

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Hearing  
April 5, 2011

Mailed:  
July 19, 2011

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Oakton Press, Inc.

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Serial No. 77221836

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Ken Oliveira of Odin, Feldman & Pittleman, P.C. for Oakton Press, Inc.

Steven W. Jackson, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

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Before Quinn, Bergsman and Wolfson,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Oakton Press, Inc. ("applicant") seeks to register the mark CONSUMERAFFAIRS.COM on the Principal Register, in standard character form, for "business investigations and business information services in the field of business and trade practices for protecting responsible business and the public against abusive business practices and for establishing and maintaining legitimate advertising and merchandising practices," in Class 35. Applicant claimed first use of its mark anywhere and first use of the mark in

commerce at least as early as December 1, 1998. Also, applicant disclaimed the exclusive right to use ".COM."

Applicant's specimen of use is a webpage featuring links for, *inter alia*, consumer news, recalls and scam alerts. Applicant's webpage provides that "we open our pages to consumers just like you, reporting your experience with products and services, while our reporters, editors and resident experts provide news and information that can help you be a better informed consumer."

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive. According to the Examining Attorney, "[t]he words 'consumer' and 'affairs' in combination with '.com' clearly convey to users information about the subject matter and feature of the services. The applicant's services provide users with a website featuring public matters of business, such as providing investigations and information on unfair trade practices, for consumers, i.e., consumer affairs."<sup>1</sup>

While maintaining the position that its mark is not merely descriptive, applicant requested that

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<sup>1</sup> The Examining Attorney's Brief, unnumbered p. 5.

CONSUMERAFFAIRS.COM be allowed to register on the Principal Register under Section 2(f) or, in the alternative, on the Supplemental Register. Applicant claimed that CONSUMERAFFAIRS.COM has become distinctive through its substantially exclusive and continuous use of the mark for at least the five years preceding the filing of its declaration of acquired distinctiveness. The Examining Attorney continued the refusal under Section 2(e)(1), denied registration under Section 2(f), and issued a refusal under Section 23(c) on the ground that applicant's mark is generic and, therefore, not registrable on the Supplemental Register.

Preliminary Issue

At the outset, we are compelled to make some observations regarding the prosecution of this application by the examining attorney. First, the examining attorney submitted the same evidence multiple times. For example, he submitted the same dictionary definitions in the October 4, 2007, November 26, 2008 and July 16, 2009 Office Actions. Suffice it to say, the definitions do not become more probative with repetition. The examining attorney also submitted different excerpts from applicant's website in the October 4, 2007, November 26, 2008 and July 16, 2009 Office Actions, including two separate excerpts in the July

16, 2009 Office Action. The better practice is for the examining attorney to submit all the relevant excerpts from a website at one time rather than piecemeal.<sup>2</sup> Finally, in the Office Actions, the examining attorney should identify the evidentiary websites and specifically explain their probative value. For example, if the examining attorney has attached numerous websites, he/she may identify three of the most relevant websites in the Office Action and explain why those websites are probative of his/her position. In this case, the examining attorney has not pointed out, even in its brief, the evidence that he believes is most probative of his position. It is not very helpful when an examining attorney or an applicant submits hundreds of pages of evidence in the hope that the Board wades through it to find something relevant.

#### Evidence

The Examining Attorney submitted the following evidence to demonstrate that CONSUMERAFFAIRS.COM is generic and/or merely descriptive when used in connection with "business investigations and business information services in the field of business and trade practices for protecting

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<sup>2</sup> When appropriate, the examining attorney may explain that he/she introduced a second excerpt from a website previously made of record because additional probative evidence was found in a later search that was not available initially.

responsible business and the public against abusive business practices and for establishing and maintaining legitimate advertising and merchandising practices":

1. The definition of the word "affairs" from the dictionary of MSN.ENCARTA (*Encarta.msn.com*) meaning "public matters of business: public, government, or professional business or activities: *affairs of state; consumer affairs.*"<sup>3</sup>

2. The definition of "consumer" from the dictionary of MSN.ENCARTA meaning "buyer: a buyer of goods or services."<sup>4</sup>

3. An excerpt from applicant's website.<sup>5</sup>

**About ConsumersAffairs.com**

ConsumerAffairs.Com is a consumer news and advocacy site ... The site includes consumer news, recall information and tens of thousands of pages of consumer complaints, comments and compliments.

