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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85077031
Applicant	Michelin North America, Inc.
Applied for Mark	1-800-TIRE-911
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of :  
:   
Michelin North America, Inc. : Michael Webster  
: Trademark Examining Attorney  
Serial No.: 85/077,031 : Law Office 102  
:   
Filed: July 2, 2010 :   
:   
Mark: 1-800-TIRE-911 :   
:   
:

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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPELLANT'S BRIEF**

MICHELIN NORTH AMERICA, INC.

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## TABLE OF CONTENTS

1.	INTRODUCTION .....	3
2.	APPELLANT’S TRADEMARK.....	3
3.	PROCEDURAL SUMMARY .....	3
4.	EXAMINING ATTORNEY’S REFUSAL.....	4
5.	ARGUMENT .....	4
6.	CONCLUSION.....	19

## ALPHABETICAL TABLE OF AUTHORITIES

### CASES

<i>Amica Mutual Ins. Co. v. R. H. Cosmetics Corp.</i> , 1979 TTAB LEXIS 67, 204 U.S.P.Q. (BNA) 155 (T.T.A.B. Sept. 27, 1979) .....	14
<i>In re Eilberg</i> , 1998 TTAB LEXIS 522, 49 U.S.P.Q.2D (BNA) 1955 (T.T.A.B. Dec. 30, 1998).....	7
<i>In re Page</i> , 1999 TTAB LEXIS 229, 51 U.S.P.Q.2d (BNA) 1660 (T.T.A.B. May 26, 1999).....	9
<i>In re Phoseon Tech, Inc.</i> , 2012 TTAB LEXIS 306, 103 U.S.P.Q.2d 1822 (T.T.A.B. Aug. 23, 2012).....	6
<i>In re Remington Prods., Inc.</i> , 1987 TTAB LEXIS 91, 3 U.S.P.Q.2d 1714 (T.T.A.B. Jan. 29, 1987) .....	6
<i>In re Roberts</i> , 2008 TTAB LEXIS 22, 87 U.S.P.Q.2D (BNA) 1474 (T.T.A.B. May 2, 2008) .....	5, 7
<i>Mason Eng’g and Designing Corp. v. Mateson Chemical Corp.</i> , 1985 TTAB LEXIS 114, 225 U.S.P.Q. (BNA) 956 (T.T.A.B. Feb. 28, 1985) .....	14
<i>Tektronix, Inc. v. Daktronics, Inc.</i> , 534 F.2d 915, 189 U.S.P.Q. (BNA) 693 (C.C.P.A. 1976).....	11

### TREATISES

1 J. Thomas McCarthy, <i>McCarthy on Trademarks and Unfair Competition</i> § 3:3 (4th ed. 2013).....	4
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## **Introduction**

Applicant Michelin North America, Inc. (hereafter “Appellant”) hereby appeals from the Examining Attorney’s refusal to register the trademark in Application Serial No. 85/077,031 filed July 2, 2010, and respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney’s decision and allow the mark to proceed to registration.

## **Appellant’s Trademark**

Appellant seeks registration on the Principal Register of its mark:

**1-800-TIRE-911**

for the following services:

- vehicle tire maintenance and repair services; size fitting and installation of replacement vehicle tires; removal of vehicle tires; emergency roadside services for vehicles, namely, flat tire changing, emergency fuel supplying, battery jump starting, responding to calls for roadside assistance, repair services in case of motor vehicle breakdown, in Class 37;
- emergency roadside assistance services, namely, towing services in the event of vehicle breakdown, services of transportation of people and/or vehicles in the event of breakdown, winch-out and key delivery services, in Class 39; and
- emergency roadside services, namely, opening of locks, in Class 45.

## **Procedural Summary**

Appellant’s mark, filed under Section 1(b) of the Act, was examined, found inherently distinctive without any issue raised under Section 2(e)(1), and allowed. Upon consideration of Appellant’s specimens of use, both in the Statement of Use and specimens filed subsequently, the Examining Attorney refused registration and then made that refusal final.

