29, 2010 -Philadelphia, PA (Mann Center for the Performing Arts)
 Tuesday, August 31, 2010 – Gilford, NH (Meadowbrook US Cellular Pavilion)
 Thursday, September 02, 2010 – Albany, NY (Times Union Center)
 Friday, September 03, 2010 – Buffalo, NY (Artpark)
 Saturday, September 04, 2010 – Toronto, ON (Molson Canadian Amphitheatre)
 Sunday, September 05, 2010 – Montreal, QC (Place des Arts)
 Wednesday, September 08, 2010 – Edmonton, AL (Northern Jubilee)
 Thursday, September 09, 2010 – Calgary, AL (Southern Jubilee)
 Saturday, September 11, 2010 – Vancouver, BC (Queen Elizabeth Theatre)
 Sunday, September 12, 2010 - Vancouver, BC (Queen Elizabeth Theatre)
 Tuesday, September 14, 2010 – Regina, SK (Brandt Centre)
 Wednesday, September 15, 2010 – Winnipeg, MB (MTS Centre Theatre)
 Saturday, September 18, 2010 – London, ON (John Labatt Centre)
 Sunday, September 19, 2010 - Ottawa, ON (Scotiabank Place)
 Tuesday, September 21, 2010 – Rochester, NY (Auditorium Theatre)
 Wednesday, September 22, 2010 – Burlington, VT (Flynn Theatre)
 Friday, September 24, 2010 – Portland, ME (Merrill Auditorium)
 Saturday, September 25, 2010 – Boston, MA (Wang Theatre)
 Sunday, September 26, 2010 – Boston, MA (Wang Theatre)
 Tuesday, September 28, 2010 – Providence, RI (Providence PAC)
 Wednesday, September 29, 2010 – Wallingford, CT (Oakdale Theatre)
 Thursday, September 30, 2010 – Pittsburgh, PA (Benedum Center for the Performing Arts)
 Saturday, October 02, 2010 – New York, NY (Radio City Music Hall)
 Sunday, October 03, 2010 – New York, NY (Radio City Music Hall)
 Tuesday, October 05, 2010 – Hershey, PA (Hershey Theater)
 Wednesday, October 06, 2010 – Cleveland, OH (State Theatre at PlayhouseSquare)
 Friday, October 08, 2010 – Detroit, MI (Fox Theatre)
 Saturday, October 09, 2010 – Chicago, IL (Chicago Theatre)
 Sunday, October 10, 2010 -Chicago, IL (Chicago Theatre)
 Monday, October 11, 2010 – Louisville, KY (The Palace Theatre)
 Wednesday, October 13, 2010 – Indianapolis, IN (Murat Theatre)
 Friday, October 15, 2010 – Richmond, VA (Landmark Theater)
 Saturday, October 16, 2010 – Greensboro, NC (War Memorial Auditorium)
 Sunday, October 17, 2010 – Charlotte, NC (Ovens Auditorium)
 Tuesday, October 19, 2010 – Chattanooga, TN (Soldiers & Sailors Memorial Auditorium)
 Wednesday, October 20, 2010 – Huntsville, AL (Von Braun Center)
 Thursday, October 21, 2010 – Nashville, TN (Jackson Hall – Tennessee PAC)
 Saturday, October 23, 2010 – Atlanta, GA (Fox Theatre)
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 Wednesday, October 27, 2010 – Jacksonville, FL (Moran Theatre at Times Union Center)
 Friday, October 29, 2010 – Kissimmee, FL (Silver Spurs Arena)
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 Wednesday, November 03, 2010 – Knoxville, TN (Tennessee Theatre)
 Friday, November 05, 2010 – Tulsa, OK (BOK Center)
 Saturday, November 06, 2010 – Kansas City, MO (The Midland)
 Sunday, November 07, 2010 - Denver, CO (1st Bank Center)
 Tuesday, November 09, 2010 - Salt Lake City, UT (The E Center)
 Friday, November 12, 2010 – Spokane, WA (INB Performing Arts Center)
 Saturday, November 13, 2010 – Seattle, WA (Tacoma Dome)
 Sunday, November 14, 2010 – Portland, OR (Memorial Coliseum)
 Monday, November 15, 2010 - Eugene, OR (Hult Center)
 Thursday, November 18, 2010 – Sacramento, CA (Memorial Auditorium)
 Saturday, November 20, 2010 – San Francisco, CA (Bill Graham Civic Auditorium)
 Sunday, November 21, 2010 – San Francisco, CA (Bill Graham Civic Auditorium)
 Friday, November 26, 2010 – Los Angeles, CA (Nokia Theater)
 Saturday, November 27, 2010 - Los Angeles, CA (Nokia Theater)
 Sunday, November 28, 2010 – San Diego, CA (San Diego Sports Arena)
 Saturday, December 04, 2010 - Phoenix, AZ (Dodge Theater)
 Sunday, December 05, 2010 – Phoenix, AZ (Dodge Theater)
 Tuesday, December 07, 2010 - El Paso, TX (Abraham Chavez Theater)
 Thursday, December 09, 2010 – San Antonio, TX (Freeman Coliseum)

Friday, December 10, 2010 – Houston, TX (Hobby Center)
Saturday, December 11, 2010 - Austin, TX (Cedar Park Center)
Sunday, December 12, 2010 – Dallas, TX (Dr Pepper Arena)

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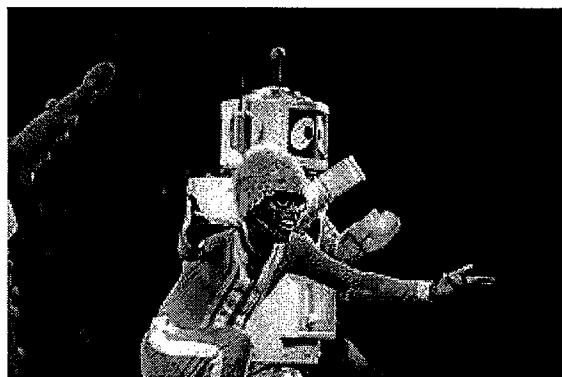
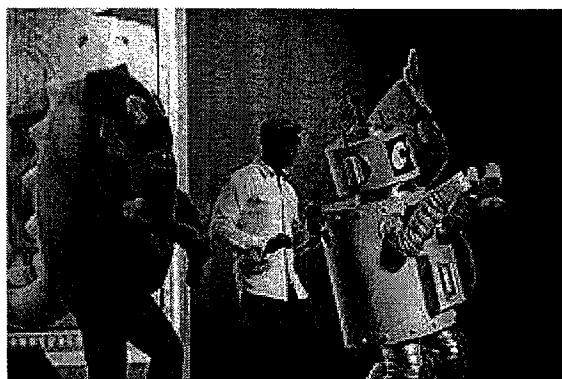


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Fresh off a sold-out tour debut, DJ Lance Rock and the cast of “Yo Gabba Gabba!” are back on the road and heading to the Fox Theatre on Friday, Oct. 8, for shows at 2 and 7 p.m.

The live touring show “Yo Gabba Gabba! Live!: There’s a Party in My City!” features DJ Lance Rock and characters Muno (the red Cyclops), Foofa (the pink flower bubble), Brobee (the little green one), Plex (the magic robot) and Toodee (the blue cat-dragon).

The one-of-a-kind live event includes music, animation, games, singing, dancing and offers audience members of all ages the opportunity to witness their favorite characters come to life with the magic words, “Yo Gabba Gabba!”

Tickets, \$16, \$24, \$29 and \$39, are on sale at OlympiaEntertainment.com, the Fox Theatre and Joe Louis Arena box offices, Hockeytown Authentics in Troy (without service charge) at all Ticketmaster locations and Ticketmaster.com. To charge tickets by phone, call 800-745-3000. Children younger than 1 year old will be admitted free to sit on a parent’s lap. The Fox Theatre is at 2211 Woodward Ave. in Detroit.

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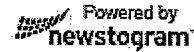


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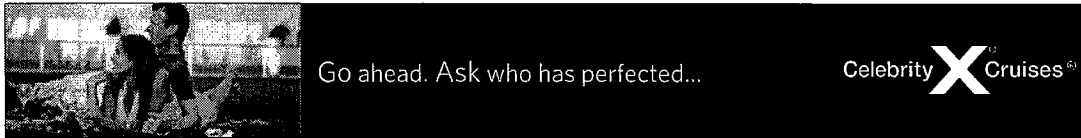
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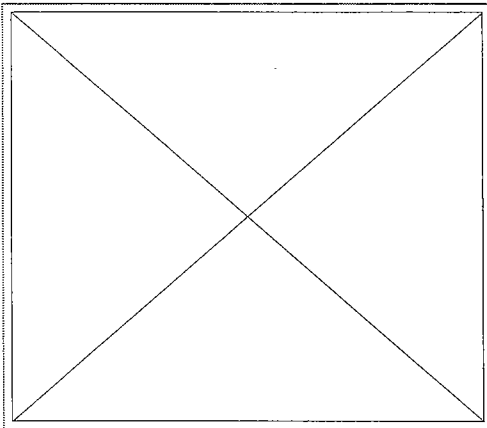
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CHILDREN'S ENTERTAINMENT

Kid-hip 'Yo Gabba Gabba!' takes live show to next level



BY WADE TATANGELO
THE BRADENTON HERALD

Yo Gabba Gabba! has become a pop-culture phenomenon. **Viewers** of the children's show that airs on Nick Jr., also include college students who appreciate the psychedelic awesomeness of the production and appearances by hipster-approved celebrities. Since debuting in 2007, the show has featured guests including Jack Black, Weezer, Tony Hawk, The Killers, The Roots and Florida indie-pop band The Postmarks.

Yo Gabba Gabba! Live! brings the sensation from the small screen to the biggest stages in the country. Charismatic host DJ Lance Rock and his supporting cast of costumed characters will be at the AmericanAirlines Arena on Sunday. Co-creator

Christian Jacobs (who's also an accomplished rock musician) has wanted his show to tour from the start.

"I think as soon as we got picked up by Nickelodeon our dreams got bigger about what was going to happen," he said while en route from his Orange County home to Los Angeles for a meeting about an upcoming **Yo Gabba Gabba!** album. "And one of the first things we planned on was getting to take this on the road."