A second excerpt from applicant's website provides the following:<sup>6</sup>

ConsumerAffairs.com is a private, non-governmental entity that empowers consumers by providing a forum for their companies and a means for them to be contacted by lawyers if their complaints have legal merit.

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<sup>3</sup> October 4, 2007 Office Action.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> November 26, 2008 Office Action.

A third excerpt from applicant's website providing a "Consumer Comment form" for consumer complaints for review by attorneys and possible publication by news media.<sup>7</sup>

4. *The Free Dictionary (thefreedictionary.com)* redirected a search for "Consumer Affairs" to "Consumer Protection."<sup>8</sup> The entry provides the following:

Consumer protection laws are federal and state statutes governing sales and credit practices involving consumer goods. Such statutes prohibit and regulate deceptive or unconscionable advertising and sales practices, product quality, credit financing and reporting, debt collection, leases, and other aspects of consumer transactions.

5. Numerous excerpts from the websites of various departments of consumer affairs (e.g., California Department of Consumer Affairs, New York City Department of Consumer Affairs and the New Jersey Division of Consumer Affairs).<sup>9</sup> The URL path for the New Jersey Division of Consumer Affairs is *njconsumeraffairs.gov*.

The Alabama consumer affairs website (*ago.state.al.us*) provides the following information:

The Attorney General's Office of Consumer Affairs provides three primary services for the State of Alabama and its residents: (1) serves as a mediator of consumers' complaints that

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<sup>7</sup> July 16, 2009 Office Action.

<sup>8</sup> November 26, 2008 and July 16, 2009 Office Actions.

<sup>9</sup> *Id.*

relate to a retail transaction; (2) investigates allegations of fraud or illegal practices by a business which may violate state or certain federal laws; and (3) offers information and consumer education to the public about how to avoid becoming a victim of fraud.

The Palm Beach County, Florida Division of Consumer Affairs<sup>10</sup> website indicates that the Division "assists residents and visitors with advice and information about unfair, fraudulent or deceptive practices of businesses and landlords."

The Montgomery County, Pennsylvania Department of Consumer Affairs<sup>11</sup> website states that the County provides "free assistance and education to protect Montgomery County consumers against economic losses resulting from unethical business practices in the marketplace."

The South Carolina Department of Consumer Affairs website notes that the Department "has broad powers and responsibilities to accept all types of complaints dealing with any consumer transaction arising out of the production, promotion or sale of consumer goods and services."

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<sup>10</sup> At [pbcgov.com/publicsafety/consumeraffairs/fastfacts.htm](http://pbcgov.com/publicsafety/consumeraffairs/fastfacts.htm).

<sup>11</sup> At [consumeraffairs.montcopa.org](http://consumeraffairs.montcopa.org).

A search summary from a GOOGLE search engine search for "consumer affairs" retrieving links to the Cleveland, Ohio Department of Consumer Affairs<sup>12</sup> and the District of Columbia Committee on Public Services and Consumer Affairs<sup>13</sup> which both include the term "consumeraffairs" in their URL path.<sup>14</sup> Likewise, the Middlesex County, New Jersey Department of Consumer Affairs<sup>15</sup> and the Suffolk, County, New York Office of Consumer Affairs use the term "consumeraffairs" in their URL path.<sup>16</sup>

6. An excerpt from the website of the California State University at Long Beach, Department of Family & Consumer Affairs describing the "Consumer Affairs" program (*csulb.edu/colleges/chhs/departments/fcs/program/consumeraffairs.htm*).<sup>17</sup> The website describes the "Consumer Affairs" program as follows:

Our program is one of the leading undergraduate programs in the field. It offers interdisciplinary study of the financial, legislative, psychological, sociological, and cultural factors involved in consumerism.

