

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

Mailed:  
December 20, 2010

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Sears Brands, LLC

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Serial No. 77558337

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Jeffrey P. Dunning and Mark R. Galis of Greenberg Traurig,  
LLP for Sears Brands, LLC.

Paul A. Moreno, Trademark Examining Attorney, Law Office  
103 (Michael Hamilton, Managing Attorney).

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Before Zervas, Bergsman and Wellington,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Sears Brands, LLC ("applicant") filed an intent-to-use application to register the mark SEARS BLUE SERVICE CREW, in standard character form, for services ultimately identified as "retail department store services; retail store services featuring appliances, electronics, lawn and garden equipment," in Class 35.

The Trademark Examining Attorney issued a final requirement that applicant disclaim the exclusive right to use the term "Service Crew" on the ground that "Service

Crew" is merely descriptive. See Section 6(a) of the Trademark Act of 1946, 15 U.S.C. §1056(a). The Examining Attorney contends that the term "Service Crew" is merely descriptive when used in connection with applicant's retail department stores services because it refers to a group of people working together to provide assistance.

The Examining Attorney introduced the following evidence in support of his claim that the term "Service Crew" is merely descriptive:

1. A definition of the word "service" as meaning "the action or process of serving" and "an act of assistance."<sup>1</sup>

2. A definition of the word "crew" as meaning "a group of people."<sup>2</sup>

3. An excerpt from the website of J & L Harley-Davidson (jl-harley.com) using the term "Service Crew" to identify the employees performing repair and maintenance services for motorcycles;<sup>3</sup>

4. An excerpt from the *MerchantCircle.com* website featuring online reviews for Spicher's Appliance, Inc.

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<sup>1</sup> Compact Oxford Dictionary at *AskOxford.com* attached to the December 10, 2008 Office Action.

<sup>2</sup> *Id.*

<sup>3</sup> July 11, 2009 Office Action.

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stating that the company's appliance installers were a "friendly service crew";<sup>4</sup>

5. An excerpt from the Tolson Appliance Center website (tolsons.com) identifying Carroll Settle as the service manager in charge of the company's "service crew";<sup>5</sup>

6. Excerpts from applicant's website (sears.com) using the mark SEARS BLUE SERVICE CREW to identify applicant's repair and maintenance services.<sup>6</sup> The mark is displayed most prominently in the following manner:



Applicant also states that "Sears Blue Service Crew pros can service any major brand, no matter where you bought it." The color blue is a prominent feature of the website;

7. An excerpt from Dave's Garden website (davesgarden.com) with entries from participants in a chat room.<sup>7</sup> One participant noted that an unidentified retailer offered its own extended 5 year warranty for appliances because the retailer had its own "service crew."

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

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

<sup>6</sup> March 1, 2010 Office Action.

<sup>7</sup> *Id.*

Applicant, on the other hand, contends that the term "Service Crew" as used in the SEARS BLUE SERVICE CREW mark should not be disclaimed because the term "Service Crew" is not merely descriptive, competitors do not need to use the term "Service Crew" to describe retail department store services, and the entire mark is a unitary phrase or slogan, and therefore a disclaimer is not necessary.

Applicant argues that "Service Crew" is not merely descriptive because consumers must take multiple mental steps to determine what services are identified by the mark. For example, applicant asserts that assuming "Service Crew" means people who provide assistance, "consumers must next perform additional mental steps to conclude *what type of assistance* may be involved" (e.g., general customer assistance, repair and maintenance services, cleaning services, etc.).<sup>8</sup> (Emphasis in the original).

With respect to the mark being a unitary phrase or slogan, applicant argues that SEARS BLUE SERVICE CREW "creates a distinct commercial impression separate and apart from the terms 'service' and 'crew.'"<sup>9</sup>

Applicant's mark SEARS BLUE SERVICE  
CREW has a clear and significant

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<sup>8</sup> Applicant's Brief, p. 2.

