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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re U-Haul International, Inc.

Serial Nos. 86757544, 86757575, 86757589, 86757631 and 86757635

Stephen R. Winkelman, Esq. for U-Haul International, Inc.

Michael J. Souders, Trademark Examining Attorney, Law Office 115
(Daniel Brody, Managing Attorney).

Before Zervas, Adlin and Heasley, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

These five consolidated appeals all present the same basic issue: is TRAILERSHARE and variations thereof merely descriptive of trailer rental services? More specifically, U-Haul International, Inc. (“Applicant”) seeks Principal Register registrations for five standard character marks comprising or including TRAILERSHARE or a variation thereof (TRAILERSHARING, U-HAUL TRAILER SHARING, U-HAUL TRAILERSHARING, U-HAUL TRAILER SHARE and U-HAUL TRAILERSHARE), all for “Rental services, namely, rental of trucks, trailers, vans, automobile freight trailers, vehicles, moving vans; Rental of moving equipment

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in the nature of portable moving and storage units, pads, tow bars, dollies, carriers and hand trucks” in International Class 39.¹

The Examining Attorney refused registration of the ‘544 Application for TRAILERSHARING on the ground that the proposed mark is merely descriptive of the identified services under Section 2(e)(1) of the Act, and refused registration of the other marks under Sections 2(e)(1) and 6(a) of the Act absent disclaimers of “TRAILER SHARING” in the ‘575 and ‘589 Applications and “TRAILER SHARE” in the ‘631 and ‘635 Applications.² After the refusals became final, Applicant appealed and filed requests for reconsideration which were denied; Applicant later filed a motion to consolidate all five appeals, which was granted. 11 TTABVUE.³ Applicant and the Examining Attorney filed briefs.

The Record

The Examining Attorney relies on the following dictionary definitions of the words comprising the compound terms at issue:

TRAILER—“a nonmotorized vehicle designed to be pulled behind a motor vehicle”⁴

¹ Application Serial Nos. 86757544 (the “‘544 Application”), 86757575 (the “‘575 Application”), 86757589 (the “‘589 Application”), 86757631 (the “‘631 Application”) and 86757635 (the “‘635 Application”), respectively, each filed September 15, 2015. Applicant filed the ‘544 Application for TRAILERSHARING under Section 1(a) of the Trademark Act, based on first use dates of August 29, 2012, and filed the other applications under Section 1(b) of the Act, based on an alleged intent to use the marks in commerce.

² Where, as here, telescoped terms are found to be descriptive, “the correct spelling must be disclaimed.” TMEP § 1215.07 (October 2017).

³ Citations are to the record in the ‘544 Application.

⁴ <http://www.ahdictionary.com/word/search.html?q=trailer>

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SHARE—“To allow someone to use or enjoy something that one possesses: Being in daycare taught the child to share.”⁵

Office Action of January 5, 2016.

He also relies on a web post about Applicant which states that “Truck and **trailer sharing** refers to rental services intended to substitute for private truck ownership,” echoing the dictionary definitions. Office Action of July 29, 2016 (printout from “myuhaulstory.com”) (emphasis added). In fact, Applicant, on the same website, states that it “is built on a model of sharing, where customers move each rental from one area to another to be shared continuously. Sharing rental trucks and trailers is at the foundation of our rental products ...” *Id.* Applicant’s specimen uses the term “Trailer Sharing,” which, while depicted in initial capital letters, is nonetheless used to describe trailer rental services:

⁵ <http://www.ahdictionary.com/word/search.html?q=share>

Michelle Sullivan
Manager, Corporate
Sustainability

Dr. Allan Yang
Chief Sustainability
Scientist



Trailer Sharing

If you are driving a car or if your moving truck is filled to capacity, hitch up a U-Haul cargo trailer. Trailers reduce the environmental impact of moving because they do not emit CO₂ or other greenhouse gasses.

