

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Corporate Fuel Partners, LLC
Serial No.: 78/705,685
Mark: CORPORATE FUEL
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P.O. Box 1451
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BRIEF OF APPLICANT IN SUPPORT OF REGISTRATION

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STATEMENT OF ISSUE FOR REVIEW

Whether Applicant's mark CORPORATE FUEL, creates a singular impression such that Applicant should not be required to disclaim "CORPORATE" apart from its mark as a whole?

STATEMENT OF THE CASE

This action arises from the final refusal to register Applicant's service mark, CORPORATE FUEL under 15 U.S.C. § 1056 alleging that the "CORPORATE" portion of Applicant's mark must be disclaimed as a separable descriptive element of the mark. Applicant objects to the Examining Attorney's final conclusion and responds that the mark, CORPORATE FUEL, is entitled to registration, as the term "CORPORATE" is a salient component of Applicant's unitary composite mark CORPORATE FUEL, and the mark as a whole makes a singular impression that should not be dissected. Specifically, Applicant's mark consists of the unusual combination of the adjective "CORPORATE" as a modifier of the arbitrary noun "FUEL" creating the singular and arbitrary source identifier CORPORATE FUEL used in connection with Applicant's business consultation and financial services.

PROCEEDINGS AND DISPOSITION BELOW

Applicant applied for registration of its coined phrase, CORPORATE FUEL, on September 1, 2005. The Examining Attorney initially refused registration by Office Action dated March 22, 2006, based on the preliminary finding that Applicant's mark was

likely to be confused with the mark FUEL (Registration No. 2,460,369) for "financial services, namely, an equity line of credit program," and potential confusion with a prior pending mark FUEL (Serial No. 79/013,992) for "investment services" among other services. The Examining Attorney's preliminary refusal also required an amendment to the recitation of services and required that Applicant disclaim the term "CORPORATE" as used in its mark. In a response submitted September 22, 2006, Applicant amended its recitation of services and argued against the refusals. On October 18, 2006, based on Applicant's response, the Examining Attorney suspended the application, pending the outcome of the prior pending application.

On September 15, 2008, the Examining Attorney issued a final Office Action, removing the 2(d) bar to registration, as the cited registration had expired, and removing the prior pending application cited as a potential bar to registration based upon consideration of Applicant's arguments. The Examining continued and made final however the requirement that the word "CORPORATE" be disclaimed.

On September 22, 2008, Applicant filed a timely Request for Reconsideration, arguing against the disclaimer requirement and providing substantial evidence of third party registrations. On October 10, 2008, the Examining Attorney denied Applicant's Request for Reconsideration. Applicant then filed an Ex Parte

Appeal on March 9, 2009, again Requesting Reconsideration, and reserving the right to oral argument. On March 20, 2009, the T.T.A.B. mailed notification to Applicant that its Request for Reconsideration was acknowledged, and remanded the case to the Examining Attorney for review. The Examining Attorney, in an Action dated May 19, 2009, denied Applicant's Request for Reconsideration. On June 2, 2009, the T.T.A.B. notified Applicant that its appeal was resumed, allowing Applicant sixty (60) days to file the instant brief.

STATEMENT OF FACTS

Applicant, Corporate Fuel Partners, LLC, is a leader in the field of investment banking providing merger and acquisition and capital raising services to both individuals and small and medium sized consumers. Applicant provides these business and financial services under its unique and arbitrary coined phrase, CORPORATE FUEL. As Applicant's recitation of services show, Applicant's services are extensive and diverse in the financial market, and the fictional phrase CORPORATE FUEL is the source identifier Applicant coined to distinguish its services from those of others.

On September 1, 2005, Applicant filed to register its mark with the United States Patent and Trademark Office ("PTO"). However, in a series of Office Actions, the Examining Attorney finally refused registration of Applicant's trademark claiming

that the term "CORPORATE" is a separable element of Applicant's composite mark CORPORATE FUEL and should therefore be disclaimed as descriptive.

Applicant responded to the Examining Attorney's refusals claiming the "CORPORATE" portion of Applicant's mark CORPORATE FUEL is not separable from the mark as a whole and is in fact a salient feature of the mark. The unusual combination of the otherwise incompatible terms, "CORPORATE" and "FUEL" creates a singular impression that is at the very most suggestive, not descriptive of Applicant's services. This appeal is the culmination of that prosecution history.

