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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re ROC USA, LLC

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Serial Nos. 77044525 & 77059988

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Ashlyn J. Lembree for ROC USA, LLC.

Brian Neville, Trademark Examining Attorney, Law Office 114  
(K. Margaret Le, Managing Attorney).

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Before Grendel, Walsh and Ritchie, Administrative Trademark  
Judges.

Opinion by Walsh, Administrative Trademark Judge:

ROC USA, LLC (applicant) has appealed refusals in the two applications referenced above. The Board will decide both appeals in this opinion because the applications involve the same marks and the appeals present the same issue. The records in the two applications are essentially the same. For consistency we will refer to the record and briefs in Application Serial No. 77044525.

In the first application (Serial No. 77044525), applicant seeks to register the mark ROC USA in standard

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characters on the Principal Register for services identified as: "Providing business management consulting in the field of manufactured home communities; business management assistance; business management consulting; business management organization; professional business consulting; business information; business expertise; manufactured housing community management assistance; market studies; market research; economic forecasts; cost price analysis; promotion of partnerships between resident owned communities and community organizers, trainers, primary lenders, and sub debt lenders for lending in manufactured housing communities; advertising; issuing and updating of advertising texts for others," in International Class 35 and "Educational services, namely, teaching in the field of resident ownership of manufactured housing communities and lending practices; training seminars for community development practitioners, lenders, and homeowners" in International Class 41. The application was filed on November 15, 2006, and claims first use of the mark anywhere and first use in commerce on September 11, 2006. The application includes a disclaimer of "USA" and a claim of acquired distinctiveness under Trademark Act Section 2(f).

In the second application (Serial No. 77059988),

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applicant also seeks to register the mark ROC USA in standard characters on the Principal Register for services identified as: "Capital investment consultation; underwriting assistance relating to financing resident owned manufactured housing communities; financial services, namely, financial consultation, analysis, and planning; asset administration and management services for private, institutional, and business clients; intermediary services, credit enhancement and direct lending to Community Development Financial Institutions and resident owned communities" in International Class 36. The application was filed on December 8, 2006, and claims first use of the mark anywhere and first use in commerce on November 8, 2006. The application includes a disclaimer of "USA" and a claim of acquired distinctiveness under Trademark Act Section 2(f).

In both applications, the Examining Attorney has issued final refusals under Trademark Act Section 2(e)(2) on the grounds that the mark is geographically descriptive of the identified services. Specifically, the Examining Attorney found USA geographically descriptive of the services and ROC merely descriptive of the services, and therefore, insufficient to render the mark distinctive. The Examining Attorney has also rejected applicant's claim

of acquired distinctiveness in both applications.

Applicant appealed. Both applicant and the Examining Attorney have filed briefs and presented arguments in an oral hearing before the Board. We affirm the refusals under Section 2(e)(2) but find the claim of acquired distinctiveness sufficient to overcome the refusals in both applications.

The 2(e)(2) Refusal

There is no serious dispute as to the meaning of USA or that USA is geographically descriptive of the services. Applicant has disclaimed "USA." The focus is on whether the presence of ROC in the mark is sufficient to render the entire mark registrable on the Principal Register with or without a showing of acquired distinctiveness. Applicant and the Examining Attorney vigorously dispute whether or not ROC is highly descriptive, merely descriptive or inherently distinctive. Ultimately, the crucial question is whether the entire mark, ROC USA, is either merely descriptive or highly descriptive and, if it is either, whether applicant's claim of acquired distinctiveness is sufficient.

The Examining Attorney's argument rests on the premise that ROC is an abbreviation or acronym which the relevant public understands to mean "resident-owned community" and

that the identified services all relate to resident-owned communities. More particularly, the Examining Attorney asserts that a resident-owned community is "... a manufactured/mobile home or RV [recreation vehicle] development that is incorporated and operated as a not-for-profit co-operative." Examining Attorney's Brief at 5.

