

**THIS OPINION IS  
NOT A PRECEDENT  
OF THE T.T.A.B.**

Hearing:  
July 22, 2010

Mailed:  
December 6, 2010

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re AmQuip Crane Rental, LLC

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Serial No. 77331303

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Timothy D. Pecsénye and Sean W. Dwyer of Blank Rome LLP,  
for AmQuip Crane Rental, LLC

Doritt Carroll, Trademark Examining Attorney, Law Office  
116 (Robert L. Lorenzo, Managing Attorney).

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Before Zervas, Kuhlke and Taylor, Administrative Trademark  
Judges.

Opinion by Zervas, Administrative Trademark Judge:

AmQuip Crane Rental, LLC has appealed from the final  
refusal of the examining attorney to register the mark



on the Principal Register for services identified as "Crane  
rental and leasing for construction purposes" in  
International Class 37; and "Crane rental and leasing for

loading and unloading purposes" in International Class 39. Applicant claims first use and first use in commerce of its services in June 1999,<sup>1</sup> and describes its mark as consisting of a stylized drawing of a crane next to the words "AmQuip THE CRANE PEOPLE." The only issue raised in the final action and discussed in the briefs is the examining attorney's requirement pursuant to 15 U.S.C. §§ 1052(e)(1) and 1056(a) that applicant disclaim the term CRANE.

Applicant and the examining attorney have filed appeal briefs. We reverse the refusal to register.

Merely descriptive terms are unregistrable under Trademark Act Section 2(e)(1) and, therefore, are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is grounds for refusal of registration. See *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46 (CCPA 1975); and *In re Ginc UK Ltd.*, 90 USPQ2d 1472 (TTAB 2007).

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient,

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<sup>1</sup> On September 30, 2010, the Board remanded the application file for clarification of, inter alia, the dates of first use and first use in commerce for the International Class 39 services. Applicant identified such dates, and the application file was returned to the Board for resumption of the appeal.

quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is the examining attorney's position that the term CRANE is descriptive of a feature of the services, and she is correct. The recitation of services specifies that the services involve cranes. Applicant does not contend that the word CRANE is not descriptive; applicant contends that it need not disclaim CRANE because THE CRANE PEOPLE, "used as part of a composite in conjunction with and to promote Applicant's house mark, AMQUIP," is a slogan and considered unitary, and unitary terms should not be broken up for purposes of requiring a disclaimer.

A mark is unitary if it creates a single, distinct commercial impression. That is, the elements are so merged together that they cannot be divided to be regarded as separable elements. If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required. TMEP § 1213.05 (6th ed. 2nd rev. 2010). See also *Dena Corp. v. Belvedere International, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991). The commercial impression is determined by various factors, including the

relative location of the respective elements; and the meaning of the terms in the mark in relation to each other and to the services. *Id.*

The examining attorney maintains that to be a registrable slogan, "the whole of the mark must create a commercial impression greater than the sum of its parts, typically through some sort of double entendre." Brief at 5.<sup>2</sup> In her view,

[A]pplicant's mark offers no pun and no double entendre. The mark makes use of no assonance, consonance, or rhyme. In the absence of any form of wordplay, the applicant cannot successfully argue that the meaning of the mark is greater than the sum of its parts.<sup>3</sup>

She also relies on the numerous registrations which she placed into the record containing a disclaimer of the term between THE and PEOPLE, including:



(Reg. No. 0999324)

THE WATER QUALITY PEOPLE (Reg. No. 3482014)

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<sup>2</sup> The examining attorney relies on *Sprague Elec. Co., Inc. v. Elec. Utilities Co.*, 209 USPQ 88 (TTAB 1980) which involved the mark THE CAPACITOR PEOPLE for the service of designing capacitors to the order and/or specification of others. The Board, in that case, found that the opposer did not carry its burden of demonstrating a prima facie case that the mark was descriptive; there was no discussion of whether the mark was a slogan.

<sup>3</sup> The examining attorney's analysis does not comport with TMEP Section 1213. According to Section 1213, a mark is unitary if there is, inter alia, a double entendre or rhyme, or if it is a slogan. In order for a phrase to be a slogan, the phrase does not need to contain a double entendre or rhyme.