Fans can expect a concert-like experience featuring DJ Lance Rock and costars Brobee (little green one), Foofa (pink flower bubble), Plex (yellow robot), Muno (red friendly cyclops) and Toodee (blue cat dragon). The props and characters meticulously recreate the show. And, yes, Lance Robertson, the beloved DJ Lance Rock on TV, reprises his role on stage.

"I think there's that misconception that kids won't know the difference," Jacobs said. "I got four kids, and I know my kids could smell a rat. It was really important to keep it real for the kids in the audience -- we can't let them down -- and for the parents, who shouldn't be feeling ripped off."

For those of us who grew up during the golden age of hip-hop, Biz Markie remains best known for his wonderfully off-key, 1989 hit *Just a Friend*. He's beloved by another generation solely for his beat-boxing segment on **Yo Gabba Gabba!** At the show, Biz will demonstrate his singular vocal skills and offer a few lessons.

"It's one of the best parts of the show," Jacobs said. "When he comes out, it's a surprise. We utilize a big

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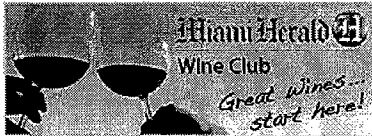
screen behind the characters, and then Biz comes out on the big screen and then suddenly he's in your face. Not to spoil things, but when 2,000 families are beat-boxing with Biz, that's pretty awesome."

Like the TV show, **Yo Gabba Gabba! Live!** also features the Dancey Dance segment. In it, surprise guests – sorry, no word on Miami's – take the stage and teach their favorite moves.

Snoop Dogg, Sarah Silverman, Daryl McDaniels of Run-D.M.C. and the Pittsburgh Steelers have danced at past tour stops. Then there's the Super Music Friends Show. Erykah Badu, The Roots, Cold War Kids, Devendra Banhart and The Aquabats (Jacobs' band) have played in the past.

"We want be selective; we don't want just anybody on the show so it doesn't feel like Us Magazine," Jacobs said. "Guests are there [on the TV show and/or tour] for the reason of their quirky personality or spunk. Like Jack Black. He has that kind of energy and playfulness where he can have fun and get down in the sandbox."

"We want to make sure it doesn't feel like guests don't fit," he added. "Snoop was on the live stage, but maybe [laughs] too much, ah, baggage for the TV show."



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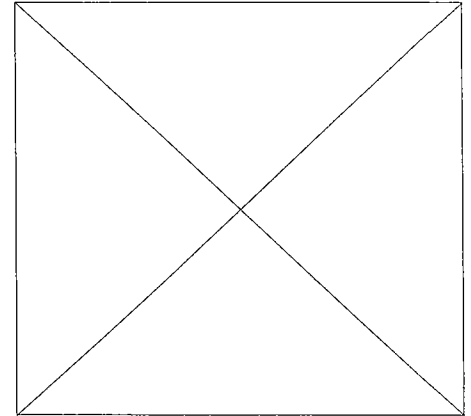
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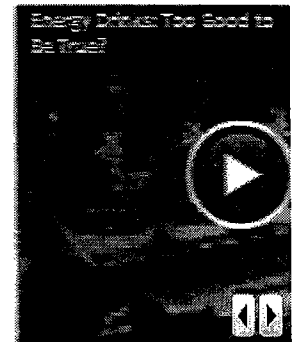
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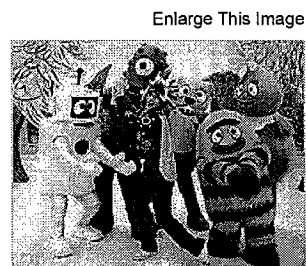
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Nickelodeon's Stepchild, Eager for More Love

By David Zucchero
Published: November 19, 2009

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Andy Samberg appearing as a guest star on "Yo Gabba Gabba!"

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THESE days, even monsters have handlers.

On a recent Monday morning at a cavernous design studio here, a quintet of colorful, uncategorizable creatures — or, at least, a group of people dressed to look like them — were being instructed on how to stand atop a long, narrow float that will soon make its maiden voyage in the Macy's Thanksgiving Day Parade.

Crew members from the children's television show "Yo Gabba Gabba!" were positioned around the float, directing a pink flower-bubble beast named Foofa on her ballet steps and telling a furry green unibrowed animal called Brobee how wide he could sweep his exceptionally long arms when he waves to parade watchers.

On Thursday, when this psychedelic menagerie makes its way through Midtown Manhattan on a Keith Haringesque float (with a giant boombox at its center), "Yo Gabba Gabba!" will take its most significant step into mainstream popular culture, sharing a parade route with the likes of Spider-Man and Mickey Mouse. At the same

time, a live tour based on the television series continues to travel the country, stopping at the Beacon Theater in Manhattan for three sold-out performances on Saturday.

These milestones highlight how rapidly "Yo Gabba Gabba!," a show aimed at a preschool audience and broadcast on Nickelodeon's Nick Jr. channel, has built a fan base of young (and not-so-young) viewers with a mix of charming characters, catchy music and hip celebrity guests.

They are also occurring at a time of growing pains for the show, when its producers are wondering if Nickelodeon — which does not produce "Yo Gabba Gabba!" itself, and

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instead licenses it from an outside studio — values their show as much as its other children's franchises.

"We're a little bit of a stepchild," Christian Jacobs, who created "Yo Gabba Gabba!" with Scott Schultz, said in a telephone interview.

He added: "Everyone we work with creatively at Nickelodeon is so super-into the show. But we're at a place in the business model where they're like, 'We don't own that show, so we don't necessarily want to push it.'"

Now in its second season, "Yo Gabba Gabba!" has taken off in many measurable ways since its August 2007 debut: It is shown three times a day, seven days a week, on Nick Jr., and draws around 524,000 viewers an episode, according to Nielsen, about a third of whom are 18 and older. (By comparison, "Dora the Explorer," which is shown on Nick Jr. in prime time, gets more than one million viewers). Nickelodeon said that "Yo Gabba Gabba!" videos averaged more than 1.3 million streams per month at the nickjr.com Web site.

Its producers, however, prefer to focus on the eclectic lineup of performers who have been booked on the show, from the Devo frontman [Mark Mothersbaugh](#) and the rapper Biz Markie (who are featured regularly), to buzz bands like MGMT and the Shins (who played original songs), to [Elijah Wood](#) and [Andy Samberg](#) (who have boogied in the recurring "Dancey Dance Time" segment).

In perhaps the ultimate act of cultural validation, [Brad Pitt](#) was photographed on [Halloween](#) dressed as DJ Lance Rock, the program's human host. His costume was provided by Wildbrain, the studio that produces "Yo Gabba Gabba!" with the Magic Store, Mr. Jacobs and Mr. Schultz's company.

"We had no idea he was a fan of the show," said Michael Polis, the chief executive of Wildbrain, "but orange suits him."

Despite these accomplishments, the producers say that Nickelodeon's long-term commitment to "Yo Gabba Gabba!" feels unclear.

After their first season, they said they waited several anxious months for Nickelodeon to renew the show. Now they do not have a firm premiere date for a third season (which they recently wrapped shooting) or an order for a fourth.

"If we were owned by them, like 'SpongeBob SquarePants' or 'Dora the Explorer,' it would be a no-brainer," Mr. Jacobs said. "Which one of those shows had [Jack Black](#) on it for a whole episode, or got the Shins?"

The producers also note that of the 44 merchandising deals that "Yo Gabba Gabba!" has struck in the United States and Canada — for everything from action figures to CDs to dinnerware — Nickelodeon has a stake only in the show's home video, giving the network even less incentive to put its full weight behind the series.

Brown Johnson, the Nickelodeon executive who brought "Yo Gabba Gabba!" to Nick Jr., said in a telephone interview that though the show was not a Nickelodeon-owned property, "it fits our brand incredibly well."

"The out-there creativity and the wonderful innocence in the show are a really good match for us," Ms. Johnson continued.



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She said that a range of criteria factor into the network's decision to renew a show, from ratings to cost-benefit analysis to online video hits to intangible cultural buzz. ("Brad Pitt was a big check mark in the good column," Ms. Johnson said.)

"It's tough times," she said, adding that the third season will most likely have its debut next year and that a verdict on a fourth season would be rendered "in about a year."

The current "Yo Gabba Gabba!" live tour and its Thanksgiving parade presence could provide further proof of the show's viability.

Before its United States itinerary, which concludes in Chicago on Dec. 5, "Yo Gabba Gabba!" spent two weeks in May on tour in Australia, where the show is broadcast on both Nick Jr. and that country's public ABC television channel (and where the Australian branch of the parent-advice Web site babble.com described the show as "crack for toddlers"). This was followed in the summer by a handful of smaller stateside appearances by the DJ Lance Rock and Brobee characters.

During this time Mr. Polis, a former executive with the Jim Henson Company, worked with Macy's to secure a spot in its annual Thanksgiving parade, including a 90-second performance in front of the Herald Square store that will be shown on NBC.

"We felt it could bring real pop to the parade," Amy Kule, the Macy's parade producer, said of the show. "It's on the cusp of becoming something big."

As a late addition to the Macy's lineup, the "Yo Gabba Gabba!" team built its float by converting one that was used in last year's parade to promote [Gwen Stefani's](http://GwenStefani.com) Harajuku Lovers perfume.

Mr. Jacobs, a founding member of the punk-pop band the Aquabats, said he relished the chance to "go into the parade as complete fly-by-night, low-budget, amateur dudes." He emphasized that the float was being financed by Wildbrain and with funds raised from the live tour.

Nickelodeon, he said, "if they wanted to, could jump in and say, 'Hey, we want to co-sponsor it with you guys.'"

"But really," he continued, "this whole live thing, it's all us."

Ms. Johnson of Nickelodeon said that the channel believed that Mr. Jacobs and Mr. Schultz were the best equipped to decide who their promotional partners should be, and gave them enormous latitude to choose the opportunities they want to pursue.