Built with recyclable materials, many U-Haul trailers are still on the road 30-40 years after they were built. U-Haul trailers' aerodynamic design helps optimize the fuel efficiency of the towing vehicle.

Trailers have been instrumental in the increased mobility of North Americans since the end of WWII. Inexpensive rentals enable people move to new homes, new jobs, new opportunities. Van-line movers were available to those with money, but not to the average person. So it is logical that trailers, a relatively simple product to construct, became the Conestoga wagon of postwar America. Trailers continue to be one of the most vital tools American families use. Today we see trailers used for everything from moving households, to transporting recreational and landscaping equipment, to extra cargo space for vacations. U-Haul continues to supply customers with quality products at low costs that everyone can afford.

Shared use of U-Haul trailers reduces the cost for users and reduces the need to build new trailers, which makes for a win-win-win situation environmentally, socially and economically.

The specimen indicates that “inexpensive rentals” of trailers enable people to “move to new homes, new jobs, new opportunities” and that “[s]hared use of U-Haul trailers reduces the cost for users and reduces the need to build new trailers, which makes for a win-win-win situation environmentally, socially and economically.”

While Applicant may be the first user of “trailer sharing” and variations thereof, it is not the only one. An article entitled “5 Tips for Moving Cross-Country on a Budget” states “[c]onsider hiring a service, renting a truck, a trailer, a big SUV, paying friends, shipping your crap, ride sharing, **trailer sharing**, you name it.”

Denial of Request for Reconsideration of February 27, 2017 (printout from “terradrift.com”) (emphasis added). 6 TTABVUE 20.

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This evidence is consistent with how “sharing” is often used -- as a suffix preceded by a generic term describing what is shared -- to describe analogous types of rental services. For example, the Wikipedia entry for “Carsharing” indicates that “Carsharing or car sharing ... is a model of car rental where people rent cars for short periods of time, often by the hour.” Office Action of July 29, 2016 (printout from “wikipedia.org”); *see also id.* (printouts from “eartheasy.com,” “bcgperspectives.com” and “treehugger.com”) and Denial of Request for Reconsideration of February 27, 2017 (printouts from “autotrader.com,” “enterprise.com,” “getaround.com,” “latimes.com,” “myfunride.com,” “nytimes.com,” “orlandosentinel.com,” “reachnow.com” and “rentcentric.com.”). 7-8 TTABVUE. All of this evidence refers not to sharing cars for free, but instead to renting cars for a fee. The term “truck sharing” is used the same way to refer to truck rental services. Denial of Request for Reconsideration of February 27, 2017 (printout from “psenergy.com”). 7 TTABVUE. Similarly, an article entitled “Airbnb of RVs brings sharing economy to vacationers” indicates that one recreational vehicle rental service is named “RVshare.com,” and quotes its co-founder concerning the “RV sharing market.” Denial of Request for Reconsideration of February 27, 2017 (printouts from “cnbc.com” and “rvshare.com”). 6, 8 TTABVUE. Again, in these examples, the rentals are in exchange for monetary compensation.

For its part, Applicant introduced third-party registrations and its own registrations on the Principal Register for marks containing the term SHARE in

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which the term is not disclaimed or subject to a Section 2(f) claim of acquired distinctiveness, including:⁶

<u>Reg. No.</u>	<u>Mark</u>	<u>Pertinent Goods/Services</u>
4938855	BLUESHARE (Stylized)	“vehicle rental services”
4913567	CRYOSHARE (Stylized) & Design	“transport and storage of goods”
4802361	DIVIDE & SHARE in standard characters	“bicycle rental services”
4575533	Have it? Share it. Park it. in standard characters	“car rental”
4455378	JUST SHARE IT & Design	“online rental of land-based and water-based vehicles featuring a network of members who share said vehicles”
4312480	miles2share share rides, save money and reduce carbon foot print in standard characters	“motor vehicle sharing services, namely, providing temporary use of motor vehicles”
4067311	protect. share. nurture. in standard characters	“providing a website for the electronic storage of medical, training and social records of pets that also allows the records to be shared with pet sitters, trainers, dog walkers, veterinarians and other pet service providers”
4210639 ⁷	RAPID SHARE in standard characters	“rental, moving and storage services, namely, rental of moving trucks, trailers and vans; and rental, moving and storage of portable storage units in the nature of storage containers”
4665661	SHARECLOUD in standard characters	“providing a website for the electronic storage of letter templates and which includes software customizations that allows letter templates to be customized, stored and shared with other end users”