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<sup>12</sup> At [city.cleveland.oh.us/government/departments/conaffairs/consumeraffairsind.html](http://city.cleveland.oh.us/government/departments/conaffairs/consumeraffairsind.html).

<sup>13</sup> At [dccouncil.us/public-services-and-consumeraffairs](http://dccouncil.us/public-services-and-consumeraffairs).

<sup>14</sup> We are not relying on the text of the search summaries from the GOOGLE search. As indicated above, the links show that the term "consumeraffairs" is used in the URL path.

<sup>15</sup> [co.middlesex.nj.us/consumeraffairs/file.asp](http://co.middlesex.nj.us/consumeraffairs/file.asp).

<sup>16</sup> [co.suffolk.ny.us/departments/.../consumeraffairs.asp](http://co.suffolk.ny.us/departments/.../consumeraffairs.asp).

<sup>17</sup> November 26, 2008 Office Action.



Areas covered in Consumer Affairs are Consumer Advocacy and Protection, Financial Management, and Housing. In addition, the course work in Consumer Affairs is complemented by minors in several areas including Business Management, Economics and Marketing.

7. An excerpt from an article in the February 1, 1987 issue of the *St. Petersburg Times* with the headline "Consumer affairs office can offer help, assistance."<sup>18</sup> The article explains that the Hillsborough County Office of Consumer Affairs "is a clearinghouse for consumer complaints stemming from a broad range of controversies with businesses and merchants."

8. A column in the *Cleveland.com* website by Sheryl Harris is entitled "Consumer Affairs" and it promotes itself as "[a] weekly column about consumer affairs."<sup>19</sup> It uses the term "consumeraffairs" in its URL path.<sup>20</sup>

Applicant did not submit any evidence.

Whether CONSUMERAFFAIRS.COM is generic?

When a proposed mark is refused registration as being a generic term, the examining attorney has the burden of proving genericness by "clear evidence" thereof. *See In re Hotels.com*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir.

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<sup>18</sup> July 16, 2009 Office Action.

<sup>19</sup> July 16, 2009 Office Action.

<sup>20</sup> [cleveland.com/consumeraffairs](http://cleveland.com/consumeraffairs).

2009); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); and *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987).

The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods in question. *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *Ginn*, 228 USPQ at 530. Evidence of the public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. See *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985); *Merrill Lynch*, 4 USPQ2d at 1143.

Finally, where, as here, the mark is a compound term, the examining attorney may establish that the term is

generic by producing evidence that each of the constituent words is generic, and that the separate words retain their generic significance when joined to form a compound term.

*In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-1112 (Fed. Cir. 1987) (SCREENWIPE held generic as applied to premoistened antistatic cloths for cleaning computer and television screens); *see also In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) ("Even if each one of the constituent words in a combination is generic, the combination is not generic unless the entire formulation does not add any meaning to the otherwise generic mark"); TMEP §1209.01(c)(i) (7<sup>th</sup> ed. 2010).

We begin by finding that the genus of the services at issue in this case is adequately defined by applicant's description of services, namely, "business investigations and business information services in the field of business and trade practices for protecting responsible business and the public against abusive business practices and for establishing and maintaining legitimate advertising and merchandising practices." *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) ("[A] proper genericness inquiry focuses on the description of

[goods or] services set forth in the [application or] certificate of registration").