<sup>9</sup> Applicant's Brief, p. 5.

rhyming element in the terms "BLUE" and "CREW." Consumers are thus likely to view SEARS BLUE SERVICE CREW as a single, unitary phrase or slogan based on the rhyming "blue"/"crew" pattern, and Applicant need not disclaim separate elements of that mark since consumers are likely to perceive it as a whole.<sup>10</sup>

Applicant also contends that "the mark is unitary by virtue of its incongruity." According to applicant's logic, because the word "blue" has no meaning in connection with retail department store services, and if a consumer perceives the term "Service Crew" as being merely descriptive when used in connection with retail department store services, then "that consumer would not be likely to further conclude that SEARS BLUE SERVICE CREW describes a blue retail store, or a retail store that offers blue services."<sup>11</sup> In other words, what is a blue service crew?

Finally, applicant argues that the mark SEARS BLUE SERVICE CREW is a double entendre because the term "Blue Crew" is identified with fan clubs for teams whose main color is blue. Thus, "consumers would be likely to see the term 'BLUE SERVICE CREW' as signifying a group of people who are aficionados of the latest electronics or appliances, which is exactly what Applicant's sales teams

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

are intended to portray. Thus, Applicant's mark is a unitary slogan because the term 'BLUE SERVICE CREW' is a double entendre that makes consumers think of an appliance and electronics fan club."<sup>12</sup>

A. Whether "Service Crew" is merely descriptive?

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). A term that identifies the source or provider of a service may be merely descriptive. *In re Major League Umpires*, 60 USPQ2d 1059, 1060 (TTAB 2001); *In re E.I. Kane, Inc.*, 221 USPQ 1203, 1205 (TTAB 1984).

Whether a particular term is merely descriptive is determined in relation to the goods for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). The issue is considered in the context of how the mark is presented to and perceived by prospective users of applicant's services. *In re E.I. Kane, Inc.*, 221 USPQ at 1205. In other words, the question is not whether someone

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<sup>12</sup> *Id.* at page 6.

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presented only with the mark could guess the products listed in the description of goods. Rather, the question is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of new information

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services in the food processing industry). In this regard, we must consider the issue of descriptiveness by looking at the mark in its entirety. Common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. See *Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989).

If one must exercise mature thought or follow a multi-stage reasoning process in order to determine what characteristics the term identifies, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); see also, *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). Incongruity is a strong indication that a mark is suggestive rather than merely descriptive. *In re Tennis in the Round, Inc.*, 199 USPQ at 498 (the association of applicant's mark TENNIS IN THE ROUND with the phrase "theater-in-the-round" creates an incongruity because applicant's services do not involve a tennis court in the middle of an auditorium).

The term "Service Crew" used in the mark SEARS BLUE SERVICE CREW to identify retail department store services is incongruous because the term "service crew" does not



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immediately call to mind retail department store services or its employees. For example, retail employees are commonly referred to as a sales staff, sales team, salesman or saleswoman, sales force, sales or account representatives, sales corps or sales help. "Service Crew" is not the usual or normal way that consumers refer to a retail department store or its employees. All the above-noted evidence of record demonstrating the use of the term "Service Crew" was in connection with installing services or repair and maintenance services. See *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (online sources are useful for determining consumer perceptions).

With all the millions of websites, the examining attorney could only find references in connection with installing services or repair and maintenance services; and not one website that referred to people selling things as a service crew. This leads to the conclusion that the term "service crew" is not a natural or obvious way to describe retail department store services. Thus, we find that the term "Service Crew" is highly suggestive, not merely descriptive, of retail department store services.

In reaching this decision, we acknowledge that the dictionary definitions and the website evidence establish

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that a "service crew" is a group of people providing assistance. However, as indicated by the evidence of record, the literal meaning of the term "service crew" does not in any clear or precise way describe retail department store services or those who rendering the services. The commercial impression engendered by the term "Service Crew" in the mark SEARS BLUE SERVICE CREW is related to installing services and repair and maintenance services. The literal meaning of the term "Service Crew," a group providing assistance, may through the exercise of some thought suggest or hint at the people rendering retail department store services; that is, some thought is required for the consumer to make a connection between "Service Crew" and retail department store services. The mental leap between the term "Service Crew" and retail department store services is not instantaneous.

