

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

Mailed: March 25, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Richard M. Russell
—

Serial No. 90432695
—

Richard M. Russell, Esq., pro se.

Justine Levy, Trademark Examining Attorney, Law Office 128,
Travis Wheatley, Managing Attorney.

—
Before Kuhlke, Lykos and Lynch,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:¹

¹ Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system. Citations to the record and briefs include references to TTABVUE, the Board's online docketing system.

I. Background

Richard M. Russell (“Applicant”) seeks to register on the Principal Register the proposed mark WE’RE HERE TO HELP WITH YOUR LEGAL NEEDS! in standard characters for “legal services”² in International Class 45.³

Applicant described the specimen of use, shown below, as “mark used on Internet marketing”:



The Examining Attorney has finally refused registration on the grounds that the proposed mark: fails to function as a service mark under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§ 1051-1053, 1127; is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1); and is likely to cause confusion with Registration No. 4790098, under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

For the reasons set forth below, we affirm the refusal to register under Sections 1, 2, 3 and 45, and do not reach the other grounds for refusal. *See, e.g., In re DTI P'ship*

² The application included the following miscellaneous statement: “Any use of a similar mark is necessarily geographic and geographically far from applicant’s use.” December 30, 2020 Application at TSDR 1. Any attempt to seek a concurrent use registration must comply with Trademark Rule 2.42, 37 C.F.R. § 2.42, which Applicant’s statement does not. *See also* 37 C.F.R. § 2.99 (regarding concurrent use proceedings).

³ Application Serial No. 90432695 was filed December 30, 2020, based on an alleged use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

LLP, 67 USPQ2d 1699, 1702 (TTAB 2003) (affirmance of requirement for information was sufficient basis to refuse registration; Board did not reach merits of refusal under Section 2(e)(1)).

II. Failure to Function

A. Legal Background

The [Trademark] Act conditions the registrability of any mark on its ability to distinguish an applicant's goods and services from those of others. See 15 U.S.C. §§ 1052, 1053. In other words, it is a threshold requirement of registrability that the mark "identify and distinguish" the goods and services of the applicant from those of others, as well as "indicate the source" of those goods and services. [15 U.S.C.] § 1127; *Jack Daniel's Props., Inc. v. VIP Prods. LLC*, 599 U.S. 140, 146, 143 S. Ct. 1578, 216 L. Ed. 2d 161 (2023) ("[A] trademark is not a trademark unless it identifies a product's source (this is a Nike) and distinguishes that source from others (not any other sneaker brand)."); *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 429, 143 S. Ct. 2522, 216 L. Ed. 2d 1013 (2023) (Jackson, J., concurring) ("It is clear beyond cavil that what makes a trademark a trademark under the Lanham Act is its source-identifying function.").

In re Go & Assocs., LLC, 90 F.4th 1354, 2023 USPQ2d 1337, at *2 (Fed. Cir. 2024).

We must assess whether Applicant's proposed mark, WE'RE HERE TO HELP WITH YOUR LEGAL NEEDS!, functions as a mark based on whether the relevant public, i.e. purchasers or potential purchasers of the recited legal services, would perceive WE'RE HERE TO HELP WITH YOUR LEGAL NEEDS! as identifying the source or origin of such services. *See e.g., id.* (the relevant inquiry "typically focuses on how the mark is used in the marketplace and how it is perceived by consumers"); *In re Texas With Love, LLC*, 2020 USPQ2d 11290, at *2 (TTAB 2020) ("Whether the

term ... falls within this definition and functions as a mark depends on whether the relevant public, i.e., purchasers or potential purchasers of Applicant's goods [or services], would perceive the term as identifying the source or origin of Applicant's goods [or services]."). In this case, because there are no limitations to the channels of trade or classes of consumers, the relevant consuming public comprises all potential purchasers of the identified legal services, and therefore includes members of the general public. *See In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at *5 (TTAB 2019); *cf. CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983) (applying this principle in the likelihood of confusion context).

