

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
July 8, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Southeastern Dermatology, PA*

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Serial No. 85543229

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Matthew H. Swyers of The Trademark Company for Southeastern Dermatology,  
PA.

Sung In, Trademark Examining Attorney, Law Office 103 (Michael Hamilton,  
Managing Attorney).

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Before Zervas, Shaw, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

On February 15, 2012, applicant Southeastern Dermatology, PA applied to register the mark RESTORE LIFT, in standard character form, for “cosmetic and plastic surgery, namely, a minimally invasive face/neck lift done under local anesthesia,” in International Class 44.<sup>1</sup> The application included a voluntary disclaimer of the exclusive right to use the word “LIFT” apart from the mark as a whole.

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<sup>1</sup> Application Serial No. 85543229, alleging first use and first use in commerce at least as early as 2010, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

The examining attorney has refused registration on the ground that the applied-for mark is merely descriptive of applicant's services pursuant to Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1).

Applicant timely appealed, and briefing is complete.

#### Analysis

A mark is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of an ingredient, quality, characteristic, function, feature, purpose, or use of the goods with which it is used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular mark is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the possible significance that the mark is likely to have to the average purchaser encountering the goods or services in the marketplace. *See DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Eng'g Sys. Corp.*, 2 USPQ2d 1075, 1076 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

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, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents for tracking the status of the records by means of the Internet); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, consultation, and listing services); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1318 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Putman Publ'g Co.*, 39 USPQ2d 2021, 2022 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of online news and information service for the food processing industry). However, a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. In other words, we must consider the issue of descriptiveness by looking at the mark in its entirety.

Applicant has conceded the common, descriptive nature of the term “LIFT” by disclaiming exclusive rights in that term apart from the mark as a whole. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987). The examining attorney has made of record dictionary definitions of “restore,” including “[t]o bring back to an original condition.”<sup>2</sup> Thus, as stated by the examining attorney: “The term

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<sup>2</sup> May 31, 2012 Office action at 3; *see also id.* at 4 (defining “restore” as “to return (something, esp a work of art or building) to an original or former condition”). Applicant also made of record a printout from Thesaurus.com displaying definitions of restore including “fix, make new.” September 4, 2012 response to Office action at 14.

RESTORE refers to the function of the services, i.e., to return the appearance and condition of the face and neck area to their original or former state through the services. The term LIFT refers to the name of the medical procedure of the services, i.e., a face and neck lift.”<sup>3</sup> Considering the applied-for mark as a whole in relation to “cosmetic and plastic surgery, namely, a minimally invasive face/neck lift done under local anesthesia,” it is plain that RESTORE LIFT immediately conveys information to consumers about applicant’s services. Moreover, the two component terms retain their descriptive significance in relation to applicant’s services, evoking no new or unique commercial impression in combination. *Cf. In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR & SPICE held not merely descriptive of bakery products).

We also note that the examining attorney made of record screenshots of websites using the terms “restore” and “lift” in association with cosmetic surgery and similar services, including the following description of “The Perlane Procedure”: “Perlane is a non-surgical treatment for deep or severe facial lines and folds. During the procedure, Dr. Stover will inject Perlane deep under the skin to **restore lift** and volume to severely sagging areas of the skin.”<sup>4</sup> (emphasis added). Where there is evidence that the composite mark itself has been used together to form a phrase that is descriptive of the goods or services, it is unnecessary to engage in an analysis of each individual component. *In re Shiva Corp.*, 48 USPQ2d 1957, 1958

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<sup>3</sup> Examiner’s Brief at unnumbered page 6.

<sup>4</sup> September 26, 2012 final Office action at 5. *See also id.* at 4, 8 and May 31, 2012 Office action at 7-12.

(TTAB 1998) (holding TARIFF MANAGEMENT merely descriptive of computer hardware and computer programs to control, reduce, and render more efficient wide area network usage).

In the first of its two main arguments, applicant contends that RESTORE LIFT is suggestive of applicant's services because there is no "instantaneous connection" between the mark and cosmetic procedures.<sup>5</sup> Instead, the entire mark

conjures up other possible ideas. While the term, "RESTORE" speaks for itself, having a definition of "To bring back to an original condition", the terms together "RESTORE LIFT" does not immediately direct the consumer to a cosmetic procedure. For instance, a "RESTORE LIFT" can also reference repairing a foundation of a building. Thus, even if a consumer utilized their imagination, they would still not know immediately what types of goods or services are provided and what its functions are.<sup>6</sup>

This argument approaches a concession that the term "RESTORE" is merely descriptive in association with its services. More importantly, the argument does not address the proper descriptiveness analysis. It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech, Inc.*, 64 USPQ2d at 1316-17.


Applicant's second chief argument is that other registrations have issued on the Principal Register for marks incorporating the terms RESTORE and LIFT in

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<sup>5</sup> Appeal Brief at 5.

<sup>6</sup> Appeal Brief at 6.

connection with similar services, and therefore “it would be inconsistent for the Office to assert that Applicant’s mark is merely descriptive of Applicant’s services.”<sup>7</sup> Given applicant’s voluntary disclaimer of the term “LIFT,” a concession that the term is merely descriptive in association with the identified services, we focus on the four registrations submitted by applicant incorporating the term “RESTORE” for Class 44 services:<sup>8</sup>

| Mark  | Reg. No. | Disclaimer          | Services  |
|---|----------|---------------------|---|
|  | 3303502  | “a medical day spa” | Health spa services, namely medical cosmetic body care services                             |
| RESTORE A MEDICAL DAY SPA   | 3439933  | “a medical day spa” | Health spa services, namely medical cosmetic body care services                             |
| RESTORE VISION CENTERS  | 3040052  | “vision centers”    | Laser vision correction surgery services  |
| RENEW YOUR SKIN.<br>RESTORE YOUR SMILE.   | 3368785  | none                | Dentistry and cosmetic dentistry, facial treatment services and laser hair removal services |

The examining attorney argues that the registrations cited by applicant are distinguishable, in that they identify different services and/or incorporate non-descriptive elements.<sup>9</sup>

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<sup>7</sup> Appeal Brief at 9.

<sup>8</sup> Applicant also submitted a registration for **Lip Restore**, with “lip” disclaimed, for “cosmetics, namely lip cream” in International Class 3 (Registration No. 1508775).

<sup>9</sup> Examiner’s brief at unnumbered p. 10.

We do not view these registrations as establishing a practice on the part of the Office to treat the term “RESTORE” as suggestive, particularly given that none of the registrations is for the same services as applicant’s. Prior decisions in other applications are not binding on the Board, furthermore, and each case must stand on its own merits. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Scholastic Testing Serv., Inc.*, 196 USPQ 517, 519 (TTAB 1977).

We have carefully considered applicant’s arguments and evidence, even if not specifically discussed herein, but have not found them persuasive. Viewing applicant’s mark as a whole, we find that consumers who know that applicant’s services are “cosmetic and plastic surgery, namely, a minimally invasive face/neck lift done under local anesthesia” will understand RESTORE LIFT to convey information about them; that is, that the services are a face/neck lift the function of which is to restore the appearance of those body parts to their original or former condition. We therefore find that applicant’s mark is merely descriptive within the meaning of Section 2(e)(1) in association with applicant’s goods.

*Decision:* The examining attorney’s refusal to register applicant’s mark under Section 2(e)(1) of the Trademark Act is affirmed.