### **The Examining Attorney's Refusal**

The Examining Attorney has refused registration of Appellant's mark under Section 1, 2, 3 and 45 of the Act, 15 U.S.C. §§ 1051-1053, 1127<sup>1</sup>, based upon his opinion that the mark, as used on the specimens of record, does not function as a service mark because it is "used solely as a telephone number to provide information on how to contact Applicant and is not also used as a service mark to indicate the source of the services." *See* Reconsideration Letter, p. 4. In the Reconsideration Letter, the Examining Attorney clarifies that specimens submitted with the Application have been accepted, but registration is being refused because "use of the mark as a service mark on the specimen has not been shown." *Id.*, p. 5.

### **Argument**

The Examining Attorney's refusal under Sections 1, 2, 3 and 45 of the Trademark Act should be reversed because, as used on the specimens of record submitted on November 28, 2012 and July 30, 2013, Appellant's mark is used as, and would be perceived by consumers as, a source indicator and not as merely a telephone number.

In determining whether a designation functions as a trademark, the critical inquiry is how the designation would be perceived by the relevant public. *See* 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 3:3 (4th ed. 2013). In the present case, the relevant question is whether Appellant's alpha-numeric designation would be perceived as a source indicator, or rather, as merely informational matter, namely, only as a telephone number. If Appellant's mark would be perceived by consumers in ways that include as a source indicator, then the mark is registrable.

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<sup>1</sup> While the Examining Attorney's Final Office Action dated July 8, 2013 ("Final Action"), states that the refusal is grounded on Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§ 1051-52, 1127, the Examining Attorney's August 20, 2013 Letter denying Appellant's Request for Reconsideration ("Reconsideration Letter") at page 4 clarifies that the refusal is also based on Trademark Act Section 3, 15 U.S.C. § 1053.

A. **Appellant's Alpha-Numeric Designation Is Used As, and Would Be Perceived As, A Mark**

“In order for a designation to be a service mark..., there must ‘be a direct association between the matter sought to be registered and the [services] identified in the application, that is, that the matter is used in such a manner that it would be readily perceived as identifying such [services].” *In re Roberts*, 2008 TTAB LEXIS 22, \*5-6, 87 U.S.P.Q.2D (BNA) 1474 (T.T.A.B. May 2, 2008) (quoting *In re N.V. Organon*, 79 U.S.P.Q.2d 1639, 1649 (T.T.A.B. 2006)). Appellant’s mark, as it appears on the specimens of record, is used by Appellant and would be perceived by consumers as a service mark.

The mark, 1-800-TIRE-911, is displayed on the specimens of record in direct association with, and as a designation for, the emergency roadside assistance services offered by Appellant. The mark in the specimens appears in large, bolded type. The mark is displayed underneath Appellant’s famous mark MICHELIN®, as well as Appellant’s service mark MICHELIN® ONCall™ or just ONCall™, and appears in the same large size and font. Similar to the MICHELIN® and MICHELIN® ONCall™ marks, the applied for mark appears with a trademark designation symbol, *i.e.*, 1-800-TIRE-911™, which indicates to consumers that 1-800-TIRE-911 is being used and claimed by Applicant as a mark.<sup>2</sup> Moreover, Appellant indicates on the specimens that it is using 1-800-TIRE-911 as a source indicator by *separately* and *differently* identifying to its customers the actual numbers that are actually dialed to reach Appellant’s service. In that connection, the actual telephone number for Appellant’s services appears on a

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<sup>2</sup> While Appellant recognizes that, as argued by the Examining Attorney, the use of the “™” “does not automatically confer trademark significance”, *see* Final Action at page 3, it is still a factor to be considered. Indeed, the fact that 1-800-TIRE-911 appears with a trademark designating symbol in the same fashion as, and in close proximity with, MICHELIN® and MICHELIN® ONCall™ weighs in favor of finding that consumers would also perceive 1-800-TIRE-911™ as a mark.

separate line beneath Appellant's mark and is shown in smaller type in either italicized form or within parentheses. Contrary to the Examining Attorney's suggestion and the distinguishable case law the Examining Attorney relied upon, the applied-for mark 1-800-TIRE-911 is used on the specimens as a mark. *See, e.g.*, Final Action, p. 2<sup>3</sup>. It is not used merely as a phone number.