Describing "helpful" guidance from the Board, the Federal Circuit noted the Board's holding that "matter that 'merely convey[s] general information about the goods or services or an informational message'" fails to function as a source identifier. *In re Vox Populi Registry Ltd.*, 25 F.4th 1348, 2022 USPQ2d 115, at *3 (Fed. Cir. 2022). "Where the evidence suggests that the ordinary consumer would take the words at their ordinary meaning rather than read into them some special meaning distinguishing the goods and services from similar goods and services of others, then the words fail to function as a mark." *In re Ocean Tech., Inc.*, 2019 USPQ2d 450686, at *3 (TTAB 2019).

B. Evidence and Analysis

The Examining Attorney argues that the proposed mark "fails to function as a trademark because the wording is merely informational and constitutes a

commonplace slogan.”⁴ As support, the Examining Attorney relies on a Thomson Reuters’ Legal online article referring to “clients’ legal needs”⁵ in connection with legal services, along with the following third-party law firms’ uses of the wording in the proposed mark, or nearly identical wording:

The Baker Burton & Lundy website states: “WE’RE HERE TO HELP WITH YOUR LEGAL NEEDS,” noting, “[w]hether dealing with new opportunities or facing an unexpected problem, seeking legal advice can be intimidating. That’s why we’re here. At Baker, Burton & Lundy, we do our best to solve your problem and take the stress out of navigating the legal system.”⁶

The Terry Jessop & Bitner Facebook page states, “[s]ometimes, our problems require the help of others. We salute and honor those who step up to help. We’re here to help with your legal needs.”⁷

The Carroll Law Firm, LLC website states, “We’re Here to Help With Your Legal Needs. Whether you’re starting a business, handling family affairs, or struggling with the home damage recovery process, we’re here to help you.” The webpage then lists three types of legal services – property damage, family law, and small business legal.⁸

An article titled “Keep Your Divorce Off Social Media: Here’s Why” on the Patton & Pittman Attorneys at Law website concludes with, “Need more advice about using social media during your divorce? Call (931)361-4477 to speak with our Clarksville divorce lawyers. We’re here to help with your legal needs.”⁹

⁴ 14 TTABVUE 2 (Examining Attorney’s Brief).

⁵ October 19, 2022 Office Action at TSDR 8.

⁶ *Id.* at 2 (bakerburtonlundy.com) (capitalization in original).

⁷ *Id.* at 3 (facebook.com/TerryJessopBitner/).

⁸ *Id.* at 4 (serenalaw.com).

⁹ *Id.* at 5 (pattonandpittman.com).

The website of Fitzpatrick Zimmerman & Rose, LPA, Attorneys at Law states, “We are a firm BELIEVER IN JUSTICE And We’re Here To Help With Your Legal Needs.”¹⁰

The Vanderpool Law Firm, PC website states, “Personal injury cases can have devastating effects on individuals and their families. Vanderpool Law Firm, PC has helped countless injury victims obtain the compensation they deserve. We are here to help you with your legal needs.”¹¹

The Janzen Legal Services website includes the following statement: “WE ARE HERE TO HELP YOU WITH YOUR LEGAL NEEDS. Give us a call for a free consultation or to schedule an appointment to meet with one of your attorneys.”¹²

The Ashmore Law Firm, P.C. website states, “Has a loved one died and you need to Probate the Estate? Do you need a will? Have you been in an accident? Need a Divorce in Texas? We are here to help you with your legal needs.”¹³

The Cornerstone Law Firm website states, “Our attorneys are deeply knowledgeable and client-focused. Preparing wills and drafting contracts, offering vigorous criminal defense, initiating and defending civil lawsuits – each of these is part of a broad practice that allows this firm to serve Berks County’s legal needs. We’re here to help you with your legal needs.”¹⁴

Applicant repeatedly characterizes the third-party uses as merely a “handful” of examples,¹⁵ and asserts that “[s]uch minimal results are insufficient to establish that the applied-for mark is ‘ordinary’” as in the DRIVE SAFELY case relied on by the

¹⁰ *Id.* at 6 (fzrlaw.com).

