

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: August 24, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Cynthia Dumas*

\_\_\_\_\_  
Serial No. 87345342

Joseph Shapiro of Strong & Hanni,  
for Cynthia Dumas.

Jessica Ellinger Fathy, Trademark Examining Attorney, Law Office 110,  
Chris A. F. Pedersen, Managing Attorney.

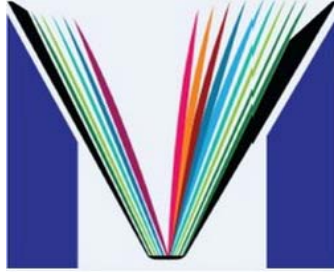
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Before Kuhlke, Taylor and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Cynthia Dumas (“Applicant”) seeks registration on the Principal Register of the stylized letter M mark, as displayed below, for “retail store services featuring books, printed materials, and gifts” in International Class 35.<sup>1</sup>

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<sup>1</sup> Application Serial No. 87345342, filed on February 22, 2017, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming June 30, 2016 as both the date of first use and the date of first use in commerce. The description of the mark reads as follows: “The mark consists of an uppercase M incorporating an open book on its spine, with the pages pointing upward, the open book acting as the two diagonal lines in the center of the uppercase M. The open book has a black cover on the left end and a black cover on the right end, and between the covers are 14 distinct pages that are colored, in order from left to right, dark green, light green, light blue, blue, purple, pink, orange, dark red,



The Trademark Examining Attorney refused registration under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§ 1051 and 1127, on the ground that the mark in the drawing is not a substantially exact representation of the mark as used on or in connection with the identified services, as shown by the specimens of record.

When the refusal was made final, Applicant appealed. We affirm the refusal to register.<sup>2</sup>

## I. Arguments

### A. The Examining Attorney's Arguments

In support of her refusal, the Examining Attorney maintains that the specimens of use do not show the applied-for mark standing alone. Instead, the Examining Attorney argues that the mark, as displayed in the specimens, which Applicant maintains are acceptable, show the proposed mark as part of the word "Marissa's"

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blue, light blue, light blue, light green, dark green, and dark green. The two vertical lines representing the left and right ends of the M are purple." The colors black, purple, dark green, light green, light blue, blue, pink, orange, dark red, and blue are claimed as a feature of the mark.

<sup>2</sup> The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations reference the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

and not a singular, stylized letter “M” as represented on the drawing.<sup>3</sup> Specimen examples are reproduced below:<sup>4</sup>



<sup>3</sup> Examining Attorney's Appeal Brief, p. 4, 6 TTABVUE 5.

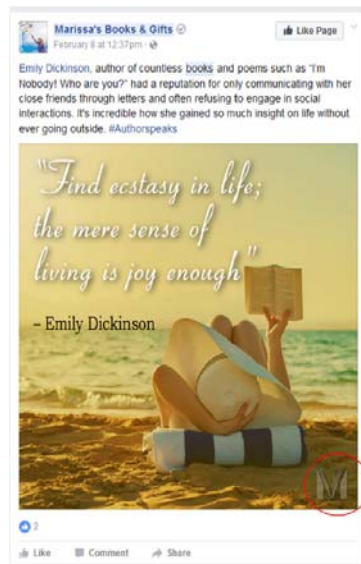
<sup>4</sup> The red circle appearing around Applicant's stylized letter M mark in these specimens is not part of the actual specimens themselves but was included by Applicant during prosecution of its involved application to show the placement of Applicant's mark on the specimens.



More specifically, the Examining Attorney contends that, as the first letter, and without spacing to distinguish it and regardless of its design features, color and size, Applicant's stylized "M" mark as shown in the specimens is so incorporated into the wording "Marissa's" that it is not viewed as a singular, stylized letter "M" and therefore, alters the commercial impression of the drawing alone. Instead, the Examining Attorney argues that the mark will be perceived by consumers as the term "Marissa's." Additionally, the Examining Attorney argues that, without the stylized letter "M," the mark would appear as a nonsensical word, namely, "arissa's." The

Examining Attorney concludes that the use of the applied-for mark will be recognized by consumers as being so intricately bound to the term “Marissa’s,” the possessive form of a name and, therefore, does not constitute a substantially exact representation of a singular, stylized letter “M.”<sup>5</sup>

The Examining Attorney further maintains that, in addition to the specimens specifically argued by Applicant to be acceptable, the application includes additional specimens of use where the Applicant’s mark appears without use of the colors claimed in the application.<sup>6</sup> These specimens are reproduced below:



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<sup>5</sup> Examining Attorney’s Appeal Brief, pp. 4-5; 6 TTABVue 5-6.

<sup>6</sup> Applicant’s Application dated February 22, 2017, TSDR pp. 13 and 14. As with the other specimens discussed above, the red circle appearing around the mark is not part of the actual specimens themselves but was included by Applicant during prosecution to show the placement of Applicant’s mark on the specimens.



A closer view of the mark, as displayed on these specimens, is reproduced below:



Because the above specimens do not show the colors claimed as a feature of the mark, the Examining Attorney argues that the mark as shown on the drawing is also not a substantially exact representation of Applicant's mark as shown on these particular specimens.