Consistent with its actual use, Appellant's mark also would be perceived by consumers as a mark, and not merely as a phone number. Appellant's mark differs visually and phonetically from the telephone number that is actually used to reach Appellant's services. Appellant's mark does not follow the standard, universally used and recognized formula for telephone numbers, *i.e.*, one number – three numbers – three numbers – four numbers. Instead, Applicant's mark appears in a unique presentation of one number – three numbers – a *four-letter word* – three numbers. By not following the well-known format for telephone numbers, Applicant's mark would not be perceived by consumers as merely a telephone number. This fact was apparent enough to Appellant that it recognized the need to also display in the specimens the actual numeric-only telephone number. Appellant believed that many of its customers would not recognize the mark as a telephone number. Or, even if they did, they would still need to know separately the actual dialing information since Appellant's mark has a further function as a memorable source indicator for Appellant's services to the point that its usefulness and even significance as a telephone number would be obscured. The distinctive presentation of the designation for Appellant's services helps consumers to recall that designation of Appellant's services, which affirms the source-indicating function of the mark.

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<sup>3</sup> See Final Action at page 2, citing the factually distinguishable cases, *In re Phoseon Tech, Inc.*, 2012 TTAB LEXIS 306, \*22, 103 U.S.P.Q.2d 1822 (T.T.A.B. Aug. 23, 2012) and *In re Remington Prods., Inc.*, 1987 TTAB LEXIS 91, \*6, 3 U.S.P.Q.2d 1714 (T.T.A.B. Jan. 29, 1987), where the Board held that the wording at issue was being used to identify or convey information about a feature of the product, and not being used as a mark.

Beyond that unique structure, the substance of Appellant's number-word combination, 1-800-TIRE-911, is not merely informational or merely descriptive in nature. *See generally* Trademark Manual of Examining Procedure ("TMEP") § 1209.03(l). It carries significance other than just dialing information and is inherently distinctive. The term "911", when used immediately after a word as it is in Applicant's mark is readily recognized by the PTO as an inherently distinctive designation of source. For example, see the following marks currently on the Principal Register for comparable assistance and/or repair services and without a disclaimer of "911": 1-800-VISA-911 (Reg. No. 1,752,821); STOLEN 911 and Design (Reg. No. 4,270,513); and RETIREMENT 911 (Reg. No. 3,342,132).<sup>4</sup> *See also* DRYWALL 911 (Reg. No. 4,480,684); ELECTRICIAN 911 (Reg. No. 4,394,887); COMPUTER 911 (Reg. No. 1,897,907); DENTAL 911 (Reg. No. 3,834,939); and BED BUG 911 (Reg. No. 4,015,292). Therefore, consumers are likely to recognize that 1-800-TIRE-911 has source-indicating significance and is more than just dialing information.

The Examining Attorney states that the use of a telephone number as a mark is parallel to use of a domain name or model designation as a mark. *See* Reconsideration Letter, p. 5-6. However, the authorities cited by the Examining Attorney support Appellant's position insofar as they all recognize that domain names and model designations can serve a source-identifying function and be registrable if used in a manner that indicates source. *See In re Eilberg*, 1998 TTAB LEXIS 522, \*2-3, 6, 49 U.S.P.Q.2D (BNA) 1955 (T.T.A.B. Dec. 30, 1998) (noting that a domain name, if presented prominently as the name under which applicant is rendering its legal services, may well be registrable, but the domain name in question was not because it was displayed inconspicuously and consisted of merely the Internet address which is used to contact

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<sup>4</sup> Copies of the Certificates of Registration for these marks were made of record in Exhibit B to the Response to Office Action of June 17, 2013 ("June 2013 Response").

applicant's web site); *In re Roberts*, 2008 TTAB LEXIS 22, at \*10-11 (recognizing that the purpose of [www.irestmymcase.com](http://www.irestmymcase.com) as an Internet address does not *per se* preclude it from functioning as a mark, but finding that in that particular instance the domain simply served only as an address for reaching applicant's Internet website); *see also* TMEP § 1202.16(a) ("if the mark both identifies a model or grade designation and serves as a trademark, no failure-to-function refusal should issue.").