⁶ We have not considered registrations which have been cancelled in their entirety, in which the identified rental or sharing services have been deleted, or which are not for rental or sharing services, because they have no probative value.

⁷ Applicant owns this registration.

5009992	SHARE'NGO & Design	“rental of means of transportation, namely, boats, aircraft, vehicles, electric vehicles, cars, electric cars, motorbikes, electric motorbikes, electric scooters, bicycles and electric bicycles”
4642904	SHARING EXCELLENCE in standard characters	“rental of computers for data processing”
4135196 ⁸	UHAULCARSHARE.COM & Design	“motor vehicle rental services”
4793099	share a ride, split the fare. in standard characters	“carpooling services, namely, matching drivers of motor vehicles with individuals needing rides”

However, the Examining Attorney counters with a larger number of registrations for marks containing SHARE for vehicle rental or related services in which the mark is registered on the Supplemental Register, or the term containing SHARE is disclaimed or subject to a claim of acquired distinctiveness under Section 2(f) of the Act. It does not escape notice that Applicant owns several of the registrations the Examining Attorney cites, including the following all for “motor vehicle rental services” which disclaim “CAR SHARE”: U CAR SHARE in standard characters (Reg. No. 3648101); U CAR SHARE UHAUL.COM & Design (Reg. No. 3651744); U CAR SHARE & Design (Reg. No. 3708617); and U CAR SHARE UCARSHARE.COM & Design (Reg. No. 3712056). Office Action of February 27, 2017.

Analysis

The record leaves no doubt that all five forms of TRAILERSHARING are merely descriptive, because they all immediately convey knowledge of a quality, feature,

⁸ Applicant owns this registration.

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function, characteristic or purpose of the services for which they are used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (quoting *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987)); *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Indeed, all forms of the term at issue – TRAILERSHARING, TRAILER SHARING, TRAILERSHARE, and TRAILER SHARE – convey that Applicant “shares” or rents “trailers.” Accordingly, the refusal to register the mark in the ‘544 Application, and the disclaimer requirement in the remaining applications,⁹ are appropriate.

Applicant vigorously argues that the dictionary definition of “sharing” reveals that the proposed marks are suggestive rather than descriptive:

When a parent tells his child to share her toys with her sibling, the parent is not telling the child to charge a fee. Rather, “sharing” means to allow another to use one’s possession as part of a non-financial arrangement. When the United Church of Christ ran a commercial saying, “It’s nice to share” it was not saying, “It is nice to rent things. Rather, the term “sharing” means a non-financial, informal, personal interaction, while the service provided by Applicant is in fact a financial transaction. Thus, Applicant is using the word “sharing” as a metaphor, suggesting a more informal, personal and non-pecuniary relationship, rather than describing a financial transaction.

⁹ Under Section 6(a) of the Act, “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable,” such as a component which is merely descriptive under Section 2(e)(1). Failure to comply with a disclaimer requirement is a basis for refusing registration. See *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399-1400 (Fed. Cir. 2006); *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