#### B. Applicant's Arguments

The crux of Applicant's argument in traversing the Examining Attorney's refusal is that any variations between the mark depicted on the drawing and the mark shown in the specimens of use are inconsequential and do not create a different overall

commercial impression. Specifically, Applicant argues that (1) Applicant’s mark is the leading letter and significantly larger in the word “Marissa’s,” thereby making a stronger impression than the letters that follow; (2) Applicant’s mark is capitalized, but the succeeding letters are in lowercase, again focusing the consumer’s attention on the applied-for mark; (3) unlike the letters in “-arissa’s” that follow Applicant’s mark, the applied-for mark is not a conventional typed letter, but is uniquely designed, having an artistic set of pages in the dip in the letter “M” that appear to be an end profile view of a partially open book, again directing a consumer’s attention to the applied-for mark; and (4) Applicant’s mark uses for the pages at least eight colors that do not appear in the monochromatic remaining letters in “Marissa’s.” Applicant concludes by stating that it simply cannot be said that the applied-for mark is “incorporated” into or otherwise camouflaged in the word “Marissa’s” such that consumers would not perceive the applied-for mark as a distinctive source indicator apart from the word “Marissa’s.”<sup>7</sup>

## II. Specimens – Applicable Law

Trademark Act Section 1(a)(1), 15 U.S.C. § 1051(a)(1), requires an applicant to submit specimens of its mark as used. *See also* Trademark Rules 2.34(a)(1)(iv), 37 C.F.R. § 2.34(a)(1)(iv), and 2.56(a), 37 C.F.R. § 2.56(a) (“An application under section 1(a) of the Act . . . must [] include one specimen per class showing the mark as used on or in connection with the goods or services.”). An applicant also is required to submit a drawing, which “must be a substantially exact representation of the mark

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<sup>7</sup> Applicant’s Appeal Brief, pp. 11-12; 4 TTABVue 12-13.

as used on or in connection with the goods and/or services.” Trademark Rule 2.51(a), 37 C.F.R. § 2.51(a). “[T]he determination of whether a mark shown in the drawing is a substantially exact representation of the mark shown on the specimen is ‘assuredly a subjective one.’” *In re wTe Corp.*, 87 USPQ2d 1536, 1539 (TTAB 2008) (quoting *In re R.J. Reynolds Tobacco Co.*, 222 USPQ 552, 552 (TTAB 1984)). Indeed, “each case presents its own unique circumstances and requires a judgment as to that particular designation.” *In re 1175856 Ontario Ltd.*, 81 USPQ2d 1146, 1448 (TTAB 2006).

Under the Board’s precedent, a drawing displaying only a “minor alteration” of the mark that “does not create a new and different mark creating a different commercial impression” from the matter shown in the specimens is acceptable. *In re Schechter Bros. Modular Corp.*, 182 USPQ 694, 695 (TTAB 1974); *see also In re Frankish Enters. Ltd.*, 113 USPQ2d 1964, 1974 (TTAB 2015) (quoting *Schechter*).

### III. Decision

We are not persuaded by Applicant’s arguments and agree with the Examining Attorney that the mark, as displayed on the drawing, is not a substantially exact representation of the mark as used on any of the specimens of use submitted by Applicant.

We first address the use of the applied-for mark as part of the possessive form of the female name Marissa, i.e., Marissa’s, as shown in the specimens. While we acknowledge that Applicant’s letter M mark appears in larger font and is highly stylized as compared to the remaining letters in the term “Marissa’s,” which appear in lowercase and not in any distinctive font or stylization, the spacing between the



stylized M and the remaining letters is equidistant so as not to engender the impression of two separate and distinct terms. In other words, there is not sufficient space between the letter “M” and the remaining lettering such that consumers would perceive the stylized M as a separate and distinct mark. Additionally, the letters “arissa’s” appear in the same color purple as the two vertical lines representing the left and right ends of the stylized letter M which further reinforces consumer perception that Applicant’s stylized M mark is intricately interwoven with the remaining letters that comprise the word “Marissa’s.”

While we acknowledge that our primary reviewing court and the Board have allowed owners of a composite mark to register separately one or more of its several elements, *see, e.g., In re Servel, Inc.*, 181 F.2d192, 85 USPQ 257 (CCPA<sup>8</sup> 1950) (allowing registration for SERVEL where specimens of use displayed the mark as SERVEL INKLINGS); *In re Sansui Electric Co., Ltd.*, 194 USPQ 202 (TTAB 1977) (Board allowed registration of QSE and QSD; specimens showed use as QSE-4 and QSD-4), the circumstances in these cases vastly differ from this case. In the cases identified above, the Board found that the additional wording in the specimens was either descriptive of the goods or services or constituted a series of model numbers. As such, these additional terms did not deter from the commercial impression of the drawing of the mark standing alone. Here, however, we find Applicant’s mark to be so intricately intertwined in the term “Marissa’s” as to constitute a single composite

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<sup>8</sup> The United States Court of Customs and Patent Appeals (“CCPA”) is the predecessor of the U.S. Court of Appeals for the Federal Circuit, the Board’s primary reviewing court.


mark which differs in commercial impression with Applicant's standalone stylized M letter appearing on the drawing.

Accordingly, we find that that the mark in the drawing is not a substantially exact representation of the mark shown in the specimens of use.

Lastly, with regard to the specimens of use which display the mark shown on the drawing without the claimed colors of use, we also agree with the Examining Attorney that these specimens are also unacceptable. Section 904.02(c)(ii) of the TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") clearly and unequivocally provides that "[i]f color is a feature of the mark, or if the mark consists solely of color, the specimen **must** show use of the color." (emphasis added). Because the display of the stylized letter M mark alone on these specimens is not displayed in the colors claimed as a feature of the mark, these specimens are also unacceptable because they are not a substantially exact representation of the mark as displayed on the drawing.

#### IV. Conclusion

In sum, after carefully reviewing all of Applicant's specimens of record, as well as all arguments made by Applicant and the Examining Attorney, we find that the mark

displayed on the drawing, i.e., , is not a substantially exact representation of the mark shown on any of the specimens of record to demonstrate use of the mark for Applicant's identified services.

**Decision:** The refusal of registration under Sections 1 and 45 of the Trademark Act is affirmed.