SUMMARY OF ARGUMENT

A mark or a portion of a mark is not merely descriptive if, when taken in context, imagination, thought or perception is required to reach a clear conclusion as to the nature of the goods or services. In this instance the unique combination of the incompatible adjective "CORPORATE" to modify the noun "FUEL," creates a singular arbitrary coined phrase, CORPORATE FUEL.

Further, the Trademark Office database contains extensive evidence of use of the word "CORPORATE" in analogous registrations where "CORPORATE" is combined with an otherwise incompatible term creating a new arbitrary unitary phrase and where in each instance, the mark was viewed as unitary thereby

obviating the need to disclaim "CORPORATE." Lastly, the Examining Attorney failed to resolve all doubts concerning registration in Applicant's favor. Where Applicant's mark creates a unitary singular whole, a proper balancing of the doubts at hand favors publication of Applicant's mark for opposition.

As a result of the foregoing, Applicant's mark, when viewed in its entirety, is -- on the continuum of trademarks -- a unitary suggestive phrase, and thus registrable without disclaimer.

ARGUMENT

I. PROVIDING THE STANDARD FOR DESCRIPTIVENESS

Marks and in this instance portions of marks fall into one of five classifications: (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful. Abercrombie & Fitch Co. v. Hunting World, Inc., 189 U.S.P.Q. 769, 537 F.2d 4, 9 (2d Cir. 1976). "Although these categories are meant to be mutually exclusive, they are spectrum-like and tend to merge imperceptibly from one to another." Vision Center v. Opticks, Inc., 202 U.S.P.Q. 333, 596 F.2d 111, 115 (5th Cir. 1979), cert. denied. Due to the sometimes subtle differences between classifications, they are "frequently difficult to define and quite frequently difficult to apply." Id.

In addressing the subject of descriptive wording, the Federal Circuit, in the case In re Gyulay, 3 U.S.P.Q.2d 1009, 820 F.2d 1216 (Fed. Cir. 1987), recognized the Trademark Trial and Appeal Board language establishing that descriptiveness refusals are relevant when "the mark merely describes a significant characteristic of the goods." Id. at 1217. The Federal Circuit in In re Gyulay continued, stating that "[w]hether a given mark is suggestive or merely descriptive depends on whether the mark 'immediately conveys . . . knowledge of the ingredients, qualities, or characteristics of the goods . . . with which it is used', or whether 'imagination, thought, or perception is required to reach a conclusion on the nature of the goods.'" In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 525, 205 U.S.P.Q. (BNA) 505, 507 (C.C.P.A. 1980). The categories are in actuality 'central tones in a spectrum . . . and are frequently difficult to apply.'" Id. at 1217 (citation omitted, emphasis added). It is certain, therefore, that a mark, or portion thereof, must immediately convey knowledge to support a request to disclaim that portion. The commercial impression cannot be a time consuming, tenuous, or pensive connection -- it must be immediate. If a certain image of Applicant's certification services does not immediately come to mind upon hearing or seeing the mark, then *some imagination* must be required to connect the mark to the services. See Self-

Realization Fellowship Church v. Ananda, 35 U.S.P.Q.2d 1342, 59 F.3d 902, 911 (9th Cir. 1995); and In re Application of ABCOR Development Corp., 200 U.S.P.Q. 215, 588 F.2d 811, 814 (C.C.P.A. 1978) ("Generally speaking, if the mark imparts information directly, it is descriptive. If it stands for an idea which requires some operation of the imagination to connect it with the goods, it is suggestive." (citation omitted.)

As clarified in the T.M.E.P., however, "a designation does not have to be devoid of all meaning in relation to the goods and services to be registrable." T.M.E.P. § 1209.01(a) (5th ed. 2007) (emphasis added).¹ It is a general and well-established principle that "a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning" T.M.E.P. § 1209.03(d) (5th ed. 2007). The Ninth Circuit, in California Cooler, Inc. v. Loretto Winery, Ltd., 227 U.S.P.Q. 808, 774 F.2d 1451 (9th Cir. 1985), recognized that "words which could not individually become a trademark may become one when taken together. . . . It is the likely reaction of customers to the total mark that is at issue.