The term "Service Crew" possesses enough incongruity to raise doubts as to its mere descriptiveness because its meaning would not be grasped without some measure of imagination and "mental pause." Accordingly, the term "Service Crew" as used in the mark SEARS BLUE SERVICE CREW in connection with retail department store services does not readily and immediately evoke an impression and

understanding of the services or the people rendering the services.

We recognize that there is often a thin line separating merely descriptive from suggestive terms and that judgments in these cases are frequently subjective. However, where there is doubt in the matter, the doubt should be resolved in applicant's behalf. *In re Rank Organization Ltd.*, 222 USPQ 324, 326 (TTAB 1984) and authority cited therein.

B. Whether SEARS BLUE SERVICE CREW is unitary?

Although we have found that the term "Service Crew" is not merely descriptive of retail department store services, for purposes of completeness, we analyze whether the entire mark SEARS BLUE SERVICE CREW is a unitary mark.

Section 6(a) of the Trademark Act of 1946, provides in part that an applicant may disclaim the exclusive right to use an unregistrable component of an otherwise registrable mark. The purpose of the disclaimer is to make it clear, if it might otherwise be misunderstood, that the applicant is not claiming the exclusive right to use the unregistrable component of the mark. *In re Kraft, Inc.*, 218 USPQ 571, 572-573 (TTAB 1983). When the composite mark is unitary in nature, no disclaimer is required. *Id.*

A unitary mark is a mark with multiple elements that create a single and distinct commercial impression separate and apart from the meaning of its constituent elements. *Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991); *see also, In re Kraft, Inc.*, 218 USPQ at 573 (the elements of a unitary mark are so integrated or merged that they cannot be regarded as separate elements, and it is obvious that no claim is made other than to the entire mark). In *Kraft*, the Board explained that a unitary mark could be created "where the words which have been put together function as a unit, with each relating to the other rather than directly to the goods." 218 USPQ at 573; *see also In re EBS Data Processing, Inc.*, 212 USPQ 964, 966 (TTAB 1981).

To determine whether a composite mark is unitary, the Board must determine "how the average purchaser would encounter the mark under normal marketing of such goods and also . . . what the reaction of the average purchaser would be to this display of the mark." *Id*, quoting *In re Magic Muffler Service*, 184 USPQ 125, 126 (TTAB 1974). This can best be accomplished by looking at the specimen filed with the application because it shows how the mark is used in connection with the goods or services. *In re Magic Muffler Service*, 184 USPQ at 126. Since this application was filed

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based on applicant's bona fide intent to use the mark, there is no specimen. However, we have the benefit of applicant's use of the mark in connection with repair and maintenance services. As indicated above, applicant has used the mark as set forth below.



Also, applicant has used the mark in text as "Sears Blue Service Crew pros can service any major brand, no matter where you bought it."

We note that applicant filed its mark in standard character form. This means that applicant is claiming rights in the words alone and not in any particular format. Thus, applicant may display the mark in any reasonable manner. However, because applicant has already used the mark in connection with repair and maintenance services, it is reasonable for us to assume that it will continue to use a similar format in order to take advantage of the goodwill already created by the mark, as well as in the investment in creating the logo and associated advertising.

In the present case, we find that the mark SEARS BLUE SERVICE CREW is a unitary mark because the words have been put together to function as a unit. The term "Service

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Crew" does not stand out by itself pointing to the services. Consumers will not break the mark SEARS BLUE SERVICE CREW into its component parts but will regard it as a unitary mark, in part, because the mark rhymes. In any event, we find that consumers will perceive applicant's mark, as shown in applicant's website, as identifying applicant's employees the BLUE SERVICE CREW or SEARS BLUE SERVICE CREW, but not "Service Crew" alone. See *In re J.R. Carlson Laboratories, Inc.*, 183 USPQ 509, 511 (TTAB 1974) (consumers will call for applicant's product as E GEM notwithstanding the fact that they would recognize the descriptive significance of the letter "E"). For these reasons, we believe that purchasers will not go through the mental process of parsing the mark SEARS BLUE SERVICE CREW into its component parts, but will regard it as a unitary mark. Under the circumstances presented by the record before us, the registration of the mark SEARS BLUE SERVICE CREW does not create or recognize any rights in the individual elements of the mark apart from the mark as a whole. Therefore, we conclude that the requirement for a disclaimer of the term "Service Crew" is not necessary.