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14 TTABVUE 9 (Applicant's Appeal Brief at 8). We disagree, for two primary reasons. First, as the Examining Attorney points out, Applicant's identified services "allow someone to use or enjoy [trailers] that [Applicant] possesses," which is the dictionary definition of "sharing." Applicant's position that the dictionary definition does not apply to allowing others to use something for a fee is not supported by the definition itself, which makes no mention of whether "sharing" involves the exchange of money. Applicant is correct that the definition's example ("Being in daycare taught the child to share") strongly suggests that no money is changing hands, because children in daycare are unlikely to have or charge money, but that does not mean that for-profit trailer rental services fall outside the definition. Second, and perhaps more importantly, Applicant's position is belied by its own specimen of use. Its specimen, which has the heading "Trailer Sharing," states that Applicant's services are "built on a model of sharing," but refers to rentals for a fee, and states that "[s]hared use of U-Haul trailers reduces the cost" It is settled that "[e]vidence of the context in which a mark is used on labels, packages, or in advertising material directed to the goods is probative of the reaction of prospective purchasers to the mark." *In re Abcor Development*, 200 USPQ at 218; *In re Promo Ink*, 78 USPQ2d 1301, 1303 (TTAB 2006); *see also In re Hunter Fan Co.*, 78 USPQ2d 1474, 1476 (TTAB 2006) ("applicant's own use of the term ERGONOMIC ... highlights the descriptive nature of this term"). Moreover, the record includes numerous examples of "sharing" being used by third parties and the media to describe vehicle rentals for monetary

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compensation, including “carsharing,” “truck sharing,” “RV sharing” and, in the case of the “terradrift.com” website, “trailer sharing.”¹⁰

As for the inconsistent third-party registration evidence, it is simply inconclusive. “Although the United States Patent and Trademark Office strives for consistency, each application must be examined on its own merits. Neither the Trademark Examining Attorney nor the Board is bound to approve for registration an Applicant’s mark based solely upon the registration of other assertedly similar marks for other goods or services having unique evidentiary records.” *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); *see also In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“The Board must decide each case on its own merits ... Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”).¹¹

In short, when the term “trailer” is combined with forms of the term “share,” the mark as a whole, *i.e.*, the combination of the individual parts,” does not convey “any distinctive source-identifying impression contrary to the descriptiveness of the

¹⁰ Applicant’s argument that “trailer sharing” or “trailer share” is not among the identified services in any trademark application or registration is essentially irrelevant. *See In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001) (“Likewise, the fact that applicant may be the first and/or only entity using the phrase AGENTBEANS is not dispositive where, as here, the term unequivocally projects a merely descriptive connotation.”).

¹¹ In any event, the majority of the third-party registrations reveal that the term “share” and variations thereof has more often been treated by the Office as descriptive of vehicle rental services. Moreover, we agree with the Examining Attorney that in many of the examples Applicant provided, the marks are unitary, whereas most of the marks in the Examining Attorney’s examples are not.

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individual parts.” *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, and for tracking the status of the records by means of the Internet). To the contrary, from “the perspective of a prospective purchaser or user” of Applicant’s trailer rental services, “because ... the combination of the terms does not result in a composite that alters the meaning of [any] of the elements ... refusal on the ground of descriptiveness is appropriate.” *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332, 1341 (TTAB 2009) (BATTLECAM merely descriptive for computer game software). Indeed, the evidence makes clear that consumers who know that Applicant’s services include “rental of ... trailers” will understand the proposed mark to convey information about them, specifically that Applicant rents trailers. *See DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (descriptiveness assessed in the context of the identified services).

Conclusion

All five refusals are affirmed, because the record reveals that Applicant’s proposed mark TRAILERSHARING, and the other forms thereof, is merely descriptive of Applicant’s identified trailer rental services.

Decision: The refusals to register Applicant’s proposed marks under Section 2(e)(1) of the Trademark Act are all affirmed. However, with respect to the ‘575, ‘589, ‘631 and ‘635 Applications, this decision will be set aside if, within thirty days of the

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mailing date of this order, Applicant submits to the Board a proper disclaimer of, as appropriate, TRAILER SHARING OR TRAILER SHARE. Trademark Rule 2.142(g).

The disclaimer(s) should be worded as follows: “No claim is made to the exclusive right to use ‘TRAILER SHARING’ [or ‘TRAILER SHARE’] apart from the mark as shown.”