¹ An alternate phrasing of the "imagination" test asks whether others in the same business would generally need the word to adequately describe their product or service. However, "[t]he need to use a term because it is generic or highly descriptive should be distinguished from the desire to use it because it is attractive." Union Nat'l Bank of Texas, Laredo v. Union Nat'l Bank of Texas, Austin, 16 U.S.P.Q.2d 1129, 909 F.2d 839, 848 (5th Cir. 1990).

. . . Thus, the composite may become a distinguishing mark even though its components individually cannot." Id. at 1455.

Likewise, the T.T.A.B. has stated that "there is no question but that each of the words in a compound mark sought to be registered is a word which describes a feature of paper bound containers. . . . The mere fact that a compound mark is made up of descriptive words does not ipso facto create a mark which is merely descriptive when applied to an applicant's goods." In re Waldorf Paper Products, 155 U.S.P.Q. 174 (T.T.A.B. 1967).

Ultimately, the dissection of a mark, or portion of a mark, into its component parts (as the Examining Attorney does with the terms "CORPORATE" and "FUEL") stands against the clear weight of case law and the PTO's own rules of examination. See Coca-Cola Co. v. Seven-Up Co., 182 U.S.P.Q. 207, 497 F.2d 1351 (C.C.P.A. 1974) ("We have said, so often as not to require citation of authority, that marks must be viewed as the public sees them, *i.e.*, in their entirety.") To be sure, it is well settled that the validity of a mark is not judged by an examination of its individual parts, but rather by ultimately viewing the trademark as a whole. See California Cooler, Inc., 774 F.2d at 1455.

In the present case the Examining Attorney has improperly dissected Applicant's mark CORPORATE FUEL and ignores the fact that the terms taken as a whole create a unique unitary phrase

which does not merely convey knowledge of or describe Applicant's business consultation and financial services. As there is no such thing as "corporate fuel," Applicant's unusual combination of the adjective "CORPORATE" to modify the noun "FUEL" creates a coined phrase which has no specific meaning other than to playfully hint to Applicant's consumers that its services will provide the unique fuel or energy needed to launch them past their competitors. Thus, the unitary composite CORPORATE FUEL is a distinguishing mark even though its component "CORPORATE" individually may not be.

The Examining Attorney takes the position that "the term 'CORPORATE' refers to 'corporations.' Applicant provides its services to corporations. The applicant has not shown by any evidence that the term identifies anything else." See Reconsideration Letter dated May 19, 2009. The Examining Attorney's reasoning flies in the face of and is contrary to each of the elemental trademark principles outlined above. The Examining Attorney is simply dissecting Applicant's mark and ignoring the fact that the unusual use of the incompatible adjective "CORPORATE" to modify the noun "FUEL" creates a singular whole in the coined phrase CORPORATE FUEL. As an integral part of the singular phrase CORPORATE FUEL, the term "CORPORATE" does not immediately convey . . . knowledge of Applicant's business consultation and financial services nor is

it merely descriptive of them. The unique use of the modifier "CORPORATE" with the noun "FUEL" simply hints to consumers that Applicant provides a special type of "FUEL" or energy needed to propel them forward. The Examining Attorney ignores the creative combination of the terms, simply eyes the term "CORPORATE" and requires a disclaimer.

It cannot be overstated that there is no such thing as CORPORATE FUEL. There exists several variants of fuel, for example, bio-fuel, diesel fuel, fossil fuel and jet fuel to name a few. It was Applicant however who combined the seemingly incongruous terms "CORPORATE" and "FUEL" to coin the phrase CORPORATE FUEL using the phrase to suggest that Applicant possesses the fictional *FUEL* that will keep its consumers moving forward in their fields. While diesel is a type of fuel, corporate certainly is not. Thus, notwithstanding the fact that purchasers of Applicant's services more or less recognize the dictionary meanings of "CORPORATE," the term "CORPORATE" in Applicant's mark serves an additional function as an arbitrary modifier of the term "FUEL" creating the fictional, CORPORATE FUEL. The fact that some of Applicant's consumers may be corporations is irrelevant. Were the mark FUEL FOR CORPORATIONS a disclaimer requirement may be more appropriate and the Examining Attorney's reasoning may be applicable. In this instance however the adjective "CORPORATE," is not merely

descriptive as it is used to modify the incompatible noun "FUEL" thus becoming a salient feature of the unitary arbitrary phrase CORPORATE FUEL.