"We really trust those guys to deliver high-quality, highly entertaining, kid-appropriate content," she said. "There are very few times where we've had disagreements about anything." She added, "I hope to be working with them for a long time."

Mr. Polis of Wildbrain called Nickelodeon "a great partner," and said that he understood that the cable channel had a business to run.

"They've got to focus on properties that they feel are going to provide them with the greatest return," he said. "We do our best to offer them the opportunity to work with us."

Mr. Jacobs, too, was optimistic for the future of "Yo Gabba Gabba!" But for now, he was mostly concerned that its cast of characters remain with the parade float for the duration of its Thanksgiving Day journey.

"We're hoping it all works out," he said. "Or it will be a complete disaster, and everyone will still talk about it. Either way, we can't lose."

A version of this article appeared in print on November 20, 2009, on page C1 of the New York edition.

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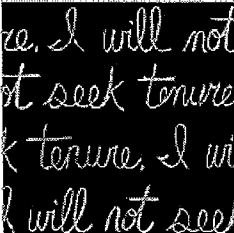




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Source: USPQ, 1st Series (1929 - 1986) > U.S. Patent and Trademark Office, Trademark Trial and Appeal Board > In re OLIN CORPORATION, 181 USPQ 182 (TTAB 1973)

181 USPQ 182
In re OLIN CORPORATION
U.S. Patent and Trademark Office, Trademark Trial and Appeal Board

Decided November 19, 1973

Headnotes

TRADEMARKS

[1] Marks and names subject to ownership — In general (► 67.501)

If ornamentation on applicant's T-shirts were without any meaning other than as mere ornamentation, it could not serve as indicia of source; however, where ornamentation consists of applicant's trademark, an arbitrary symbol, it serves as an identifier of a secondary source of origin and is registrable.

Case History and Disposition

Appeal from Examiner of Trademarks.

Application for registration of trademark of Olin Corporation, Serial No. 409,355. From decision refusing registration, applicant appeals. Reversed.

Attorneys

DONALDR. MOTSKO, H. SAMUEL KIESER, and WILLIAM W. JONES, all of New Haven, Conn., for applicant.

Judge

Before LEACH, WALDSTREICHER, and LEFKOWITZ, Members.

Opinion Text

Opinion By:

WALDSTREICHER, Member.

Olin Corporation filed an application on December 3, 1971 to register for T-shirts the following:

Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA at 1-800-372-1033.

Use since September 10, 1971 is alleged. It is asserted that the mark is used by applying it to the goods. Illustrated below is the manner in which the subject matter of the application is used on the goods.

[Unavailable graphic material set at this point contains the text shown below. To view graphics, see text in hard copy or call BNA at 1-800-372-1033.]

OLIN MARK II

Registration was refused on the ground that "the mark submitted for registration as it appears on the specimens of record does *not* serve to distinguish Applicant's goods from like goods of others." The examiner held that as used on the T-shirts, illustrated above, the mark appears to be merely ornamental.

Applicant has appealed.

Applicant states that the subject matter for registration is the letter "O" displayed in a highly stylized form and submits that a symbol or a design is proper subject matter for a trademark registration provided that it does function as a trademark.

Applicant contends that what it seeks to register is inherently distinctive and that the mark had previously been registered for skis¹ and therefore can and does function as a trademark. Applicant submits that there has been no showing that the mark would be more ornamental as applied to shirts than it is when applied to skis and that by granting Registration No. 904,230, the Patent Office has held that the symbol is a trademark and not mere ornamentation.

¹ Reg. No. 904,230, issued Dec. 15, 1970.

[1] It is a matter of common knowledge that T-shirts are "ornamented" with various insignia, including college insignias, or "ornamented" with various sayings such as "Swallow Your Leader". In that sense what is sought to be registered could be construed to be ornamental. If such ornamentation is without any meaning other than as mere ornamentation it is apparent that the ornamentation could not and would not serve as an indicia of source. Thus, to use our own example, "Swallow Your Leader" probably would not be considered as an indication of source.

The "ornamentation" of a T-shirt can be of a special nature which inherently tells the purchasing public the source of the T-shirt, not the source of manufacture but the secondary source. Thus, the name "New York University" and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the university the university's name on the shirt will indicate the sponsorship or authorization by the university.

In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as an indication of a secondary source of origin. The matter sought to be registered is an arbitrary symbol and can

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and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable.

Decision

The refusal to register is *reversed*.

- End of Case -

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Source: USPQ, 1st Series (1929 - 1986) > U.S. Patent and Trademark Office, Trademark Trial and Appeal Board > In re Watkins Glen International, Inc., 227 USPQ 727 (TTAB 1985)

227 USPQ 727**In re Watkins Glen International, Inc.****U.S. Patent and Trademark Office, Trademark Trial and Appeal Board**

Decided October 18, 1985

Headnotes**TRADEMARKS****[1] Marks and names subject to ownership -- In general (► 67.501)**

Checkered flag design sought to be registered as trademark for clothing, while common symbol in auto racing field, is nevertheless highly stylized and unique and is thus likely to be perceived not only as attractive ornamental design, but also as indication of origin.

Case History and Disposition**Page 727**

Appeal from Trademark Examining Attorney.

Application for registration of trademark of Watkins Glen International, Inc., Serial No. 466,950, filed February 23, 1984. From refusal of registration, applicant appeals. Reversed.

Attorneys

Alfred L. Michaelson, Corning, N.Y., for applicant.

E. S. Wachpress, Trademark Examining Attorney, Law Office V (P. Fahrenkopf, Managing Attorney) for the Patent and Trademark Office.

Judge

Before Allen, Krugman, and Cissel, Members.

Opinion Text**Opinion By:**

Krugman, Member.

An application has been filed by Watkins Glen International, Inc. to register the design shown below as a trademark for clothing, namely, pants, shorts, sweatshirts, jackets, sweaters, rainwear, hats, visors, shirts and gloves in International Class 25 and for patches for application to clothing in International Class 26. ¹

¹ Application Serial No. 466,950 filed February 23, 1984.

Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA at 1-800-372-1033.

Registration has been refused under Sections 1, 2, and 45 of the Trademark Act on the ground that the design sought to be registered is merely an ornamental feature of the goods and is not a trademark in that it does not serve to identify applicant's goods and distinguish them from like goods of others.

Applicant has appealed, asserting that while the design may serve as an ornamental feature of the goods, it also performs a trademark

Page 728

function and is, therefore, registrable on the Principal Register.

Applicant's specimens comprise photographs of shirts, hats and patches which depict the design sought to be registered together with the expression "WATKINS GLEN" or "THE GLEN IS BACK!" Copies of the specimens are reproduced below:

[Unavailable graphic material set at this point contains the text shown below. To view graphics, see text in hard copy or call BNA at 1-800-372-1033.]

The Glen is Back!

It is well settled, and both applicant and the Examining Attorney agree, that matter which serves as part of the aesthetic ornamentation of goods, such as shirts, hats, patches and the like may nevertheless be registered as a trademark for such goods if it also serves a source-indicating function. See *In re Astro-Gods Inc.*, 223 USPQ 621 (TTAB 1984), citing *In re Olin Corp.*, 181 USPQ 182 (TTAB 1973); *In re Paramount Pictures Corp.*, 213 USPQ 1111 (TTAB 1982) and *In re Paramount Pictures Corp.*, 217 USPQ 292 (TTAB 1983).

It is our view that this case is controlled by the decision in the *Olin* case wherein applicant sought registration of a stylized "O" design for T-shirts used by applying it to the face of the shirts, where such "O" design had previously been registered for skis. In reversing the refusal of registration, the Board stated:

"It is a matter of common knowledge that T-shirts are 'ornamented' with various insignia, including college insignia or 'ornamented' with various sayings such as 'Swallow Your Leader.' In that sense what is sought to be registered could be construed to be ornamental. If such ornamentation is without any meaning other than as mere ornamentation it is apparent that the ornamentation could not and would not serve as indicia of source. Thus, to use our own example, 'Swallow Your Leader' probably would not be considered as an indication of source.

"The 'ornamentation' of a T-shirt can be of a special nature which inherently tells the purchasing public the source of T-shirt, not the source of manufacture but the secondary source. Thus, the name 'New York University' and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of a N.Y.U. T-shirt. Where the shirt is distributed by other than the University, the university's name on the shirt will indicate the sponsorship or authorization by the university.

"In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as indication of a secondary source of origin. The matter sought to be registered is an arbitrary symbol and can and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable."

In a subsequent case, the Board adopted the above analysis in reversing a refusal to allow registration of "MORK & MINDY" as a trademark for decals. See: *In re Paramount Pictures Corp.*, 213 USPQ 1111 (TTAB 1982). The Board noted that the facts of the "MORK & MINDY" case differed from the *Olin* case in only two respects. First, the goods were decals rather than T-shirts. This was, the Board concluded, a distinction without a difference. Second, the mark was the title of a television series as opposed to a design mark. The Board concluded that while "MORK & MINDY" was certainly part of the ornamentation of the decal, it also indicated source or origin in the proprietor of the MORK & MINDY television series in the same sense as the stylized "O" in *Olin*.

In the present case, the record shows that applicant owns and operates a stadium adapted to professional car racing and that the clothing items identified in the instant application are sold ancillary to the operation of that automobile race track. Applicant also is the owner of a registered trademark for "WATKINS GLEN" and design as depicted below for organizing and conducting vehicular racing contests in a stadium. ²

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² Registration No. 1,333,697 issued April 30, 1985. The term "WATKINS GLEN" has been disclaimed apart from the mark as shown. This registration was not made of record until after the filing of the appeal, being attached to the Examining Attorney's appeal brief, and ordinarily would be excluded as untimely filed. However, since applicant, in the reply brief, has not objected to its introduction and since applicant has, in fact, otherwise treated it as being of record, said registration is considered to be part of record in this case.

[Unavailable graphic material set at this point contains the text shown below. To view graphics, see text in hard copy or call BNA at 1-800-372-1033.]