As noted above, Appellant's mark – which has content, structure and significance other than mere dialing information, which is displayed prominently with other trademarks of Appellant, which is set apart in the specimens and not within informational text, and which suggests something about the nature of the services being rendered – is being used as and would be perceived by consumers as a source-identifier and is therefore registrable.

**B. The Fact That The Mark May Be Perceived As A Telephone Number Does Not Negate Its Ability Also To Function As An Indicator Of Source**

In the Final Action and Reconsideration Letter, the Examining Attorney suggests that the specimens fail to show service mark usage because Appellant's mark, as used on the specimens, is recognizable as a phone number. For example, in the Final Action, the Examining Attorney states: "It is highly unlikely that any of Applicant's consumers would not recognize the term '1-800-TIRE-911' as Applicant's telephone number, particularly when it is preceded by the wording 'OnCALL'." In the Reconsideration Letter at page 6, the Examining Attorney states that the "initial numbers in the proposed mark '1-800' would immediately be perceived by consumers as the beginning digits of a toll-free telephone number", and then notes that "number-letter combinations of toll-free vanity numbers are typically used in connection with telephone numbers for emergency roadside services."

The fact that a designation is recognizable on a specimen as a telephone number, however, does not negate its ability to function as an indicator of source.<sup>5</sup> Were that the sole consideration then there would be no telephone number trademark registrations. It is only when the designation does not perform any source-identifying function that it is not registrable. In this connection, the Patent and Trademark Office (“PTO”) has issued a large number of registrations for telephone number service marks, many of which are readily recognizable also as telephone numbers and were allowed for registration based on specimens that are not different in any material way from those submitted by Appellant. In Attachments to Appellant’s Request for Reconsideration dated July 30, 2013 (“Request for Reconsideration”), Appellant provided many examples of registrations for clearly toll-free (“1-800” structure) marks and selected corresponding specimens for such registrations, which are representative of federally registered telephone number service marks:

<b>Att.</b>	<b>Mark</b>	<b>Reg.</b>	<b>Class</b>
1	<b>1-800-MC1-STCK</b>	1,705,399	36
2	<b>1-800-45HI-PRO</b>	1,966,592	35
3	<b>1-800-PICK-UPS</b>	2,125,243	39
4	<b>1-800-622-BEST</b>	2,224,899	35, 42
5	<b>1-800-GOT-JUNK?</b>	2,316,369	39

<sup>5</sup> It is noted that *In re Page*, 1999 TTAB LEXIS 229, \*17, 51 U.S.P.Q.2d (BNA) 1660 (T.T.A.B. May 26, 1999), cited at page 6 of the Reconsideration Letter, is inapposite because the alpha-numeric mark there was refused Principal Register registration on the basis of mere descriptiveness, not on grounds of non-use as a mark. Here, there was no finding, either during initial examination of the application itself or during examination of the specimens of use, that Appellant’s mark is merely descriptive. Moreover, while the Examining Attorney states that Appellant’s “non-descriptive letter combination....does not automatically affect the telephone number with trademark or service mark status,” *see* Reconsideration Letter at page 6, it should at least weigh in favor of finding that Appellant’s mark would be perceived as having significance to consumers beyond merely denoting a telephone number.