¹¹ May 10, 2023 Office Action at TSDR 2 (vanderpoollaw.net).

¹² *Id.* at 4 (ruggedlaw.com).

¹³ *Id.* at 5 (ashmorelaw.com).

¹⁴ *Id.* at 7 (cornerstonelaw.us).

¹⁵ 12 TTABVUE 6, 7 (Applicant’s Supplemental Brief).

Examining Attorney, *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1466, 1460-61 (TTAB 1998). Applicant also contends that because the third-party uses are “on interior web pages” or relatively less prominent than other wording or graphics, this diminishes their probative value.¹⁶

We reject Applicant’s arguments and find that the record in its entirety demonstrates that consumers would perceive Applicant’s use of WE’RE HERE TO HELP WITH YOUR LEGAL NEEDS! as an informational indication of the availability of legal services from Applicant. We find the quantity and quality of examples – which fall squarely within the context of Applicant’s recited legal services and which reflect a consistent meaning – persuasive to show the informational nature of the wording.¹⁷ And we agree with the Examining Attorney, who cited *In re Duvernoy & Sons, Inc.*, 212 F.2d 202, 101 USPQ 288, 289 (CCPA 1954) (finding “‘Consistently Superior’ is merely an adjunct [to the more prominently used trade name], operating in the shadow thereof, to indicate to purchasers that appellant’s goods are always superior in quality”), that any less prominent usage by third-parties aligns with, rather than detracts from, the informational significance of WE’RE HERE TO HELP WITH YOUR LEGAL NEEDS!.

¹⁶ *Id.* at 7. See also April 18, 2023 Response to Office Action at TSDR 2-4.

¹⁷ In its argument against the Section 2(d) refusal, Applicant submitted a screenshot of a Google video search of “we’re here to help’ law,” noting that “many law firms” use that phrase with their firm name. April 18, 2023 Response to Office Action at TSDR 9, 11. As the Examining Attorney stated, this “shows that consumers merely understand this wording as a commonly understood phrase used in connection with legal services.” May 10, 2023 Office Action at TSDR 1.

The evidence of the meaning of wording in the mark, and the use of the same or almost identical phrase by third-party competitors shows the message that consumers would understand when encountering Applicant's proposed mark. "It is clear from how the term is used by multiple third parties that [the term] merely conveys a well-recognized concept or sentiment." *See Texas With Love*, 2020 USPQ2d 11290, at *3.

Applicant's specimen is consistent with the informational nature of the proposed mark, as we find that consumers would view the much larger and more prominent wording RUSSELL LAW FIRM as the source of the services, and would understand WE'RE HERE TO HELP WITH YOUR LEGAL NEEDS! to convey the availability (WE'RE HERE) to perform the legal services the consumer viewing the specimen might require (TO HELP WITH YOUR LEGAL NEEDS).¹⁸ "If the nature of a proposed mark would not be perceived by consumers as identifying the source of a good or service, it is not registrable." *Go & Assocs.*, 2023 USPQ2d 1337, at *3 (citing *Jack Daniel's Props., Inc. v. VIP Prods. LLC*, 599 U.S. at 145).

Considering Applicant's proposed mark in its entirety, in light of the record as a whole in this appeal, we find that consumers would not perceive WE'RE HERE TO HELP WITH YOUR LEGAL NEEDS! as a source-indicator for "legal services."

¹⁸ The presence of the exclamation point does not change the impression or significance of the otherwise informational statement. *See In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) ("This case is, ... like 'most cases[,] where the addition of an exclamation point does not affect the commercial impression of a mark.'").

Decision: We affirm the refusal to register Applicant's proposed mark under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53 and 1127, on the ground that it fails to function as a mark. We therefore need not reach the other grounds for refusal.