Watkins Glen

[1] While there is no question but that the design sought to be registered performs an ornamented function as applied to applicant's clothing items and patches for clothing, the record supports a finding that said design is an indicia of source inasmuch as the design comprises the dominant, indeed, the only nondisclaimed portion of applicant's prior service mark registration. As used in connection with applicant's patches and clothing items, the specimens show the design prominently displayed along with either the legend "THE GLEN IS BACK!" or "WATKINS GLEN." We do not think the appearance of these legends along with the design detracts from the design's registrability since we believe said design creates a commercial impression, separate and distinct from the wording. While the design somewhat simulates a checkered flag which is a common symbol in the auto racing field, the design sought to be registered, in our view, is highly stylized and unique. We think, therefore, that the subject matter sought to be registered is likely to be perceived as not only an attractive ornamental design but also as an indication of

origin.

We think the design, being recognized as a mark indicating origin in applicant with respect to applicant's services of organizing and conducting auto races, comes within the purview of the *Olin* case, supra. As stated previously, ornamental matter which may additionally perform a source-indicating function is registrable if it is found to be a trademark of applicant. We disagree with the Examining Attorney that this proposition requires, in the present case, that applicant seek registration of "WATKINS GLEN" and design rather than the design itself, where, as here, such design is distinctive and engenders a commercial impression by itself. Accordingly, we conclude that the refusal of registration is not well taken.

Decision: The refusal of registration is reversed.

- End of Case -

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Source: USPQ, 1st Series (1929 - 1986) > U.S. Patent and Trademark Office, Trademark Trial and Appeal Board > In re Astro-Gods Inc., 223 USPQ 621 (TTAB 1984)

223 USPQ 621
In re Astro-Gods Inc.
U.S. Patent and Trademark Office, Trademark Trial and Appeal Board

Decided August 10, 1984

Headnotes
TRADEMARKS
[1] Marks and names subject to ownership - Form and substance (▶ 67.513)

Size, location, dominance, and significance of alleged mark that serves as part of aesthetic ornamentation of goods, as applied to goods, are all factors that figure prominently in determination of whether it also serves as indication of origin.

[2] Abandonment - Nonuse as abandonment (▶ 67.037)

TTAB cannot say as matter of law that applicant whose period of nonuse amounted to only 14 months at time of filing affidavit that mentioned it, affidavit indicating only that applicant had discontinued its use at least temporarily, has abandoned its mark.

Case History and Disposition

Page 621

Appeal from Trademark Examining Attorney.

Application for registration of trademark of Astro-Gods Inc., Serial No. 313,740, filed June 8, 1981. From decision refusing registration, applicant appeals. Affirmed.

Attorneys

Michael Joseph J. Barnas, Brooklyn, N.Y., for applicant.

Judge

Before Skoler, Rice, and Cissel, Members

Opinion Text
Opinion By:

Rice, Member.

Page 622

An application has been filed by Astro-Gods Inc. to register the term "ASTRO GODS" and design, show below,

Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA at 1-800-372-1033.

for clothing consisting of T-shirts, ¹ use since May 16, 1981 being asserted. The specimens submitted with the application are photographs of T-shirts bearing the term. Although these photographs do not photocopy sufficiently well for inclusion of a reproduction of one of them herein, applicant has also submitted a flyer which contains pictures of a T-shirt and a sweat shirt bearing the term "ASTRO GODS" and design. Those pictures are reproduced below:

¹ Ser. No. 313,740, filed June 8, 1981.

Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA at 1-800-372-1033.

Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA at 1-800-372-1033.

Registration has been refused, under Section 2 of the Trademark Act of 1946 [15 U.S.C. §1052], on the ground that the designation "ASTRO GODS" and design is merely an ornamental or decorative feature of the goods and as such is not a trademark within the definition set forth in Section 45 of the Act [15 U.S.C. §1127], that is, does not serve to identify and distinguish applicant's goods from the like goods of others. The Examining Attorney also contends that applicant has apparently abandoned its use of the designation on T-shirts.

Matter which serves as part of the aesthetic ornamentation of goods such as T-shirts may nevertheless be registered if it also serves a source-indicating function. Such ornamental matter may be found to additionally serve a source-indicating function, and hence to be registrable, if, for example, it names the secondary source of the goods or if, at the time of its first use as ornamentation, it was already a recognized trademark of applicant for services or other goods. See: *In re Olin Corp.*, 181 USPQ 182 (TTAB 1973); *In re Paramount Pictures Corp.*, 213 USPQ 1111 (TTAB 1982), and cases cited therein; and *In re Paramount Pictures Corp.*, 217 USPQ 292 (TTAB 1983). As we stated in the *Olin Corp.* case (where applicant sought to register, for T-shirts, an arbitrary design which was used by applying it to the face of the T-shirts, but which had previously been registered by applicant for skis), at pages 182-183:

It is a matter of common knowledge that T-shirts are "ornamented" with various insignia, including college insignias, or "ornamented" with various sayings such as "Swallow Your Leader." In that sense what is sought to be registered could be construed to be ornamental. If such ornamentation is without any meaning other than as mere ornamentation it is apparent that the ornamentation could not and would not serve as an indicia or source. Thus, to use our own example, "Swallow Your Leader" probably would not be considered as an indication of source.

The "ornamentation" of a T-shirt can be of a special nature which inherently tells the purchasing public the source of the T-shirt, not the source of manufacture but the secondary source. Thus, the name "New York University" and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the uni

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versity the university's name on the shirt will indicate the sponsorship or authorization by the university.

In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as an indication of a secondary source of origin. The matter sought to be registered is an arbitrary symbol and can and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable.

Of course, such matter may also be found to be registrable if applicant submits other evidence (such as evidence of promotion of the matter as a mark, survey evidence demonstrating purchaser perception of the matter as a mark, etc.) showing that purchasers recognize the matter as an indication of the source of the goods. See, for example: *In re David Crystal, Inc.*, 296 F.2d 771, 132 USPQ 1 (CCPA 1961).

In the present case, applicant, in support of its claimed right to registration, has submitted the affidavits of its president and vice president, as well as the affidavit of the artist who created the drawings for all of the matter which appears on applicant's T-shirts. The affidavits indicate that applicant was founded in March of 1981 for the purpose of marketing inexpensive consumer goods bearing drawings which fancifully correlate the Greek-Roman deities with the ruling signs of the Zodiac. At the time of the execution of the affidavits, i.e., August of 1982, applicant had three lines of products featuring the "astro gods concept," namely, T-shirts, sweat shirts, and canvas tote bags; applicant's marketing program for these products had resulted in the creation of a four-page colored flyer featuring applicant's T-shirts and sweat shirts, an article concerning applicant's venture that appeared in the Daily News Record of March 8, 1982, and an exhibition of applicant's goods at the

Boys' and Young Men's Apparel Manufacturers Association trade show held in New York in March 1982; and the designation "ASTRO GODS" and design had been used not only on the goods themselves but also on the company letterhead, envelopes, and business cards. The affidavits were accompanied by, inter alia, a copy of applicant's certificate of incorporation; a copy of the minutes of a meeting of applicant's Board of Directors held April 8, 1981; copies of the drawings of the ornamental matter (excluding the designation "ASTRO GODS" and design, which was created apart from and after the other matter) that appears on applicant's goods; additional photographs of T-shirts, sweat shirts, and a tote bag bearing ornamentation similar to that pictured above; and one of applicant's flyers. The record contains no information as to the extent of applicant's sales of T-shirts bearing the designation sought to be registered.

In a subsequent affidavit, dated June 9, 1983, which was filed in response to the Examining Attorney's request for an explanation of applicant's misuse of the symbol "R in a circle" in connection with the designation "ASTRO GODS" and design (which symbol appeared in the additional photographs submitted by applicant but not in the photographs originally submitted as specimens in this case), applicant's vice president stated that applicant had discontinued the sale of its T-shirts and sweat shirts. Specifically, he said:

4. That the goods to which the trademark registration notice was affixed are not now being sold and have not been sold or traded since March 31, 1982. That these goods, men's and boys' T-shirts and sweatshirts, have been discontinued at least temporarily as a product line while the corporation endeavors to start up a new merchandizing line consisting of men's and women's costume jewelry.

Insofar as the ornamentation issue is concerned, it is clear that the designation "ASTRO GODS" and design was not a recognized trademark of applicant at the time when it was first used by applicant ornamentally on T-shirts, and manifestly it has not been promoted in connection with applicant's T-shirts in such a manner and to such an extent as to create purchaser recognition of it as a trademark. Applicant argues, however, that the designation, as used on applicant's T-shirts, would be perceived by purchasers as a trademark because it corresponds to applicant's corporate and trade name, Astro Gods, Inc., which appears on applicant's T-shirts as part of a copyright notice. We do not find this argument, or others offered by applicant but not specifically mentioned herein, to be persuasive.

[1] We agree with the Examining Attorney that where, as here, an alleged mark serves as part of the aesthetic ornamentation of goods, the size, location, dominance, and significance of the alleged mark as applied to the goods are all factors which figure prominently in the determination of whether it also serves as an indication of origin. As noted by the Examining Attorney, the designation "ASTRO GODS" and design is one of several prominent legends decorating the front of each of

Page 624

applicant's shirts; it appears across the top-right (or in some cases, top-center) portion of the front of the shirts; the size and style of the lettering of the "ASTRO GODS" and design legend is similar (though not identical) to that of the legend at the foot of each deity portrait, and these two legends are generally equidistant from the portrait; and the "ASTRO GODS" and design legend has a highly suggestive significance in relation to the rest of the ornamental matter.² Accordingly, we are of the opinion, as was the Examining Attorney, that the designation "ASTRO GODS" and design is not likely to be perceived as anything other than part of the thematic whole of the ornamentation of applicant's shirts.

² Insofar as the significance of the term "ASTRO GODS" is concerned, applicant itself has stated in its brief: 'The term 'Astro-Gods', formed from the contraction of 'astrological gods of the universe,' is the very name of the wedding of mythology and astrology the applicant is commercially promoting. If another concern were to fashion its own drawings depicting the gods as rulers over the astrological universe, it would be difficult to find a different apt term for its own drawings.' Applicant also offers its opinion that were it not for the inclusion of the temple design between the words "ASTRO" and "GODS" in the designation sought to be registered, the designation might be "nonregistrable as merely descriptive under the first proviso to Section 2(e) of the Act." The Examining Attorney, however, has not claimed that the words "ASTRO GODS" are merely descriptive, and that issue is not before us.