<b>Att.</b>	<b>Mark</b>	<b>Reg.</b>	<b>Class</b>
6	<b>1-800-ASK-USPS</b>	2,345,079	35, 39
7	<b>1-800-YES-2000</b>	2,533,220	36
8	<b>1-800-EDISON-1</b>	2,361,225	39
10	<b>1-800-PREDICT</b>	3,035,097	45
11	<b>1-800-WIN-WIN-1</b>	3,106,660	42
12	<b>1-800-APPROVADO</b>	3,107,335	35, 36
13	<b>1-800-WRECKER</b>	3,278,183	39
14	<b>1-800-ARRESTO.COM</b>	3,311,471	45
16	<b>1-800-FIX-1036</b>	3,515,489	37
17	<b>1-800-CALL-JOE</b>	3,538,372	45
19	<b>1-800-CASINOS</b>	3,593,813	39
20	<b>1-800-917-LONG</b>	3,611,092	37
22	<b>1-800-IM STUCK</b>	3,797,354	39
24	<b>1-800-MI-HERIDA</b>	3,841,284	45
25	<b>1-800-PITCREW &amp; Design</b>	3,873,897	37, 39
27	<b>1-800-DEFENSE</b>	3,940,817	45
28	<b>1-800-CALL-KEN</b>	3,946,570	45
29	<b>1-800-TOW-TRUCK</b>	3,956,180	39
30	<b>1-800-DECLUTTER</b>	3,956,247	39
32	<b>1-800-JUNK-USA</b>	4,063,075	39
34	<b>1-800-BOOK-A-LIMO</b>	4,025,905	39
36	<b>1-800-4-MY-HOME</b>	4,050,628	35, 36, 37, 39

<b>Att.</b>	<b>Mark</b>	<b>Reg.</b>	<b>Class</b>
37	<b>1-800-NEW-FLOOR</b>	4,058,459	35
39	<b>1-800-JUNKPRO</b>	4,079,225	39
42	<b>1-800-UNLOCKS</b>	4,189,990	35
43	<b>1-800-IN-STOCK</b>	4,196,740	35
44	<b>1-800 2 SELL HOMES</b>	4,224,708	36
45	<b>1-800-LAWMAN-1</b>	4,244,497	45
46	<b>1-800-THERAPIST</b>	4,285,135	44
47	<b>1-800-TAXICAB</b>	4,288,048	39
48	<b>1-800-My-Eye-Doc</b>	4,298,015	44

The fact that the above service marks are readily recognizable as telephone numbers and yet were permitted to proceed to registration based on specimens that are not materially different from the specimens submitted by Appellant, is probative of the fact that Appellant's mark, as shown on the specimens of record, also would be perceived by consumers as having a source-identifying function. *Cf. Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 U.S.P.Q. (BNA) 693, 694-95 (C.C.P.A. 1976) (holding that third-party registrations have probative value in determining whether a particular mark is merely descriptive).

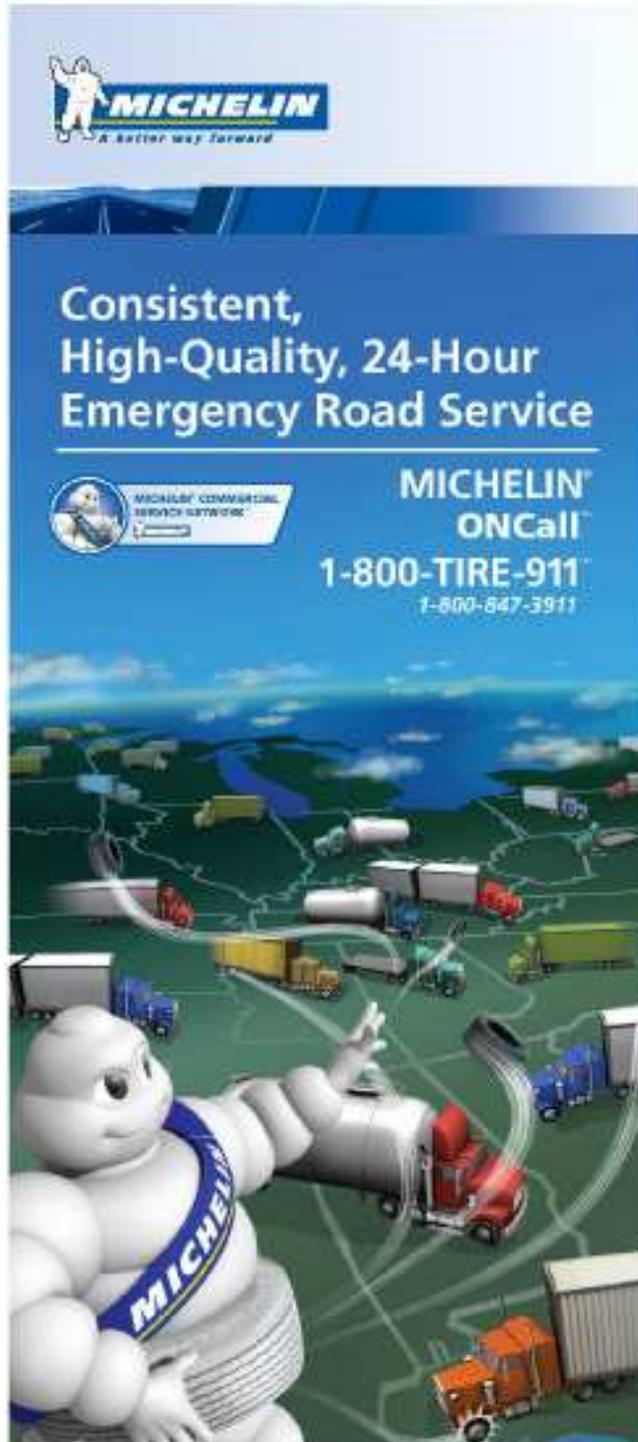
**C. There Is No Evidence That Appellant's Mark Would Be Perceived Solely As A Telephone Number Without Source Indicating Significance**