As best we understand applicant's argument as to why CONSUMERAFFAIRS.COM is not generic, applicant, relying on *In re Steelbuilding.com*, contends that in determining the genus of applicant's services, the examining attorney did not consider all of the activities encompassed by applicant's services and, therefore, improperly identified the genus of the services. Applicant argued that its services include the following activities:

1. The ability for visitors to review articles dealing with the business dealings of various companies and industries;
2. Information on product recalls;
3. Ability for visitors to post complaints about companies or products;
4. The ability for visitors to review articles and postings about various "scams" in a variety of industries and through a variety of mediums;
5. Legal articles on lemon laws and consumer law suits;
6. Interstate agency contact lists for the reporting of consumer abuses; and

7. Providing information in different areas/subject matters dealing with consumer reports.<sup>21</sup>

In *Steelbuilding.com*, the Federal Circuit found that there was an ambiguity in the description of services and it looked to applicant's website for clarification. 75 USPQ2d at 1422. When the description of services is unclear, it is improper to simply consider the description of services in a vacuum when there is extrinsic evidence showing that the description of services has a specific meaning. *Cf. In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990).

In this case, applicant's argument is based on the false premise that applicant's description of services is ambiguous. We find no ambiguity in applicant's description of services. Also, applicant maintains that the genus of services identified by the examining attorney during the prosecution of the application (*i.e.*, consumer affairs) does not encompass all of the activities offered by applicant and, therefore, the genus of the services, does not include the above-noted activities. We disagree. We adopted applicant's description of services as the genus of the services. Because applicant's description of services should identify the activities identified by the mark,

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<sup>21</sup> Applicant's Brief, pp. 8-9; Applicant's Reply Brief, p. 4.

applicant should not be heard to complain that the description of services does not encompass all the activities for which registration is sought. Moreover, we find that the seven activities identified by applicant fall within the penumbra of "business investigations and business information services in the field of business and trade practices for protecting responsible business and the public against abusive business practices and for establishing and maintaining legitimate advertising and merchandising practices."

Because Section 7(b) of the Lanham Act bestows upon the owner of a registration the presumption of use of a mark for all the services identified in a registration, the question of registrability must be determined by considering any services falling within the literal scope of an identification of services, and not merely the particular activities an applicant may be marketing at the time when registrability is determined. *In re Reed Elsevier Properties, Inc.*, 77 USPQ2d 1649, 1654 (TTAB 2005), *aff'd*, 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007). Accordingly, we find that "business investigations and business information services in the field of business and trade practices for protecting responsible business and the public against abusive business practices and for

establishing and maintaining legitimate advertising and merchandising practices" encompass the seven activities applicant claims to comprise its services. In other words, while the broad category of services in the present case may be the business investigations and information services, there is a narrower category of services within that broad category comprising the seven activities identified by applicant. See *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019 (TTAB 2010) (lighting fixtures is a generic term for electric candles); *In re Reed Elsevier Properties, Inc.*, 77 USPQ2d at 1656 ("the genus of services is providing a web site with a database of information covering the identified topics of law, legal news and legal services and that includes information about lawyers and information from lawyers"); *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002) (BONDS.COM is generic for "providing information regarding financial products and services via a global computer network and providing electronic commerce services via a global computer network ... with respect to taxable and tax exempt debt instruments" because the services encompass information about bonds); *In re Web Communications*, 49 USPQ2d 1478, 1479 (TTAB 1998) (consulting services include assisting customers in communications through the Internet); *In re Analog Devices*,

*Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (unpublished) (registration is properly refused if the subject matter for registration is generic of any one of the goods for which registration is sought); *Cf. In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005), *quoting, Application of Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 48 (CCPA 1975) ("Our predecessor court...has stated that registration should be refused if the mark is descriptive of any of the goods for which registration is sought").

We now turn to the second inquiry: the public's understanding of the term. As noted above, the evidentiary burden of establishing that a term is generic rests with the USPTO and the showing must be based on clear evidence. *Merrill Lynch*, 4 USPQ2d at 1143. Based on the record described above, we find that there is clear evidence to support a finding that the relevant public, when it considers CONSUMERAFFAIRS.COM, readily understands that term as identifying a category of business investigation and information service to prevent abusive practices and to promote legitimate business practices; in short, consumer business trade practices.



The evidence discussed above (e.g., the websites from various departments of consumer affairs) establishes that the term "consumer affairs" is understood to mean consumer business practices. The dictionary entry from MSN.ENCARTA specifically references "consumer affairs" in its definition of the word "affairs," thus indicating that "consumer affairs" is a recognized term used in connection with "public matters of business." "Public matters of business" encompasses applicant's services in the field of consumer business trade practices.