Applicant's copyright notice argument does not dissuade us from this conclusion for a number of reasons. First, applicant is free to sell its shirts without the copyright notice. Second, the notice was not in fact used on the T-shirts which appear in the photographs originally submitted as specimens herein. Third, even when the copyright notice is used on applicant's T-shirts, it appears from the

drawings and additional photographs submitted by applicant that it is printed in relatively small letters close to the bottom of the drawing, well removed from the designation "ASTRO GODS" and design. In view thereof, and considering the location and significance of the "ASTRO GODS" designation in relation to the rest of the drawing, we are not convinced that purchasers would be likely to make an association between the designation and applicant's name in the copyright notice and, on the basis thereof, regard "ASTRO GODS" and design as an indication of the source of the goods.

[2] Insofar as the question of abandonment is concerned, Section 45 of the Act of 1946 [15 U.S.C. 1127] states, in pertinent part, that a mark shall be deemed to be abandoned.

(a) when its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

In the present case, the period of nonuse had amounted to only fourteen months at the time of the filing of the affidavit that mentioned it, and the affidavit indicated only that applicant had discontinued its men's and boys' T-shirts and sweat shirts "as least temporarily." Under these circumstances, we cannot say as a matter of law that applicant has abandoned the designation "ASTRO GODS" and design in connection with T-shirts.³

³ This is not to say that the discontinuance is insignificant. To the contrary, the very limited results of applicant's marketing program; the lack of any specific information as to the extent of applicant's sales of T-shirts bearing the designation "ASTRO GODS" and design during the period from May 16, 1981 (applicant's alleged date of first use) until March 31, 1982; and applicant's discontinuance of the sale of these goods thereafter, all serve to indicate that applicant's sales of T-shirts bearing the designation have been minimal. These factors formed a good part of the basis for our statement above that the designation "ASTRO GODS" and design "has not been promoted in connection with applicant's T-shirts in such a manner and to such an extent as to create purchaser recognition of it as a trademark."

While we cannot find that applicant has abandoned the designation "ASTRO GODS" and design for T-shirts, we affirm the refusal to register since, for the reasons specified above, we agree with the Examining Attorney's holding that the designation serves merely as an ornamental feature of applicant's goods and as such does not function as a trademark therefor.

Decision

The refusal to register is *affirmed*.

- End of Case -

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Source: USPQ, 1st Series (1929 - 1986) > U.S. Patent and Trademark Office, Trademark Trial and Appeal Board > In re Paramount Pictures Corporation, 217 USPQ 292 (TTAB 1983)

217 USPQ 292
In re Paramount Pictures Corporation
U.S. Patent and Trademark Office, Trademark Trial and Appeal Board

Decided March 1, 1983

Headnotes

TRADEMARKS

[1] Marks and names subject to ownership — Form and substance (► 67.513)

Lanham Act does not exclude registration of mark simply because it has ornamental as well as source indicating purpose; nor is there restriction as to number of times mark can appear on goods.

[2] In general (► 67.01)

Trademarks indicate source of goods; it is immaterial whether actual identity of source is known; function of trademark is to identify single, albeit anonymous, source of commercial sponsorship of goods on which it is used.

Case History and Disposition

Appeal from Trademark Examining Attorney.

Application for registration of trademark of Paramount Pictures Corporation, Serial No. 215,965. From decision refusing registration, applicant appeals. Reversed.

Attorneys

Thomas E. Harrison, Jr., Jeffrey L. Miller, Bruce E. Hosmer, Kenneth E. Merklen, and Charles I. Sherman, all of New York, N.Y., for applicant.

Judge

Before Skoler, Fruge, and Simms, Members.

Opinion Text

Opinion By:

Fruge, Member.

An application was filed by Paramount Pictures Corporation to register the mark "STAR TREK" for towels, sheets, pillow cases and comforters. Use since February 1, 1976 was alleged. Applicant claimed ownership of Registration Nos. 1,077,290; ¹ 1,095,937; ² 1,096,032; ³ 1,096,135; ⁴ and 1,098,210 ⁵ for the mark "STAR TREK" on other goods and indicated that all use of the mark is by a related company/licensee.

¹ Issued Nov. 15, 1977 for film series and film series for television.

² Issued July 11, 1978 for paper goods and printed matter, namely, calendars, banks, magazines, comics, greeting cards, posters and color it yourself poster kits.

³ Issued July 11, 1978 for plastic dishes.

⁴ Issued July 11, 1978 for equipment in the nature of games and toys, namely, hard hats, masks, metal detector equipment and kites.

⁵ Issued August 1, 1978 for bathing suits, caps, costumes, hats, jackets, pants, play suits, shirts, sleep wear and sweaters.

Registration was refused on the ground that the mark appears to be in the nature of an ornamental design and, as such, does not serve the purpose of indicating origin of the goods. Applicant appealed.

In his brief, the Examining Attorney acknowledged that a party need not be the manufacturer of a product on which its mark is used in order to be entitled to registration thereof and that a mark can function as a secondary source of origin with respect to the goods on which used. However, the Examining Attorney has stated that in each of the cases

which held a design to be used as a secondary source indicator rather than as mere ornamentation,⁶ the mark was either the corporate name or corporate logo or a combination thereof while applicant's is the name of a science fiction movie and television show and not of a product or service producing entity with the result that purchasers of applicant's goods cannot actually identify the entity functioning as the secondary source of the goods; that in each of the said cases, the mark is applied to a product intended to be worn on the body while applicant's is not; and lastly, that the mark appears on the goods

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only once in the cited cases while the instant goods show the mark several times and each time in conjunction with and as part of a pictorial representation of a scene from a "STAR TREK" episode. Following a remand to consider the then recent decision of *In re Paramount Pictures Corporation*, 213 USPQ 111 (TTAB 1981), the Examining Attorney adhered to the refusal to register stating that traditionally, marks which have been refused registration on grounds of ornamentation have been permitted to register under Section 2(f) upon a showing that the matter presented for registration is recognized by consumers as an indication of origin of applicant's goods;⁷ that an exception has been made for marks ornamentally applied to T-shirts on the theory that ornamentation on T-shirts is of a special nature which inherently tells the public that the mark identifies that secondary source; and that in this latest decision, the exception has been enlarged to include decalcomanias, the Board having found that any distinction between T-shirts and decalcomanias is a distinction without a difference.

⁶ *In re Olin Corporation*, 181 USPQ 182 (TTAB 1973); *In re Expo '74*, 189 USPQ 48 (TTAB 1975); *In re Penthouse International Ltd.*, 195 USPQ 698 (CCPA 1977).

⁷ No mention was made by the Examining Attorney to Section 2(f) prior to the appeal brief. Not only was the reference thereto untimely at this juncture, but we see no lack of distinctiveness in the mark at issue here which would have necessitated such a holding.

[1] We consider the Examining Attorney's interpretation of the case law to be unrealistically narrow. Without once again dissecting *Olin*, *Expo '74*, *Penthouse* and *Paramount*, suffice it to say that apart from the fact that this case deals with towels, sheets, pillowcases and comforters instead of T-shirts, decalcomania and jewelry, the situation is basically the same. Applicant here has a mark which is capable of recognition as a trademark. Its ownership of a number of registrations of the mark for other products is evidence that it is so capable and of the fact that the mark is regarded as an indicia of origin. See: *In re Penthouse International Ltd.*, *supra* and *In re McDonald's Corp.*, 199 USPQ 702 (TTAB 1978). Thus, use of that mark on goods may well identify the source of those goods. The Examining Attorney seems to have no quarrel with that fact so long as the use of the mark comports with the traditional and accepted manner of affixation, i.e., on labels, containers etc. The problem arises when less conventional methods are employed. Obviously, the Lanham Act does not exclude registration of a mark simply because it has an ornamental as well as a source indicating purpose. Nor is there a restriction as to the number of times the mark can appear on the goods. In the case of *Vuitton et Fils S.A. v. J. Young Enterprises, Inc. et al.*, 212 USPQ 85 (CA 9 1981) where the mark consisted of a repeated design which covered the entire surface of the goods, the court noted that "(t)here is no limitation on the percentage of a product's surface area which may be covered by a trademark."

[2] Nor do we accept the restriction sought to be imposed by the Examining Attorney as to the types of goods which are acceptable as a format for the display of a secondary source indicating ornamental design. There is nothing magic about a T-shirt which sets it apart from any other goods which might carry such a mark. Member Waldstreicher said, "The 'ornamentation' of a T-shirt *can* be of a special nature which inherently tells the purchasing public the source of the T-shirt, not the source of manufacture but the secondary source." (*In re Olin Corporation*, *supra*, emphasis added). That statement did not exclude other goods from consideration as bearers of secondary source trademarks and the cases that followed it were not simply extending the exception to still other special types of goods. Rather, they were recognition of today's commercial realities. Trademarks indicate the source of goods. They are widely promoted in all of the conventional modes of advertising and in many which were at one time not as commonly used but which have become more and more widely accepted. Thus, in each situation involving a different type of affixation, the key question is not, "Is this the way it is usually done?" but rather "Does the subject matter perform a trademark function when used in this manner?" Stated another way, "Would a purchaser recognize this mark as indicating the source of these goods?" And, contrary to the argument espoused by the Examining Attorney, it is immaterial whether the actual identity of the source is known. "The function of a trademark is to identify a single, albeit anonymous, source of commercial sponsorship of the goods" on which it is used. See: *Johnson & Johnson v. E. I. du Pont de Nemours and Company, Incorporated*, 181 USPQ 790 (TTAB 1974).