To support his position, the Examining Attorney relies primarily on evidence from sources which list acronyms or abbreviations and from websites where ROC is used as shorthand for resident-owned communities.

First, the Examining Attorney presented evidence from ABBREVIATIONS.COM showing an entry connecting "ROC" to "resident owned community." The Examining Attorney also provided evidence from several websites, including the following:

residentownedcommunities.com, which states, "This directory lists over 110 ROC communities that have a website.";

joe.org, which initially states, "Each of these cooperatively owned parks, known as "Resident-owned Communities" (ROC's), formed a self-governing corporation to govern their park." (The site, which provides detailed information about the organization and operation of such communities, then proceeds to use ROC repeatedly as shorthand for resident-owned community.);

palmharbormarketing.com, which states, "I'm putting together a directory of 'resident-owned' manufactured home/mobile home communities, which includes links to the parks websites. If you

have or know of a 'roc' with a website which you would like to be included, please email me the name and url.";

monroe-giordano, which initially provides a list of abbreviations used in its real estate listings, including a reference to "Resident-Owned Community" as "ROC";

mota-nh.org, which includes a report on resident-owned communities and related subjects and refers to "... the second ROC Leadership Program." (The site also refers to applicant: "After 15 years of leading the Loan Fund's Manufactured Housing Park Program, Paul Bradley will be moving on to focus his efforts on the development of ROC USA, a national organization working with practitioners from other states to further develop the ROC system and help others to organize to purchase their communities.");

Shaesveniker.com, which reports on legislative developments related to resident-owned communities and related topics using ROC to refer to resident-owned communities;

tcpalm.com, which includes Q & As regarding resident-owned communities and consistently uses ROC to refer to resident-owned communities; and

mhoo-osta.com, which states, "Also, a third park in McMinnville, is in the early phases of purchasing their park using a Limited Equity ROC approach."

Attachments to Examining Attorney's Office Action dated February 11, 2009.<sup>1</sup>

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<sup>1</sup> In both the brief and the earlier Office action the Examining Attorney provides quotes from several of these websites without identifying the particular source of each quote. The Examining Attorney simply directs applicant and the Board to the voluminous attachments to the office action. When citing evidence, the Examining Attorney should indicate the precise source.

The Examining Attorney also argues that evidence applicant provided further supports his position, in particular, evidence showing third-party uses of ROC which applicant submitted with its response of November 21, 2008. The uses are consistent with the examples we noted above.

To determine whether USA, or any other term, is primarily geographically descriptive we must consider: (1) whether the primary significance of USA is as the name of a place which is generally known; and (2) whether the relevant public would associate the goods or services of applicant with the place named, that is, whether the public would believe that the goods or services come from the place named. *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); *In re JT Tobacconists*, 59 USPQ2d 1080, 1081 (TTAB 2001). As we stated, in this case there is no real dispute regarding the USA component of the mark. Applicant has disclaimed USA. We dismiss out of hand applicant's brief argument that USA is too broad to convey an association between the services and the place named. Applicant cites no authority for the proposition; nor can we find any. *In re Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652, 1655 (Fed. Cir. 1993). Therefore, we proceed on the basis that USA is primarily geographically descriptive.

Thus, we must focus our analysis on ROC to determine whether it is descriptive to whatever degree and whether it is insufficient to remove the mark from the prohibition of Section 2(e)(2).

Applicant argues that the mark is not primarily geographically descriptive primarily because the evidence does not establish that that the relevant public understands ROC, as used in the mark, to denote a resident-owned community. Applicant argues that, for the purposes of a refusal under Section 2(e)(2), the Examining Attorney must show that ROC is either highly descriptive or generic to find the entire mark primarily geographically descriptive.

At the outset, we reject applicant's argument that the Examining Attorney must show that ROC is either highly descriptive or generic, not just merely descriptive, to support the refusal. While the cases applicant cites, such as, *In re Mankovitz*, 90 USPQ2d 1246 (TTAB 2009) and cases cited in that opinion, involve situations where the term combined with the geographical term was either highly descriptive or generic, we do not read the cases as limiting Section 2(e)(2) refusals to such situations. Rather, we must view the mark in its entirety to determine whether the combination of terms renders the mark

registrable. Consequently, we proceed to consider whether ROC is merely descriptive.