The Examining Attorney in the Final Action and Reconsideration Letter contends that the applied-for mark is not being used in a manner that also would be perceived as a service mark. In support of that contention, the Examining Attorney provides the following reasons: (1) the applied-for mark is surrounded by informational wording, such as "OnCall", which merely

indicates that the Applicant can be reached by the phone number that follows; and (2) the listing of the actual telephone number below the applied-for mark affirms that the mark is being used as a telephone number. However, neither of these reasons suggests a finding that Applicant's mark would be perceived by consumers solely as a telephone number without any source indicating significance.

**(1) The Placement Of The Applied-for Mark Underneath MICHELIN® And MICHELIN® ONCall™ Does Not Render The Mark *Merely* Informational**

First, the Examining Attorney contends that, because the applied for mark follows the informational wording "MICHELIN ONCall" or "on call" ("ONCall") such wording only "serves to show that Applicant can be contacted by 'calling' [Appellant] using the phone number [that follows]...namely, 1-800-TIRE-911." *See* Final Action, p. 2; Reconsideration Letter, p. 5. However, a review of the specimens of record shows that this is not the case. The applied-for mark does not appear as "MICHELIN ONCall 1-800-TIRE-911" or "on call 1-800-TIRE-911" (or "ONCall 1-800-TIRE-911"). Rather, the applied-for mark appears underneath the "house" mark MICHELIN® and ONCall™ or MICHELIN® ONCall™, which are both being used as marks. *See*, for example, Appellant's specimen submitted on November 28, 2012, as follows:



See also July 30, 2013 specimen. Elsewhere, the text of the specimens again refers to MICHELIN® ONCall™ as a mark. See November 28, 2012 and July 30, 2013 specimens, stating: “Only MICHELIN® ONCall™ service can bring Michelin dependability to your

emergency road service needs.” While suggestive, the term “ONCall” is being used as a designation of a service, and not informationally. The applied-for mark, displayed in close proximity to the marks MICHELIN® and MICHELIN® ONCall™, also is likely to be perceived as mark. “[I]t is well settled that a party may use more than one trademark or a composite mark on the labels for its goods, and that each mark or the several elements of the composite mark may be registered separately if each creates a commercial impression separate and apart from the other mark or elements and performs its intended trademark function.” *Mason Eng’g and Designing Corp. v. Mateson Chemical Corp.*, 1985 TTAB LEXIS 114, \*11-12, 225 U.S.P.Q. (BNA) 956 (T.T.A.B. Feb. 28, 1985); *see also Amica Mutual Ins. Co. v. R. H. Cosmetics Corp.*, 1979 TTAB LEXIS 67, \*17, 204 U.S.P.Q. (BNA) 155 (T.T.A.B. Sept. 27, 1979) (explaining that the usual situation involving multiple marks involves the use of a house mark to identify the source of the product and a product mark within a line of merchandise associated with and distinguished by the house mark). As used on the specimens of record, MICHELIN® would be perceived by consumers as Appellant’s house mark, and MICHELIN® ONCall™ and 1-800-TIRE-911™ would be perceived as separate marks that denote the emergency roadside assistance services offered by Appellant.