In the case before us, we have a mark well known as the name of a television show and a movie. In view of applicant's registration of "STAR TREK" for a number of other goods, it is clear that it performs a trademark function and is recognizable as such to the extent that the public would associate articles on which it appears as having a common origin. We see no reason that its appearance on the goods in applicant's instant application would not evoke the same association as its use on other goods despite the fact that it appears in

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several places on the face of the goods and in conjunction with scenes from the show of that name. The Examining Attorney says that, as used, the words identify the origin of the scenes and help to identify the characters depicted

therein rather than the source or origin of the goods and that a purchaser may buy the goods because he associates the design and words on the goods with a movie or television show he enjoyed but not because he believes that the manufacturer of the movie has approved the product or has control over the quality of the article. On the contrary, these goods may be purchased for children but they are not purchased by children and in today's market environment, the most naive adult should be aware that the owners of as well known a mark as "STAR TREK" would not sit idly by and allow a third party to blithely trade on the good will it has built into its mark. Thus, we find that the mark "STAR TREK" functions as a trademark on the goods of this application in the same manner it does the goods set forth in applicant's other registrations.

Decision

The refusal to register is *reversed*.

- End of Case -

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Source: USPQ, 1st Series (1929 - 1986) > U.S. Patent and Trademark Office, Trademark Trial and Appeal Board > In re Paramount Pictures Corporation, 213 USPQ 1111 (TTAB 1982)

213 USPQ 1111
In re Paramount Pictures Corporation
U.S. Patent and Trademark Office, Trademark Trial and Appeal Board

Decided April 9, 1982

Headnotes

TRADEMARKS

[1] Marks and names subject to ownership -- Descriptive -- Misdescriptive or not descriptive -- Particular marks (▶ 67.5078)

Marks and names subject to ownership -- Distinctive display (▶ 67.511)

Arbitrary design has obvious source-indicating characteristics, just as do arbitrary terms such as "Kodak," "Dreft," etc., because they usually have no other perceived significance.

[2] Marks and names subject to ownership -- In general (▶ 67.501)

While not every sign used on product, or on its label, package, etc., functions as indication of source of product on which it is used, broad and liberal interpretation of law is that, where such sign also serves source indicating function, it should be regarded as acceptable subject matter for registration.

[3] Registration -- In general (▶ 67.731)

Not everything that is protected from encroachment by others is registrable subject matter; however, it is desirable, absent any overriding public policy considerations, to interpret Trademark Act so that subject matter that is accorded protection in courts as technical trademarks will be entitled to registration as such.

[4] Acquisition of marks -- How applied to goods (▶ 67.031)

Drawings (▶ 67.30)

If sign serves trademark function as it is used in its normal commercial setting, it should not be necessary to submit additional specimens in order to satisfy formalistically requirement for specimens of particular kind; there is no prescribed method or place for affixation of mark to goods; question in every case is not whether mark has been associated with goods by particular mode or manner, but whether matter sought to be registered performs function of trademark by signifying to purchasers source of goods sold or offered for sale; even if mark covers entire surface of product, that fact does not necessarily mean that mark does not perform trademark function; on other hand, if sign does not function as mark in its normal commercial setting, submission of "token" specimens should not be considered as overcoming basic defect.

Case History and Disposition

Page 1111

Appeal from Examiner of Trademarks

Application for registration of trademark of Paramount Pictures Corporation, Serial No. 210,108. From decision refusing registration, applicant appeals. Reversed.

Attorneys

Gregory J. Battersby and Howard B. Barnaby, both of New York, N.Y., for applicant.

Judge

Before Rice, Allen, and Simms, Members.

Opinion Text

Opinion By:

Allen, Member.

This is an appeal from the Trademark Attorney's refusal to register the paired names "MORK & MINDY" for decalcomanias on the ground that the names are an integral feature of the identified goods and, as such, fail to perform the trademark function of identifying or distinguishing applicant's goods from the goods of others.¹ In the specimens submitted with the application (actual decals), the letters of the names and of the ampersand separating them are colored in gaudy "fluorescent" rainbow shading, from orange to red to yellow (top to bottom), on a background shaded from blue to purple. The multi-colored names are superimposed on a brown toned photograph of subdued colors of the actor and actress who portray the characters "Mork" and "Mindy" in the television series of that name. Because of the complete absence of harmony between the coloring of the names and that of the characters, and the fact that the letters are not portrayed in three dimensions, whereas the characters are, the names appear to be separate and distinct in comparison to the rest of the design. Below is a reduced (5:1) reproduction of the specimens in black and white.

¹ In the Examining Attorney's final refusal, the term "ground s" (emphasis ours) is used. However, in the Examiner's Statement the Attorney relies upon a single ground which, in terms of the statute, is that the subject matter sought to be registered is not a trademark within the definition set forth in §45, Trademark Act of 1946, as amended, 15 USC §1127 (1976).

[Unavailable graphic material set at this point contains the text shown below. To view graphics, see text in hard copy or call BNA at 1-800-372-1033.]

Mork & Mindy

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The form of the mark sought to be registered is exactly the same as the black outline of the names as they are depicted in the specimens.

The Examining Attorney's position is that the words "Mork & Mindy" as used on applicant's good would not be regarded by purchasers in the marketplace as an indication of source of origin but as aesthetically functional features of the goods. A further argument is that the function of the names on the decal is to identify the familiar television characters, "Mork" and "Mindy".

We think this case is controlled by our decision in *In re Olin Corporation*, 181 USPQ 182 (TTAB 1973), wherein we *reversed* the Examining Attorney's refusal to register a mark comprising a stylized letter "O" (Olin's corporate logo) applied to T-shirts based on the following reasoning:

"It is a matter of common knowledge that T-shirts are ornamented with various insignia, including college insignias, or ornamented with various sayings such as 'Swallow Your Leader'. In that sense what is sought to be registered could be construed to be ornamental. If such ornamentation is without any meaning other than as mere ornamentation it is apparent that the ornamentation could not and would not serve as an indicia of source. Thus, to use our own example, 'Swallow Your Leader' probably would not be considered as an indication of source.

The 'ornamentation' of a T-shirt can be of a special nature which is inherently tells the purchasing public the source of the T-Shirt, not the source of manufacture but the secondary source. Thus, the name 'New York University' and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of that shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the university the university's name on the shirt will indicate the sponsorship or authorization by the university.

In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as an indication of a secondary source of origin. The matter sought to be registered is an arbitrary symbol and can and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable."

The Olin test was *affirmed* by us in another T-shirt case, *In re Expo-'74*, 189 USPQ 48 (TTAB 1975). In that case, the sign "EXPO 74" was applied across the front of the shirt and was its only ornamental feature.

The facts of the instant case can be distinguished from Olin in only two respects. Firstly, the goods here are decals rather than T-shirts. This is a distinction without a difference. Decals are frequently purchased with a view to applying them to T-shirts and there are retail outlets which sell T-shirts, decals to apply to T-shirts, and T-shirts to which the decal of your choice is applied while you wait. Thus, in our contemporary society, decals are about as closely related to T-shirts as ice cream cones are to ice cream.

[1] Secondly, the mark in Olin was a design mark, a stylized "O", whereas the mark herein is the title of a television series -- also, the names of its principal characters. Admittedly there is a difference here. An arbitrary design such as the one involved in Olin has obvious source-indicating characteristics, just as do arbitrary terms such as "KODAK",

"DREFT", etc., because they usually have no other perceived significance. On the other hand, the *primary* significance of the words "MORK & MINDY" to any prospective purchaser of a decal such as the one here involved is to indicate the television series and the principal characters thereof. ²

² In this respect, the instant facts are more like those of Expo 74 wherein the primary significance of the mark "EXPO 74" was to identify the 1974 World's Fair held in Spokane, Washington.

Lest we be lured off on a tangent, we here affirm that there is nothing inherently wrong with a mark which comprises the name of television series and/or the names of its characters. The law is perfectly clear on that. Prompted by "MA PERKINS" ³ and other decisions, the Trademark Act was amended in 1962 to expressly provide for protection of such names for the services which they identify. ⁴ Furthermore, by interpretation of the statute, such names have been accorded protection by the federal courts and this Board when used as trademarks on so-called "collateral" products. *Lone Ranger, Inc. v. Cox*,

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52 USPQ 146 (4th Cir. 1942) ["LONE RANGER" and "HI, YO SILVER"]; *Wyatt Earp Enterprises, Inc. v. Sackman*, 116 USPQ 122 (S.D.N.Y. 1958) ["WYATT EARP" official outfit]; *American Broadcasting Co. Merchandising, Inc. v. Button World Mfg., Inc.*, 151 USPQ 361 (N.Y. Sup Ct. 1966) ["GREEN HORNET"]; *Warner Bros, Inc. v. Road Runner Car Wash, Inc.*, 189 USPQ 430 (TTAB 1975) ["ROAD RUNNER"]; *Compare Sales v. Christy*, 168 USPQ 62 (TTAB 1970) ["SOUPY SALES"], but see dissent by Lefkowitz; see also, discussion in J. GILSON, *TRADEMARK PROTECTION AND PRACTICE*, §5.05[10]. Thus, were the goods for which applicant seeks to register "MORK & MINDY" steamrollers, for example, rather than decals, there would not seem to have been an even arguable basis for refusing registration. This is convincingly demonstrated -- and the Examining Attorney offers nothing in rebuttal -- by the fact that this applicant has already registered "MORK & MINDY" five times for various products. ⁵ The problem -- if, indeed, there is any -- rests in the combination of perfectly acceptable subject matter, i.e. the name of a T.V. series and its characters, with perfectly acceptable goods i.e. decals. As to this combination, the crux of the Trademark Attorney's position seems to be that the source indicating characteristics of the words "MORK & MINDY" are so dominated by their ornamental characteristics that purchasers would not perceive these words as indicating source. We do not agree.

³ *Ex parte Procter & Gamble Co.*, 97 USPQ 78 (Com'r. of Pat. 1953).

⁴ "Service mark. * * * Titles, character names and other distinctive feature of radio or television programs may be registered as service marks * * *." Trademark Act, as amended, § 45, 15 U.S.C. § 1127 (1976).

⁵ Reg. No. 1,135,853, issued May 20, 1980 for chewing gum; Reg. No. 1,135,855, issued May 20, 1980 for chewing gum; Reg. No. 1,137,292, issued June 24, 1980 for film series; REg. No. 1,137,395, issued July 1, 1980 for notebooks; and Reg. No. 1,139,689, issued September 16, 1980 for dolls and dolls accessories.