The excerpt from the website of the South Carolina Department of Consumer Affairs is illustrative of how consumers will perceive the term "consumer affairs." This website indicates that the Department of Consumer Affairs "has broad powers and responsibilities to accept all types of complaints dealing with any consumer transaction arising out of the production, promotion or sale of consumer goods and services." In other words, consumer business trade practices.

The article from the *St. Petersburg Times* describes the Office of Consumer Affairs as "a clearinghouse for consumer complaints stemming from a broad range of controversies with businesses and merchants."

Applicant's specimen of record indicates that its services encompass consumer business trade practices. Applicant's specimen is a webpage featuring links for, *inter alia*, consumer news, recalls and scam alerts, and it provides that consumers may report their experience with products and services to applicant and applicant's reporters, editors and resident experts will provide news and information that can help readers/subscribers to be informed consumers.

With respect to the fact that the mark sought to be registered is a compound term, we note that applicant displays its mark in a logo format shown below



and it also uses its mark in text as "ConsumerAffairs.com." Thus, applicant is displaying its mark in a manner that highlights the combination of two separate and distinct words: "consumer" and "affairs." As displayed by applicant, the compound term sought to be registered retains the meaning of the separate words. In other words, the meaning and commercial impression of the compound term "consumeraffairs" is the same as the separate words "consumer affairs." In this regard, the evidence also shows that many government agencies use the composite term

"consumeraffairs" as part of their URL path (e.g., *njconsumeraffairs.gov*) for consumer affairs websites. While we acknowledge that a URL path may not have any spaces, many of the consumer affair websites use "consumer\_affairs" or "consumer&affairs" in the URL path thereby indicating that there are alternatives to the use of "consumeraffairs." Thus, the third-party uses of the term "consumeraffairs" is probative to show that some state departments of consumer affairs use "consumeraffairs" as a synonym for "consumer affairs."

Finally, with respect to the ".com" element of the compound mark, we find that it simply refers to the abbreviation designating a commercial organization in the internet address. The addition of ".com" does not make the entire mark incongruous, nor does it change the meaning of the entire mark. In other words, the addition of ".com" does not add to the distinctiveness of the mark as a whole. In this regard, we note that applicant disclaimed the exclusive right to use ".Com." Accordingly, based on the evidence of record, we find that the term CONSUMERAFFAIRS.COM is no more than the sum of its constituent parts (i.e., a combination of the terms "Consumer," "Affairs," and ".com"). The individual words "Consumer," "Affairs," and ".Com" retain their generic

meanings because the compression of the three terms is not incongruous and does not evoke a unique commercial impression.

We also note that there is no evidence that CONSUMERAFFAIRS.COM has another meaning or would be perceived as anything other than a reference to consumer business trade practices.

It is clear from the evidence that the term CONSUMERAFFAIRS.COM would be recognized as the combination of the words "Consumer," "Affairs," and ".Com" and that this would be readily apparent to any purchaser, prospective purchaser or user of applicant's services. Therefore, the combination, or "telescoping," of the terms is immaterial to the issue before us and applicant's compound version of the generic terms does not compel a different result.

In view of the foregoing, we find that the term CONSUMERAFFAIRS.COM is generic when used in connection with "business investigations and business information services in the field of business and trade practices for protecting responsible business and the public against abusive business practices and for establishing and maintaining legitimate advertising and merchandising practices."

Because the term CONSUMERAFFAIRS.COM is generic when used in connection with those services, it is not registrable on the Supplemental Register or on the Principal Register under the provisions of Section 2(f).

Mere Descriptiveness

Implicit in our holding that the evidence before us establishes that CONSUMERAFFAIRS.COM is generic for applicant's services is a holding that CONSUMERAFFAIRS.COM is at least merely descriptive of applicant's services under Section 2(e)(1). "The generic name of a thing is in fact the ultimate in descriptiveness." *H. Marvin Ginn Corp.*, 228 USPQ at 530.