In Exhibit 1 to his Reconsideration Letter, the Examining Attorney cites a number of U.S. registrations containing the term “on call”, apparently as evidence that the term “ONCall” is an informational term. However, such registrations simply confirm that composite marks that contain the term “on call” or “ONCall”, such as MICHELIN® ONCall™, have a source-identifying significance. As such, the display of 1-800-TIRE-911™ in proximity to MICHELIN® ONCall™ does not indicate that the mark would be perceived merely as a number to dial; in fact, just the opposite.

Even if, for argument's sake, the Examiner Attorney's position were correct, namely, that "ONCall", is informational matter, the placement of Appellant's mark beneath that term does not automatically negate the mark's source-indicating significance. By way of analogy, in each of the specimens shown below, the registered alpha-numeric mark appears with the name of an individual or business. Under the Examining Attorney's reasoning, one could argue that such placement shows informational use, namely, that such individual or business may be contacted by using the phone number that appears with the individual's or business name. However, it cannot be the case that such placement automatically means that the designation would be perceived only informationally as a number to dial, and not also as a mark. If that were true, then the following specimens would have been insufficient to establish service mark usage in support of the registrations illustrated in the numbered Attachments to Applicant's Request for Reconsideration, PTO records for which were submitted collectively thereto as Attachment 51:

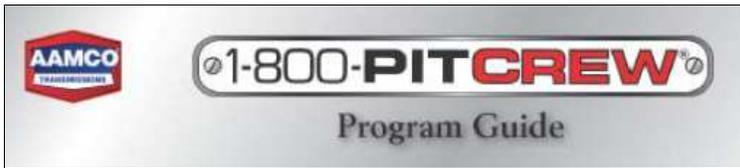
(17)



(11)



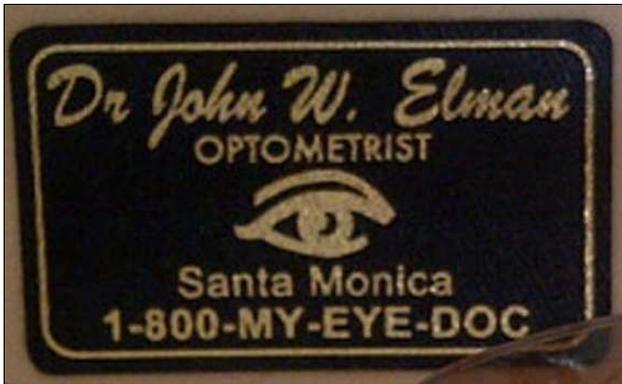
(25)



(28)



(48)

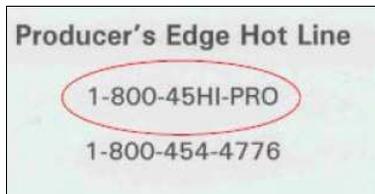


As the above specimens demonstrate, just because a designation is displayed in such a manner that it readily and inescapably will be perceived as a telephone number, that does not then mean that the designation would be perceived only informationally, and not also as a mark.