**Decision:** The requirement for a disclaimer is reversed.

**Wellington, Administrative Trademark Judge,  
dissenting:**

I respectfully dissent from the decision of the majority and would find that the examining attorney has sustained his burden of demonstrating that the term SERVICE CREW is merely descriptive of applicant's recited services and that the disclaimer requirement is appropriate.

As defined, the term SERVICE CREW will reasonably be understood as meaning "assistance" by a "a group of people." In the context of retail store services, SERVICE CREW would immediately be understood by consumers as referencing applicant's employees and/or a feature of applicant's retail store services, namely, that applicant also has a "service crew" available to repair items purchased in its stores. And, while the evidence of third-party use and applicant's own use of the term "service crew" does not specifically reference employees involved in the retail sales aspect of the business, the evidence shows that it is not uncommon for retail businesses to have "service crews" available to service the retail merchandise. Thus, it is an aspect or feature of the retail stores to have a "service crew" and they are, indeed, employees of the retail business entity. To wit, the Harley Davidson website (referenced in the majority as

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item 2 in listing the evidence) clearly indicates that they sell motorcycles, parts and accessories, in addition to having a "service crew." Likewise, the "Tolson Appliance Center" website (referenced in the majority as item 5 in listing the evidence) advertises their retail business of "appliances...showroom...kitchens" and also features their "service" on the same page. In describing the Tolson Appliance Center employees, including an "office manager and sales assistant," they also tout the experience of their "Service Manager" who "takes great care of our service crew." Applicant's own retail website describes its appliance service repair business and that "Sears Blue Service Crew pros can service any major brand, no matter where you bought it...;" this tells consumers that, in addition to selling appliances, applicant is also capable of repairing them.

Accordingly, I have no problem concluding that the term SERVICE CREW would be immediately understood by the relevant consumers as describing the type of employees working in applicant's retail stores featuring appliances. Specifically, it describes the retail store's employees responsible for repairing items sold. The term "service crew" also informs consumers of a feature of the retail



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store services, i.e., that it has a "service crew" available to repair goods purchased.

As to the majority's finding that SEARS BLUE SERVICE CREW is a unitary mark, I too disagree. Simply put, the mere rhyming of the words "blue" and "crew" is insufficient and I believe the majority gives undue weight to a certain manner in which applicant uses its mark in coming to the conclusion that the entire mark is unitary. Again, the applied-for mark does not comprise the color blue (or any other color) as a feature nor does it display the lettering in uneven sizes. Yet, the majority focuses on applicant's use of the mark as it appears on applicant's website in blue, stylized lettering (the terms BLUE and CREW appearing bold and significantly larger) and with fanciful blue persons standing alongside. The majority concludes "it is reasonable for us to assume that [applicant] will continue to use a similar format in order to take advantage of the goodwill already created by the mark, as well as in the investment in creating the logo and associated advertising." I disagree to the extent that this will be the most likely manner in which consumers will encounter applicant's mark. As alluded to previously in this dissent, applicant uses the mark SEARS BLUE SERVICE CREW on several occasions in normal text in the same retail

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website. Again, applicant only seeks registration of the mark in standard character format and we should consider the mark being used in said fashion or any reasonable mode thereof; we should not import extraneous features into our consideration to conclude that it is unitary.

Accordingly, I would find that the term SERVICE CREW is merely descriptive of applicant's recited services and that a disclaimer of said term is appropriate.