We start from the point that our trademark law is very liberal -- perhaps the most liberal in the world -- as to what is registrable subject matter. ⁶ The outermost reach of this principle, perhaps, is in the interpretation we apply to applications for registration of "sound" marks. In many, if not most, other countries, such matter is not deemed registrable because, not being in any tangible form, sound would not be perceived by purchasers to constitute a mark, a rationale which is similar to that which has been applied here. However, the answer of our law is that this is an objection of form, without substance, where the sound is rendered in such a way as to impart, or also impart, source significance. To be sure, not all sounds distinguish source and most do not. In the case of musical sound, for example, the entertainment aspect generally overwhelms any other. However, this is not always the case and where a particular musical sound has, or also has, source indicating significance, we have recognized this trademark function by issuing a registration of the sound as a mark. See: *Trademark Manual of Examining Procedure*, §1301.07(a).

⁶ One is tempted to say that our strict use requirement is an exception to this point. However, our use requirement is not a subject matter restriction but rather a condition which must be met by the applicant before registration of the mark can be applied for.

[2] Similarly here, while not every sign used on a product, or on its label, package, etc., functions as an indication of source of the product on which it is used -- e.g. some are merely part of the aesthetic ornamentation -- the broad and liberal interpretation of our law is that, where such a sign also serves a source indicating function, it should be regarded as acceptable subject matter for registration. See: *In re Kotzin*, 125 USPQ 347 (CCPA 1960); *In re Todd Co.*, 129 USPQ 408, 410 (CCPA 1961); *In re Olin*, supra; *In re Expo '74*, supra; *In re McDonald's Corp.*, 199 USPQ 702, 704 (TTAB 1978); *In re Penthouse International Ltd.*, 195 USPQ 698, 699-700 (CCPA 1977); *In re Levi Strauss & Co.*, 165 USPQ 384 (TTAB 1970); *Levi Strauss & Co. v. Blue Bell, Inc.*, 208 USPQ 713, 715 Cir. 1980).

[3] In applying this principle to the facts herein, we believe that the same reasoning which was applied in *Olin* is also applicable here. In that decision, Member Waldstreicher delineated a simple and -- we think -- workable test for use in considering the registrability of matter pressed on, or otherwise affixed to, T-shirts. Thus, if the subject matter is in the nature of the expression "SWALLOW YOUR LEADER", it is purely ornamental and would not be considered as an indication of source. See, e.g. *In re Whataburger Systems, Inc.*, 209 USPQ 429 (TTAB 1980). On the other hand, the stylized "O" would be regarded as a trademark of *Olin Corporation*, hence, it can serve as a secondary indication

of source when applied to T-shirts. Applying the same test here, it seems to us that the paired names "MORK & MINDY", while certainly part of the ornamentation of the decal, also indicate source or origin in the proprietor of the Mork & Mindy television series in the same sense as the stylized "O" in Olin. The Trademark Attorney contests this conclusion, arguing that the names, located as they are, beneath the photographic representations of the artists who portray the characters in the Mork & Mindy's series, are essentially part of the ornamentation and that they also perform the non-trademark function of

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identifying the characters by their names. We concede both points and would add that both non-trademark functions were also apparent in Olin and Expo '74.⁷ Although the fame of applicant's television series probably rendered the character identifying function unnecessary as a practical standpoint, the fact that the character names identified the artists is well supported in this record by evidence submitted by applicant of the close association in viewers' minds which these particular artists have with the series' principal characters.⁸ More importantly, we think it is significant that it is a common merchandising technique in this country to license the use of character names and images as *trademarks* for a variety of products collateral to the product or services in respect of which the name or images are primarily known. Thus, while purchasers may be accustomed to seeing characters' names and images as part of the ornamentation of decals, T-shirts and the like, they are also accustomed to seeing characters' names and images used as trademarks to indicate source of origin. Applicant's other registrations of "MORK & MINDY" as trademarks demonstrate that "MORK & MINDY" is no exception. The above factors have persuaded this Board and the court above to recognize trademark significance in signs which also have ornamental significance, In re Olin, supra; In re Expo '74, supra; in re Penthouse International, supra, and we are similarly persuaded here. Obviously, not everything that is protected from encroachment by others is registrable subject matter. However, as to this point, we agree with applicant (brief on appeal, 13) that it is desirable, absent any overriding public policy considerations -- we know of none here --, to interpret the Trademark Act so that subject matter which is accorded protection in the courts as technical trademarks will be entitled to registration as such.

⁷ The stylized "O" was part of the ornamentation of the T-shirt and it identified Olin Corporation. "EXPO '74" was the T-shirt's only ornamentation and it identified the World's Fair of 1974.

⁸ Applicant had submitted this evidence for a different purpose, thinking that the Examining Attorney might require a showing of distinctiveness pursuant to Section 2(f) as a condition to registration. That issue is not before us, as the Trademark Attorney has not refused registration on this ground. We agree that a showing of distinctiveness pursuant to Section 2(f) is not necessary in this case. "MORK & MINDY" are fanciful names and we see no relationship between the mark and decals or between decals and the television series which would justify finding that the mark was subject to any inherent defect which would have to be overcome by a showing under Section 2 (f). We do not, of course, exclude the possibility on other facts that registration might be refused where it was not apparent that the subject matter sought to be registered would be perceived as a mark. In such a case, evidence to demonstrate the perception of the subject matter as a mark by the relevant purchasing public might be of assistance.

In support of his refusal of registration, the Trademark Attorney cites International Order of Job's Daughters, v. Lindenburg and Co. 208 USPQ 718 (9th Cir. 1980) and Pagliero v. Wallace China Co., 95 USPQ 45 (9th Cir. 1952). Pagliero is inapposite. The subject matter there involved merely the pattern or motif of the hotel china created by Wallace. Although "SHADOW-LEAF" and other names were used on cartons to identify each of the motifs (which terms were not refused protection by the court), there were no words or other signs used as part of the decoration of the china itself which purchasers would normally recognize as marks. Job's Daughters is distinguishable for another reason. In that case, plaintiff had permitted many jewelers, including the defendant, to produce unauthorized "unofficial" jewelry bearing the plaintiff's emblem. It was as a result of this activity rather than the nature of the use that the trademark function of the plaintiff's emblem had been diluted to the point that it no longer indicated a single "official" source of jewelry bearing the emblem.

In both of these Ninth Circuit decisions, the court defined the applicable legal principle involved in terms which are entirely consistent with that which we applied in Olin and which we apply here. Indeed, this interpretation was recently *reaffirmed* by the Ninth Circuit in a case not unlike the one which is before us. Vuitton et Fils S.A. v. J. Young Enterprises, Inc., 212 USPQ 85 (9th Cir. 1981). The decision of the lower court, *Id.*, 208 USPQ 98 (C.D. Ca. 1980), had denied trademark protection to plaintiff's design comprising the initials "LV" superimposed one upon the other and surrounded by three fleur-de-lis symbols, used in an all-over repeated pattern as an ornamental feature of its luggage, on rationale not unlike that of the refusal of registration under appeal here. However, that decision was *reversed* by a unanimous Court of Appeals based on the reasoning, albeit not the result, in its previous decision in Pagliero. The Pagliero rationale equally supports our conclusion here that "MORK & MINDY" should not have been refused registration as a mark for decalcomanias.

We are constrained to address a point which, although not expressly made, was nevertheless clearly implied by the Examining Attorney in his statement on this appeal. The

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implication is that registration might not have been refused had specimens other than the decals themselves been submitted. Thus, in the conclusionary paragraph of the statement, page 5, the following statement is made:

Here the words Mork & Mindy, *as they appear on the specimens of record*, do not perform a trademark function * * *." (Emphasis added.)

This statement and others having the same import tie in with a suggestion apparently made to applicant during a telephone interview on this case (applicant's brief, 6) that the mark would be considered registrable if it was used on a label affixed to the product instead of as a component of the product itself. Applicant declined -- properly, we think -- to follow this suggestion, choosing instead to rely on the statement in *Penthouse*, supra, 191 USPQ 698, 701, that the "capacity of a mark to indicate origin is not destroyed because the mark appears as a charm on a bracelet, instead of as a symbol on the box which contains the bracelet."

The above cited admonition of Judge Rich in *Penthouse* was recently reiterated by Judge Weinfeld in a decision of the Federal Court of the Southern District of New York in a trademark infringement action which also involved marks used on jewelry. *Damn I'm Good Inc. v. Hanover House Industries, Inc.*, 212 USPQ 684 (S.D. N.Y. 1981). In that case, the plaintiff relied upon the presumption of validity earned as a result of its federal registration of "DAMN I'M GOOD" for jewelry (the goods were plain brass or copper bracelets and other jewelry, the *only* aesthetic feature of which was the phrase "DAMN I'M GOOD", one of numerous such expressions used as messages on applicant's jewelry), which was allowed after small cardboard tags had been submitted as specimens "at the Examiner's suggestion." *Id.*, 212 USPQ 684, 688. Holding that the trademark "DAMN I'M GOOD" was invalid and unenforceable, Judge Weinfeld made the following observation about the registration history:

"This last-ditch attempt to overcome * * * the previous adverse ruling of the Trademark Commission is insufficient to establish that the phrase 'DAMN I'M GOOD' has been used consistently by plaintiff to identify the source of the bracelets. * * * Since 'there is no such thing as property in a trademark except as a right in connection with which the mark is employed' (citing inter alia, *United Drug Co. v. Theodore Rectanus Co.*, 284 U.S. 90 (1981)) * * * plaintiff's limited use of the phrase 'DAMN I'M GOOD' as the source of origin of its products makes a very weak case for according this phrase trademark protection."

[4] There is much food for thought in Judge Weinfeld's observation. If a sign serves a trademark function as it is used in its normal commercial setting, it should not be necessary to submit additional specimens in order to satisfy formalistically a requirement for specimens of a particular kind. Clearly, there is no prescribed method or place for affixation of a mark to goods. In every case, the question is not whether the mark has been associated with the goods by a particular mode or manner, but whether the matter sought to be registered performs the function of a trademark by signifying to purchasers the source of the goods sold or offered for sale. In *re Expo '74*, supra, at 139 USPQ 49. Even if a mark covers the entire surface of a product, that fact does not necessarily mean that the mark does not perform a trademark function. *Vuitton et Fils, S.A. v. J. Young Enterprises, Inc.*, supra, at 212 USPQ 89. On the other hand, if the sign does not, in its normal commercial setting, function as a mark, the submission of "token" specimens should not be considered as overcoming the basic defect.