**(2) The Display of the Applied-for Mark In Number Form Does Not Affirm That the Mark Would Be Perceived Only As Informational Matter**

In the Final Action at page 2, the Examining Attorney states “the fact that the telephone number appears in number form below the telephone number in letter form affirms the use of 1-800-TIRE-911 as a telephone number and not a source-indicator. Consumers would recognize it as merely the letter version of the phone number and a means to remember the number.” This statement, however, is in conflict with a large multiplicity of registrations issued by the PTO for alpha-numeric marks, many of which are displayed in the specimens as an alpha-numeric telephone number with the telephone number below or with it, for example, as in the registrations illustrated in the following numbered Attachments, for which PTO records were included in Attachment 51 to Appellant’s Request for Reconsideration:

(2)



(4)



(6)



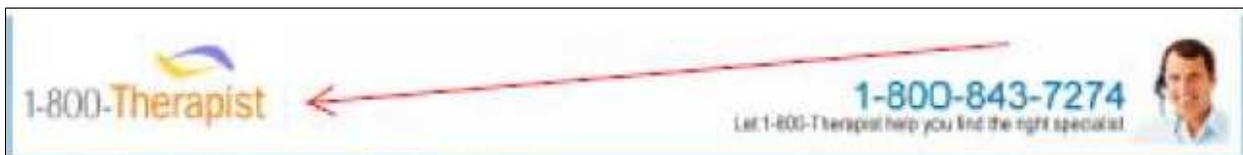
(28)



(43)



(46)



The alpha-numeric marks above were granted registration based on specimens that are materially the same as the specimens of record in this case. Clearly, it is not true that all source-indicating significance of a mark in the form of a telephone number is eliminated merely because the actual telephone number is displayed below the mark.

In addition, in the above examples, the use of the letter form of the registrants' telephone numbers was clearly intended to be used by consumers as a mnemonic device to help consumers remember the telephone number to dial. There is no question that this function is present and intended in every other alpha-numeric telephone number mark that the PTO has registered. As such, it cannot be true that all source-indicating significance of a mark is eliminated if the mark is intended or used for this purpose. In fact, the distinct presentation of a suggestive reference to the services yet within the structure and constraints of the length of a telephone number serves multiple purposes and helps consumers recall something about the nature of the services, and actually affirms the source-indicating significance of the mark.

The seven examples of third party webpages, which are relied on by the Examining Attorney to argue that the common use of a dual-display renders it less likely consumers will perceive Appellant's use of the applied-for mark as a source-indicating service mark, are readily distinguishable. *See* Final Action, p. 2; Reconsideration Letter, p. 6. For example, the numbers do not appear in proximity with other trademarks, some numbers are displayed inconspicuously, with some even embedded within text, and none are displayed with the "TM" symbol that would indicate to consumers that the number is being claimed as a mark. Therefore, none of the examples cited by the Examining Attorney render it likely that Appellant's mark, as it is prominently displayed on the specimens of record, will be perceived by consumers merely as a telephone number, and not also as a mark.

Accordingly, the fact that Appellant's mark is displayed on the specimens of record with the all-numeric telephone number below it does not mean that Appellant's mark would be recognized by consumers solely as the letter version of the phone number and merely a means to remember the number.

### **Conclusion**

In Section 1209.03(1) the TMEP sets forth specific guidance with respect to the examination of telephone numbers as trademarks. That guidance pertains to the evaluation of the issue of distinctiveness. Appellant and the Examining Attorney both agree that Appellant's mark is inherently distinctive and many examples of the PTO issuing "word 911" structured registrations on the Principal Register without a required Section 2(f) showing or a disclaimer of "911" tends to confirm that that concurrence is sound. The TMEP also addresses the issue of acceptable specimens for service marks. TMEP § 1301.04. That section does not make any mention of marks that also are telephone numbers and nothing in that section requires or even implies that specimens for telephone number marks may be examined under different standards from all other service marks. Appellant's specimens of use fully meet the examination criteria of TMEP § 1301.04. Further, even were there an empirically suggested, separate standard for examination of specimens for telephone number marks based on prior examination of other telephone number marks, Appellant's specimens fully meet that unofficial standard as well.

Appellant's mark, as shown on the specimens of record, is being used as and would be perceived as a service mark. The fact that it is also recognizable as a telephone does not negate the source-identifying significance of the mark. Moreover, the reasons proffered by the Examining Attorney do not demonstrate that Appellant's mark as used and displayed on the specimens of records would be perceived by consumers only informationally and not as a mark.