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. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute or function of the goods or services. See *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778 (Fed. Cir. 2003) (MONTANA SERIES and PHILADELPHIA CARD held merely descriptive of credit card services featuring credit cards depicting scenes or subject matter of, or relating to the state of Montana or the city of Philadelphia); *In re Busch Entertainment Corp.*, 60 USPQ2d 1130 (TTAB 2000) (EGYPT held merely descriptive of amusement park services; namely an area within an amusement park).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services identified in the application, and the possible significance that the term would have to the average purchaser or user of the goods or services. *In re Polo International Inc.*, 51 USPQ2d 1061, 1062 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The question whether a mark is merely descriptive is not determined by asking whether one can guess from the mark what the goods or services might be, but rather by asking, when the mark is seen in connection with the goods or services, whether it immediately conveys information about their nature. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998).

In this case, we must consider whether ROC, an abbreviation or acronym, is merely descriptive of the identified services. The mere fact that resident-owned community, the phrase from which ROC is derived, is merely descriptive is not dispositive. See *In re Uniform Product Code Council, Inc.*, 202 USPQ 618 (TTAB 1979).

Based on the entire record we conclude that ROC is merely descriptive of the identified services, that is, that the relevant public would understand ROC as a reference to resident-owned communities when viewing ROC in

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applicant's mark, as applied to the identified services. All of the services in both applications relate to resident-owned communities.

Furthermore, we conclude that the entire mark, ROC USA, is primarily geographically descriptive of the identified services. There is nothing about the combination of ROC and USA which renders the entire mark inherently distinctive. Both ROC and USA describe something significant about the identified services. There is no incongruity about the combination even though each component describes a different aspect of the services, that is, the nature of the services and the geographical origin and scope of the services. Also, the services are specialized and directed to a distinct segment of the public, those concerned with the establishment and administration of resident-owned communities or "resident ownership of manufactured housing communities." This fact reinforces the conclusion that the relevant public would understand the meaning of both ROC and ROC USA.

For the record we reject applicant's argument that the designation of "rock" as a "pseudo mark" in the USPTO data base provides evidence that ROC conveys a double entendre. The pseudo mark field in the USPTO data base serves a purely administrative purpose to facilitate searching

generally. It is in no way probative of how the relevant public would perceive this mark. Furthermore, there is no evidence indicating that the relevant public would perceive ROC, as used here, as rock. On the contrary, the argument is, at best, a stretch.

We also reject applicant's argument that the frequent use of resident-owned community followed by ROC in a parenthetical indicates that the relevant public would not understand the meaning of ROC without this guidance. This usually happens at the outset in each of the examples of use. In this case, this practice simply reflects a process whereby the publication is educating the relevant public as to the meaning, again a rather narrowly defined relevant public which is likely to learn the meaning readily.

Furthermore, we reject applicant's arguments based on third-party registrations which appear to include ROC as an abbreviation for some phrase other than resident-owned community. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). This evidence is not probative of how the relevant public would perceive ROC when used as an abbreviation for resident-owned community.

In concluding that the entire mark is primarily geographically descriptive, we hasten to add that we reject the Examining Attorney's characterization of the entire

mark as highly descriptive. In this regard we note that the mark consists of two abbreviations, again, one describing the nature of the services and the other the geographical origin and scope. There is no evidence that anyone else uses this combination, nor would we expect to find such evidence, again, in view of the rather narrow, specialized nature of the field.

Acquired Distinctiveness

The applicant bears the burden of establishing acquired distinctiveness. *Yamaha Intl. Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1004-1008 (Fed. Cir. 1988); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 919 (TTAB 1984) ("`Packaging Specialists, Inc.' is highly descriptive of distributorship services for packaging material and equipment, contract packaging services, and design services for design of packages.").