Another teaching of *Damn I'm Good* is that the rationale supporting non-protectibility of the mark therein involved supports protectibility of the mark involved herein. This point is made in footnote 21, at 212 USPQ 689, in which *Olin*, *Expo*, *Penthouse* and -- in our opinion -- the instant case, are *distinguished* by the following language:

"By contrast, placement of a recognized trademark on, for example, a T-shirt, might serve primarily as an indicator of source despite its functional component. See: In *re Expo*, 189 USPQ 48 (TTAB 1975); In *re Olin*, 181 USPQ 182 (TTAB 1973); cf. In *re Penthouse Int'l Ltd.*, 565 F.2d 679, 195 USPQ (CCPA 1977)."

Thus, it seems to us that the phrase "Damn I'm Good", used as it was on the jewelry in the New York case does not satisfy registrability criteria for the same reason as the hypothetical example, "Swallow Your Leader", in *Olin*. It plainly would not be perceived by purchasers as serving any source-indicating function. We conclude on this record that "MORK & MINDY" would be and is so perceived.

Decision

The refusal of registration is *reversed*.

- End of Case -

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Source: USPQ, 1st Series (1929 - 1986) > U.S. Patent and Trademark Office, Trademark Trial and Appeal Board > In re Expo '74, 189 USPQ 48 (TTAB 1975)

189 USPQ 48

In re Expo '74

U.S. Patent and Trademark Office, Trademark Trial and Appeal Board

Decided July 31, 1975

Headnotes

TRADEMARKS

[1] Acquisition of marks — In general (► 67.071)

Registration — In general (► 67.731)

Party need not be manufacturer of goods to own and register trademark; any person in normal distribution channels, including manufacturer, contract purchaser who has goods manufactured, retailer, merchant, or non-profit organization can be owner of trademark "in commerce" if he applies mark to goods to which he has acquired ownership and title, and sells or transports goods in commerce as his own product, with mark serving to identify product as emanating from shipper or seller in his own capacity.

[2] Trademarks — In general (► 67.01)

Acquisition of marks — Character and extent of use — Advertising (► 67.0733)

Acquisition of marks — How applied to goods (► 67.081)

Lanham Act Section 45 provides that mark shall be deemed to be used in commerce on goods that bear mark in any manner and are sold or transported in commerce, which encompasses mark's affixation across front of garment; there is no prescribed method or place for mark's affixation to goods; mark that signifies goods of particular entity to prospective purchasers and distinguishes goods from those of others performs trademark's function; trademark serves seller by being prime element in advertising goods in addition to functioning as indicator of source and quality.

Case History and Disposition

Appeal from Examiner of Trademarks.

Application for registration of trademark of Expo '74, Serial No. 439,078. From decision refusing registration, applicant appeals. Reversed.

Attorneys

Wells, St. John & Roberts, Spokane, Wash., for applicant.

Judge

Before Leach, Lefkowitz, and Bogorad, members.

Opinion Text

Opinion By:

Lefkowitz, Member.

An application has been filed by Expo '74, a corporation organized under the laws of the State of Washington, to register the designation "EXPO '74" as a trademark for handkerchiefs and T-shirts, use of the mark since August 23, 1972 being claimed.

It is stated in the application that the mark is used by applying it to the goods. Specimens filed with the application comprise photographs of applicant's T-shirts showing the mark applied across the front of the shirts as follows:

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[Unavailable graphic material set at this point contains the text shown below. To view graphics, see text in hard copy]

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EXPO'74

Registration has been refused on the ground that " * * * The mark as used by applicant merely functions to advertise and promote the Seattle Exposition of 1974 rather than to identify and distinguish applicant's goods * * *" In other words, the Examiner's holding is that "EXPO '74", as displayed across the front of applicant's goods, does not constitute trademark use thereof.

Applicant has appealed.

According to the record, applicant, Expo '74, established and organized an international exposition or World's Fair in Spokane, Washington centering upon the theme of environmental improvement and our natural resources and designed to provide educational and entertainment services to patrons. Income to applicant was derived from two major sources; (1) from admission charges, and (2) income received from the sale of merchandise. It was decided to acquire and utilize two principal service trademarks for the rendering of services and the selling of goods that are traditional with expositions of this kind. The two marks that were chosen were "EXPO '74" and an "EXPO '74" symbol mark. Applications were initially filed for Federal registration of "EXPO '74" as a service mark for the establishment, publicizing and promoting of an international exposition for the benefit of sponsors and others and as a trademark for publications [Registration No. 948,989, issued December 19, 1972 covering "EXPO '74" for both the services and the goods]. Subsequently, applications were filed relating to several items of merchandise sold in interstate commerce under the mark "EXPO '74". The present application is one of the merchandise applications and is specifically directed to the sale of handkerchiefs and T-shirts under the mark "EXPO '74".

It is applicant's contention that:

"The mark 'EXPO '74' which is conspicuously displayed on the front of the T-shirt advises the purchaser that the applicant 'EXPO '74' is a secondary source of that T-shirt. The mark 'EXPO '74' is a word adapted and used by the applicant to identify his goods and to distinguish their goods from those goods sold by others. There is no requirement that the applicant additionally be the manufacturer of the goods. Additionally the mark 'EXPO '74' *identifies the source* (secondary) of the T-shirts and handkerchiefs.

"The T-shirts are not given away or distributed for the purpose of advertising. The advertising conducted to encourage the attendance of patrons to the fair is done through various type of media such as television, newspaper advertisements, magazine advertisements and the like. The merchandise is sold to the patrons who come to the World's Fair. The merchandise including the T-shirts and handkerchiefs are sold for the purpose of deriving income. The patrons purchase the applicant's merchandise mainly because the mark 'EXPO '74' does in fact *identify the source of the goods* and distinguishes the goods from those that are sold by others."

[1] There is no question but that a party need not be a manufacturer of goods to own and register a trademark. In fact, any person in the normal channels of distribution including a manufacturer, a contract purchaser who has goods manufactured for him, and a retailer or merchant as well as any non-profit organization or institution can be the owner of a trademark "in commerce" if he applies or has someone in his behalf apply his own trademark to goods to which he has acquired ownership and title and sells or merely transports such goods in commerce as his own product with the mark, as applied thereto, serving to identify the particular product as emanating from the shipper or seller in his own capacity.

[2] It is likewise clear that, while Section 45 of the statute provides that a mark shall be deemed to be used in commerce on goods where it is placed, *inter alia*, "in any manner on the goods" and the goods are sold or transported in commerce, the quoted language is broad enough to encompass the affixation of a mark across the front of a garment as applicant has done in the instant case. That is, there is no prescribed method

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or place for affixation of a mark to goods. The question is not whether it is placed in the position or portion of the goods customarily employed in the trade for this purpose, but rather whether the mark, as used, performs the function of a trademark by signifying to purchasers and prospective purchasers the goods of a particular entity and distinguishing such goods from those of others. cf. *In re Kotzin*, 125 USPQ 347 (CCPA, 1960) and *In re Levi Strauss & Co.*, 165 USPQ 348 (TT&A Bd., 1970). Finally, it should be noted that, in addition to functioning as an indicator of source and quality, a trademark serves the seller by being a prime element in advertising the goods offered thereunder. See: J. Thomas MacCarthy, "Trademarks and Unfair Competition", Volume 1, Section 3.5. In this regard, Comment (b) in Section 715 of the Restatement of Torts notes the following:

"When Trademarks came in fact to identify the source of manufacture of goods, they were regarded, in the law as elsewhere, solely as indicia of origin. With the expansion of markets, the growth of a complicated system of distribution and the development of large scale advertising, trademarks began to perform the additional function of an advertising and selling device. In the market, the chief value of a trademark may be its power to stimulate sales."

These were the considerations which formed the basis for the Board's decision in *In re Olin Corporation*, 181 USPQ

182 (TT&A Bd., 1973) which contained a fact situation as well as a legal issue substantially identical to that involved herein.

In that case, the applicant, obviously not engaged in the manufacture of wearing apparel, sought to register a design mark for T-shirts. The mark, according to the application, was applied across the front of the shirt. Registration was refused on the ground that the mark as it appeared on the shirts does not serve as a trademark to identify and distinguish applicant's goods in commerce. The Examiner further held that as used on T-shirts, the mark appeared to be merely ornamental. The Board *reversed* the holding, inter alia that:

"The 'ornamentation' of a T-shirt can be of a special nature which inherently tells the purchasing public the source of the T-shirt not the source of manufacture but the secondary source. Thus, the name 'New York University' and an illustration of the Hall of Fame, albeit it will serve as ornamentation on a T-shirt will also advise the purchaser that the university is the secondary source of the shirt. It is not imaginable that Columbia University will be the source of an N.Y.U. T-shirt. Where the shirt is distributed by other than the university, the university's name on the shirt will indicate the sponsorship or authorization by the university.

"In the case before us, the T-shirt is ornamented with applicant's trademarks, and considering the nature of T-shirts, that particular ornamentation can serve as an indication of a secondary source of origin. The manner sought to be registered is an arbitrary symbol and can and does function as a trademark. As used on the T-shirts, we conclude that the mark serves as an identifier of a secondary source and as such is registrable."

For substantially the same reasoning, we are of the opinion that the instant mark "EXPO '74", as used on T-shirts, can and does serve a trademark function as an indication of origin for these goods sold by or on behalf of applicant. Cf. *Boston Professional Hockey Association Inc. et al. v. Dallas Cap & Emblem Manufacturing, Inc.*, 185 USPQ 364 (CA 5, 1975) and *National Football League Properties, Inc. v. Consumer Enterprises, Inc.*, 185 USPQ 550 (Ill. Appellate Ct. First District, 1975).

Decision

The refusal of registration is *reversed*.

- End of Case -

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