Acquired Distinctiveness

For the sake of completeness, we now turn to the issue of whether applicant's mark has acquired distinctiveness. In finding that the designation CONSUMERAFFAIRS.COM is incapable of being a source identifier for applicant's services, we have considered all of the evidence touching on the public perception of this designation, including the evidence of acquired distinctiveness. As to acquired distinctiveness, applicant has the burden to establish a prima facie case of acquired distinctiveness. See *Yamaha International Corp. v. Hoshino Gakki Co., Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1006 (Fed. Cir. 1988).

The issue here is the achievement of distinctiveness, and the evidence falls far short of establishing this. Applicant asserts that CONSUMERAFFAIRS.COM has acquired distinctiveness on the basis of its substantially exclusive and continuous use of that mark for the five years preceding its declaration of acquired distinctiveness.<sup>22</sup> Notably, the record contains no direct or circumstantial evidence that the relevant classes of purchasers of applicant's services view CONSUMERAFFAIRS.COM as a distinctive source indicator for applicant's services. For example, applicant has not submitted any evidence regarding the extent of its sales, advertising, market share, or renown in the field.

Where, as here, if the mark is highly descriptive of the services named in the application, the statement of five years' use alone is insufficient to establish acquired distinctiveness. See *In re Gray Inc.*, 3 USPQ2d 1558, 1559 (TTAB 1987) ("[T]o support registration of PROTECTIVE EQUIPMENT [for burglar and fire alarms and burglar and fire alarm surveillance services] on the Principal Register a showing considerably stronger than a prima facie statement of five years' substantially exclusive use is required"); *In re Quatomic, Inc.*, 185 USPQ 59, 60-61 (TTAB 1974)

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<sup>22</sup> Applicant's Brief, p. 15.

(considering the nature of the term STRIPPERS for treatment of wooden and metallic elements and products in order to remove existing finishes therefrom a declaration of distinctiveness based on use alone is not persuasive); *In re Hayes*, 154 USPQ 493, 494 (TTAB 1967) (depending on the nature of the mark involved, the mere length of time an applicant may have had exclusive use of the term is not necessarily determinative of its right to register). *Cf. In re Synergistics Research Corp.*, 218 USPQ 165 (TTAB 1983) (applicant's declaration of five years' use held sufficient to support registrability under §2(f) of BALL DARTS for equipment sold as a unit for playing a target game, in view of lack of evidence that the term is highly descriptive (e.g., no dictionary evidence of any meaning of BALL DARTS and no evidence of use of the term by competitors or the public)).

Accordingly, even if the designation CONSUMERAFFAIRS.COM were found to be not generic, but merely descriptive, given the highly descriptive nature of the designation CONSUMERAFFAIRS.COM, we would need to see a great deal more evidence (especially in the form of direct evidence from customers) than what applicant has submitted in order to find that the designation has become

distinctive of applicant's services. That is to say, the greater the degree of descriptiveness, the greater the evidentiary burden on the user to establish acquired distinctiveness. See *In re Bongrain International Corp.*, 894 F.2d 1316, 1317 n.4, 13 USPQ2d 1727, 1728 n.4 (Fed. Cir. 1990); *Yamaha Int'l. Corp. v. Hoshino Gakki Co.*, 6 USPQ2d at 1005. The sufficiency of the evidence offered to prove acquired distinctiveness should be evaluated in light of the nature of the designation. Highly descriptive terms, for example, are less likely to be perceived as trademarks and more likely to be useful to competing sellers than are less descriptive terms. More substantial evidence of acquired distinctiveness thus will ordinarily be required to establish that such terms truly function as source-indicators.

**Decision:** The refusal under Section 23(c) of the Trademark Act of 1946 on the ground that the proposed mark is generic is affirmed; the refusal under Section 2(e)(1) of the Trademark Act on the ground that the mark is merely descriptive and that the Section 2(f) showing is insufficient is likewise affirmed.