

**This Opinion is Not a
Precedent of the TTAB**

Mailed: March 5, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Rozier
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Serial No. 86005944
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John D. Gugliotta of the Law Offices of John D. Gugliotta,
for Anthony B. Rozier.

Laurie Mayes, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

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Before Cataldo, Bergsman and Gorowitz,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Anthony B. Rozier (“Applicant”) seeks registration on the Principal Register of the mark CLETAXI (in standard characters) for “taxi transport,” in Class 39.¹

The Trademark Examining Attorney has refused registration of 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 the mark CLETAXI is merely descriptive for taxi transport services. According to the Trademark Examining Attorney, the letters “CLE” refer

¹ Application Serial No. 86005944 was filed on July 9, 2013, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as September 8, 2007.

to the airport code for Cleveland Hopkins International Airport, Applicant provides taxi services to and from that airport, and, therefore, the mark describes the nature of Applicant's services.

After the Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

A term is merely descriptive of goods or services within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark is merely descriptive is determined in relation to the goods or services 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). A term need not immediately convey an idea of each and every specific feature of the goods or services in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of them. *See In re Gyulay*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). This requires consideration of the context in which the mark is used or intended to be used in connection with those goods or services, and the possible significance that the mark would have to the average purchaser of the goods or services in the relevant marketplace. *See In re*

Chamber of Commerce of the U.S., 102 USPQ2d at 1219; *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Abcor Dev. Corp.*, 200 USPQ at 218; *In re Venture Lending Assocs.*, 226 USPQ 285 (TTAB 1985). The question is not whether someone presented only with the mark could guess the products listed in the description of services. Rather, the question is whether someone who knows what the services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012), quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002). See also *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. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, *Estate of P.D. Beckwith, Inc. v. Commissioner*, 252 U.S. 538, 543 (1920). See also *In re Tower Tech, Inc.*, 64 USPQ2d at 1318 (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely

descriptive of computer programs for use in developing and deploying application programs); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information services in 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, non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. *See In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR & SPICE for “bakery products”); *In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE for “a snow removal hand tool having a handle with a snow-removing head at one end, the head being of solid uninterrupted construction without prongs”).

“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).

In his specimen of use and on his website, Applicant displays his mark as shown below:²



CLE TAXI.MOBI

² The Trademark Examining Attorney submitted an excerpt from Applicant’s website as part of her October 25, 2013 Office Action. The domain name “.mobi” is the top-level domain used by mobile devices for accessing Internet resources via the mobile web.

He advertises that he will take customers to and from Cleveland Hopkins International Airport. Among the various meanings for the letters “CLE” is the airport code for Cleveland Hopkins International Airport.³

Applicant’s mark CLETAXI is a compressed version of the term CLE TAXI without a space between CLE and TAXI. It is clear from the evidence that CLETAXI will be understood by the intended users of Applicant’s taxi transport services that the mark refers to “Cleveland Taxi.” The combination of CLE and TAXI to form Applicant’s mark does not evoke a new and unique commercial impression. In fact, numerous cases have held that telescoping two words which as a whole are merely descriptive of the goods or services into a single term does not avoid a finding of mere descriptiveness for the combined term. *See, for example, In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (FIRSTIER, the equivalent of “first tier,” is merely descriptive of banking services); *In re A La Vieille Russie Inc.*, 60 USPQ2d 1895, 1897, n. 2 (TTAB 2001) (“the compound term RUSSIANART is as merely descriptive as its constituent words, ‘Russian art.’”); *In re U.S. Steel Corp.*, 225 USPQ 750 (TTAB 1985) (SUPEROPE merely descriptive of wire rope); *In re Gagliardi Bros., Ind.*, 218 USPQ 181 (TTAB 1983) (BEEFLAKES is merely descriptive of thinly sliced beef); and *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977) (BREADSPRED is merely descriptive of jellies and jams).

³ Acronym Finder (acronymfinder.com) attached to the October 25, 2013 Office Action; United States Airports (airportcodes.us) attached to the May 16, 2014 Office Action.

We must also consider that Applicant's mark, presented in standard character form, is not limited to any special form or style as displayed in connection with his services.⁴ See *Phillips Petroleum Co. v. C.J. Webb, Inc.*, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971) (“The drawing in the instant application shows the mark typed in capital letters, and ... this means that [the] application is not limited to the mark depicted in any special form.”). See also *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847-48 (Fed. Cir. 2000) (typed drawings are not limited to any particular rendition of the mark); and *INB National Bank v. Metrohost*, 22 USPQ2d 1585, 1588 (TTAB 1992). It is clear from these cases that when a mark is presented in standard character form, the Board must consider all manners in which Applicant could depict his mark. As indicated by his specimen, the letters CLE are depicted in larger type and a different color than the word “taxi” creating a visual separation between the two terms.

In view of the foregoing, we find that Applicant's mark CLETAXI for taxi transport services immediately and directly informs purchasers about the nature of Applicant's services. See *In re Cox Enterprises, Inc.*, 82 USPQ2d 1040 (TTAB 2007) (applicant's proposed mark THEATL is merely descriptive of applicant's magazines, newspapers, and directories, since (i) at least one class of relevant purchasers are residents of Atlanta, Georgia, and visitors to Atlanta area, (ii) the evidence of record shows that term THE ATL would be recognized by Atlanta residents and visitors as

⁴ Prior to November 2, 2003, “standard character” drawings were known as “typed” drawings. A typed mark is the legal equivalent of a standard character mark. TMEP § 807.03(i) (January 2015).

nickname for Atlanta, (iii) THE ATL describes significant feature or characteristic of applicant's publications, which will feature, in part, news, activities, events, and attractions of interest to residents of Atlanta and tourists and visitors, and (iv) because THEATL is simply compressed version of THE ATL that is equivalent in sound, meaning, and impression, it is equally descriptive).

While Applicant argues that “[i]t takes a great deal of imagination, thought and perception to reach a conclusion as to the nature of the goods [sic],”⁵ Applicant did not explain the multi-stage reasoning process necessary to reach a conclusion as to the nature of Applicant’s services.

Applicant contends that “‘CLE’ has a multiplicity of possible meanings. This multiplicity demonstrates that this portion of the mark is ambiguous and cannot be considered merely descriptive of the Applicant's goods [sic].”⁶ This argument is unavailing because descriptiveness is considered in relation to the relevant services. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 103 USPQ2d at 1757. “That a term may have other meanings in different contexts is not controlling.” *In re Franklin Cnty. Historical Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012) (citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979)). As the Trademark Examining Attorney pointed out, “[a]ttributing other meanings to CLE in the context of taxi transport services does not make sense.”⁷

⁵ Applicant’s Brief, p. 2.

⁶ Applicant’s Brief, p. 2.

⁷ Trademark Examining Attorney’s Brief, p. 6 [unnumbered].

Finally, Applicant asserts that CLETAXI has not been used by others and that there is no basis on which to speculate that other might need to use it in the future.⁸ However, the fact that an applicant may be the first or only user of a merely descriptive designation does not necessarily render a word or term incongruous or distinctive. *See In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1826 (TTAB 2012); *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001); TMEP §1209.03(c).

Decision: The refusal to register Applicant's mark CLETAXI is affirmed.

⁸ Applicant's Brief, p. 5.