The type and amount of evidence required to show acquired distinctiveness depends upon the circumstances of the case. *In re Gammon Reel, Inc.*, 227 USPQ 729, 730 (TTAB 1985). In a case where the mark is highly descriptive, the applicant faces a heavier burden. *In re Packaging Specialists, Inc.*, 221 USPQ at 919. As we noted above, this is far from such a case.

Applicant filed most of its evidence of acquired distinctiveness with its response of November 21, 2008. The evidence consists of 55 exhibits, including principally affidavits and copies of excerpts from numerous media sources. Applicant provided the following affidavits or declarations: Neill G. Goslin of Development for Self-Help (North Carolina); Ishbel Dickens of Columbia Legal Services (Washington State); John VanLandingham of Lane County Legal Aid and Advocacy Center (Oregon); and Carolyn Carter of the National Consumer Law Center (Massachusetts).

The affidavits reflect an awareness of applicant and a recognition of ROC USA as a source indicator for applicant's services as a result of applicant's actions as a national leader in the establishment and development of resident-owned communities as a response to housing needs, particularly on behalf of those in need of affordable housing. Among other things, the affidavits indicate that applicant has conducted national conferences which have contributed to the recognition of ROC USA as a source indicator.

Applicant also provided letters from the Ford Foundation evidencing a grant of \$5,000,000 in 2007 to ROC USA to conduct its activities. This award, and subsequent activities and publicity related to the award reflected in

the media, indicate that the Ford Foundation support has bolstered recognition of ROC USA.

The bulk of the remaining evidence consists of media use of ROC USA from a wide variety of sources, both local and national, and from some general-circulation sources, as well as many specialized publications in relevant fields.

The geographical range extends from New Hampshire and greater New England, to Pennsylvania, Maryland, Delaware, North Carolina, Minnesota, North Dakota, South Dakota, Iowa, Texas, Arkansas, Oregon, Washington, California, and other states. The types of sources include newsletters issued by groups in the legal, real estate and financial services field, all concerned with resident ownership of manufactured housing communities. The evidence also includes scholarly reports concerning resident ownership of manufactured housing communities, and other materials from organizations as diverse as the Philadelphia Federal Reserve Bank and the Manufactured Home Owners Association of America.

Applicant also provides evidence that it placed limited advertising in the MHI (Manufactured Housing Institute) newsletter.

The principal reasons the Examining Attorney offers for rejecting applicant's claim of acquired distinctiveness

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are the fact that the evidence covers only about two years, the limited amount of advertising, and his contention that the entire mark is highly descriptive.

We must view the evidence of acquired distinctiveness in light of the circumstances in these cases. We find two circumstances in these cases significant in this regard. First, the fact that the mark is not highly descriptive is important. Secondly, the fact that the services, as identified, are targeted to a narrow field, those interested in resident ownership of manufactured housing communities.

The record shows that those with an interest in resident ownership of manufactured housing communities includes a segment of the legal, real estate and financial services professions and more generally those concerned with the development of affordable housing.

When we view the evidence of acquired distinctiveness in light of the circumstances present here, we find that applicant's activities and public exposure of its mark over the relevant two-year period are sufficient to allow us to conclude that applicant has met its burden to establish that ROC USA has come to identify applicant as the source of the identified services in the minds of the relevant public.

When we consider the totality of the circumstances, the fact that applicant has used the mark for only two years is not controlling. *Cf. In re McDonald's Corp.*, 199 USPQ 490 (TTAB 1978). Furthermore, the specialized services applicant provides under the mark are not like goods or services which would be offered to the general consuming public. Consequently, we would not expect to see applicant's mark advertised in the same manner as a mark for consumer goods. Most importantly, the evidence does show that applicant's activities to date have been sufficient to establish recognition of its mark in the minds of the relevant public.

**Decision:** In both applications, we reverse the refusals under Section 2(e)(2) based on the sufficiency of applicant's claim of acquired distinctiveness under Section 2(f).