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THE GUN CARE PEOPLE (Reg. No. 3096633)  
THE NAIL PEOPLE (Reg. No. 3319612)  
THE RETAIL PEOPLE (Reg. No. 3106118)  
THE BEEF PEOPLE (Reg. No. 3092917)  
THE CONNECTOR PEOPLE (Reg. No. 3129185)  
THE IRON AGGREGATE PEOPLE (Reg. No. 3246328)  
THE HINGE PEOPLE (Reg. No. 3422899)  
THE BARGE PEOPLE (Reg. No. 3472301)  
THE TUNA PEOPLE (Reg. No. 3222503)  
THE PIPE PEOPLE (Reg. No. 3240142)  
THE SENSOR PEOPLE (Reg. No. 3499342)  
THE DRINK PEOPLE (Reg. No. 1053446)  
THE DIAMOND PEOPLE (Reg. No. 1041990)  
THE SEALANTS PEOPLE (Reg. No. 1102333)  
THE CHEMICAL PEOPLE (Reg. No. 1120301)  
DUMAS THE MODEL BOAT PEOPLE (Reg. No. 1116914)  
THE FRAME PEOPLE (Reg. No. 1153176)  
THE MEAT PEOPLE (Reg. No. 1173469)  
THE BINGO PEOPLE (Reg. No. 1196933)  
THE APARTMENT PEOPLE (Reg. No. 1398797)  
THE BEAN PEOPLE (Reg. No. 1659902)  
THE WINDOW PEOPLE (Reg. No. 1427807)  
THE FEED PEOPLE (Reg. No. 1441383)  
THE PURE WATER PEOPLE (Reg. No. 1525495)  
THE VACATION PEOPLE (Reg. No. 1748912)  
THE TRANSFORMER PEOPLE (Reg. No. 1764275).

Applicant on the other hand argues that THE CRANE PEOPLE is a slogan and elements of a slogan need not be disclaimed. According to applicant, THE CRANE PEOPLE is a slogan because the phrase appears with other textual matter used to promote applicant's services, namely, applicant's house mark AMQUIP. Additionally, applicant argues that "[t]he dominant portion of the composite mark is Applicant's house mark AMQUIP, [and] the house mar[k] is followed by the registrable slogan 'THE CRANE PEOPLE' used to promote the house mark. The slogan 'THE CRANE PEOPLE'

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is used in conjunction with Applicant's house mark and logo in a subsidiary role to further support the main mark and distinguish Applicant from its competitors." Brief at 7.

Applicant also made of record registrations for marks including the wording "THE (descriptive or generic wording) PEOPLE," in which the term between THE and PEOPLE was not disclaimed:



(Reg. No. 3221128) for retail store services featuring office supplies and computer equipment;

ULTX ... THE TANK CAR PEOPLE (Reg. No. 2846215) for leasing of railway cars;

*Innerpeace*  
"The Sheet People"

(Reg. No. 2522473) for, inter alia, linens for massage;

**DINN BROS., Inc.**  
"The Trophy People"

(Reg. No. 1678907) for, inter alia, the custom design and printing of trophies;

THE SPILL CONTROL PEOPLE (Reg. No. 2794925) for granular absorbent organic or resin-based compositions for absorbing spills;

THE POLLEN PEOPLE (Reg. No. 2201818) for printed materials, namely, books and printed instructional materials on the subject of allergies and asthma;

THE ENERGY PEOPLE (Reg. No. 1746731) for, inter alia, fuels, namely, gasoline, fuel oil for

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heating and internal combustion, kerosene, propane, natural gas, coal, diesel fuel;

THE NUMBER PEOPLE (Reg. No. 2854062) for, inter alia, printed educational materials, namely, number cards, picture cards;

THE POWDER PEOPLE (Reg. No. 3192497) for, inter alia, manufacture and custom formulation of vitamin preparations, dietary supplements, shakes and powders;

THE STEEPLE PEOPLE (Reg. No. 2571973) for steeples;

THE HARDWARE PEOPLE (Reg. No. 3014715) for retail store services featuring, inter alia, general hardware; and

THE PICTURE PEOPLE (Reg. No. 2412495) for, inter alia, greeting cards and photograph albums.

The competing registrations submitted by both the examining attorney and applicant do not indicate a clear practice one way or another regarding disclaimers in marks including the format "THE (descriptive or generic wording) PEOPLE." The most that can be said of this evidence is that it is inconclusive. In fact, these registrations highlight why prior decisions in other applications are not binding on the Board and underscore the need to evaluate each case on its own record. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

"A registrable slogan is one that is used in a trademark sense. A registrable slogan is considered unitary and should not be broken up for purposes of

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requiring a disclaimer." TMEP Section 1213.05(b). In the present case, the proposed mark THE CRANE PEOPLE is located directly underneath the term AMQUIP and the design, promoting the services, in the manner of a slogan. Its presentation as a slogan is further supported by the fact that it appears in the same lettering style as AMQUIP. We find applicant's use of the phrase THE CRANE PEOPLE to be "in a trademark sense." In view thereof, we find that the elements in THE CRANE PEOPLE cannot be divided to be regarded as separable elements and that THE CRANE PEOPLE is a unitary slogan. CRANE therefore need not be disclaimed.

**Decision:** The requirement for a disclaimer of "CRANE" is reversed.