II. "CORPORATE FUEL" IS A UNITARY AND ARBITRARY MARK

Trademark examination policies make clear that a descriptive word can be combined with non-descriptive wording in such a way that the descriptive significance of the word in relation to the services is lost and the combination functions as a unit. See T.M.E.P. § 1213.05. This is the case where the combination of wording itself has a new meaning, such as in the case of CORPORATE FUEL. See In re Hampshire-Designers, Inc., 199 U.S.P.Q. 383 (T.T.A.B. 1978) (DESIGNERS PLUS+ for sweaters held unitary; thus, no disclaimer of "DESIGNERS" deemed necessary); In re J.R. Carlson Laboratories, Inc., 183 U.S.P.Q. 509 (T.T.A.B. 1974) (E GEM for bath oil containing vitamin E held unitary; thus, no disclaimer of "E").

Applicant's mark is similar to the marks in the cases above. Take for example the mark E GEM for "bath oil containing vitamin E" where the Board found:

Notwithstanding the fact that purchasers of applicant's goods would more or less recognize the significance of the letter "E", it is believed that it serves an additional function as a salient feature of applicant's trademark. Moreover, registration of a compound mark is merely recognition of rights in the mark as a whole and does not create or recognize any proprietary rights in the components apart from each other.

See J.R. Carlson Laboratories at 511.

Despite the fact that "E" in E GEM certainly relates to the oils containing vitamin E, the Board found that due to its unique modification of the arbitrary term "GEM," the mark becomes unitary obviating the disclaimer of "E." The owner of E GEM is certainly not providing its consumers with E GEMS, the fictional good E GEM was coined by the trademark owner in the same manner in which the fictional CORPORATE FUEL was coined by Applicant. Similarly there is no such thing as CORPORATE FUEL outside Applicant's creation of the fictional fuel. Further, Applicant's is merely requesting recognition of rights in the mark CORPORATE FUEL as a whole, it is not claiming rights in the component "CORPORATE" apart from "FUEL."

The unique combination CORPORATE FUEL merely suggests Applicant will provide its consumers with the fuel or energy needed to propel them past their competitors. When the adjective "CORPORATE" is used to modify the noun "FUEL," the resulting incompatible combination creates the unitary phrase CORPORATE FUEL and completely removes the term "CORPORATE" from the realm of descriptiveness as it becomes a salient feature of the arbitrary mark CORPORATE FUEL.

III. Applicant's Use of "CORPORATE" Does Not Deprive Competitors of An Apt Description of Their Services

Applicant's use of "CORPORATE" does not deprive competitors of an apt description of their services -- because CORPORATE FUEL is not an apt description for general business or financial services. To be sure, Applicant's mark CORPORATE FUEL is uniquely coined by Applicant and used as an indicia of source. See R. J. Reynolds Tobacco Company v. Brown & Williamson Tobacco Corporation, 226 U.S.P.Q. 169, 179 (TTAB 1985) (The Board found that the registration of NEW LOOK will not infringe upon the rights of other marketers as it does not, in the least, threaten the separate use of "new" and "look" descriptively. The Board went on to state that considering the richness of the English language, its fluidity, and the ingenuity of our advertising industry, we are confident that competitors in this field will find numerous ways to express themselves effectively in announcing changes in appearance of their products without infringing the rights of others.) Similar to the finding regarding the mark NEW LOOK, the plethora of registered "CORPORATE..." marks listed below makes certain that allowance of the registration without disclaimer will not infringe upon the rights of competitors or other marketers.

IV. Past PTO Determinations Favor Registration

Numerous Registered marks analogous to the instant

application demonstrate unequivocally that it is inappropriate for the PTO to refuse registration of Applicant's mark CORPORATE FUEL on the basis that the term "CORPORATE" is a separable element of Applicant's unitary mark CORPORATE FUEL and therefore must be disclaimed. While Applicant recognizes that third party registrations are not determinative of descriptiveness, the Principal Register is nevertheless replete with registered trademarks comprised of similar clever coined phrases incorporating variations of the word "CORPORATE." The following are but a few examples:

MARK	REGISTRATION NO.	DESCRIPTION OF SERVICES
CORPORATE PIES	2,408,346	Financial services
CORPORATE CHEFS	1,924,012	Management services
CORPORATE WOODS	2,804,816	Leasing services
CORPORATE INK	3,241,849	Advertising and publicity services
CORPORATE HINDSIGHT and Design	3,049,535	Auditing corporate travel departments
CORPORATE RELIGION	3,000,838	Creating corporate campaigns services
CORPORATE CANVAS	3,044,086	Gallery services
CORPORATE FACTORY	2,829,168	Advertising services
CORPORATE EDIBLES	2,591,567	Retail store services
CORPORATE JESTER	3,280,459	Education in the field of business management
CORPORATE SHAMAN	2,711,690	Educational services
CORPORATE CHARACTER	2,142,692	Management and educational services
CORPORATE SCENES	1,915,553	Educational services

CORPORATE EAGLE	1,982,877	Transportation services
CORPORATE ACES	2,736,882	Education in the field of military and business principles
CORPORATE PERKS	3,290,667	Moving and relocation services
CORPORATE LINK	1,868,789	Marketing and travel services
CORPORATE DICK	3,269,282	Entertainment Services
CORPORATE FACTORY	2,829,168	Advertising services
CORPORATE EXPRESS	2,123,359	Retail services
CORPORATE ONE	1,546,732	Health Insurance underwriting
CORPORATE CLASS	1,843,226	Vehicle rental services
CORPORATE CHOICE	3,144,982	Educational services
CORPORATE COLLEGE	2,636,220	Business consulting and educational services
CORPORATE BUILDERS	2,512,668	Construction planning services

(See Exhibit A to Applicant's Request for Reconsideration dated March 9, 2009.)

In each of the foregoing cases, the respective registrant combined the modifier "CORPORATE" with an unrelated and incompatible noun to create a unique and unitary mark obviating the disclaimer of the term "CORPORATE." Notably, not one of the registrations contains a disclaimer of "CORPORATE" or a Section 2(f) limitation as the combination of two incompatible terms creates a new unitary phrase where "CORPORATE" becomes a salient feature of the mark. Just as the marks CORPORATE PIE, CORPORATE CHEFS and CORPORATE INK were found to be registrable on the

Principal Register without a disclaimer or a claim of distinctiveness, so too should Applicant's. On the "pendulum of marks," the uniquely combined phrase CORPORATE FUEL creates an arbitrary, unitary phrase as registrable without disclaimer as each of the marks listed above.

V. ALL DOUBTS CONCERNING REGISTRATION SHOULD BE RESOLVED IN APPLICANT'S FAVOR

Applicant submits that, where the differences in the categories of marks are "frequently difficult to define and quite frequently difficult to apply," the clear weight of authority is to resolve the doubt in the Applicant's favor and to publish the mark for opposition. Vision Center, 596 F.2d at 115. After all, "any person who believes that he would be damaged by the registration will have an opportunity . . . to oppose the registration of the mark and to present evidence," In re Gourmet Bakers, Inc., 173 U.S.P.Q. 565, 565 (T.T.A.B. 1972).

As the Federal Circuit stated in the case In re Merrill Lynch, Pierce, Fenner, & Smith, Inc., 4 U.S.P.Q.2d 1141, 828 F.2d 1567, 1571 (Fed. Cir. 1987), "[i]t is incumbent on the Board to balance the evidence of public understanding of the mark against the degree of descriptiveness encumbering the mark, and to resolve reasonable doubt in favor of the applicant, in accordance with practice and precedent." In its reasoning, the

court relied upon the case In re Application of Aid Labs., Inc., 221 U.S.P.Q. 1215, 1216 (T.T.A.B. 1983), which held that the mark PEST PRUF was suggestive of a possible end result of use of identified goods, and not merely descriptive, for animal shampoo with insecticide, thereby resolving doubt in favor of the applicant. As such, the mark subsequently registered without disclaimer. "Where there is doubt on the matter, the doubt should be resolved in applicant's behalf and the mark should be published in accordance with Section 12(c) of the [Lanham] Statute for purposes of opposition." Id.; see also In re The Gracious Lady Service, Inc., 175 U.S.P.Q. 380, 382 (T.T.A.B. 1972) ("It is recognized that there is a large gray area in determining the descriptiveness of a mark, and where reasonable men may differ, it has been the practice to resolve such doubt in an applicant's behalf and publish the mark for opposition purposes"); and In re Entenmann's Inc., 15 U.S.P.Q.2d 1750, 1751 n.2 (affirming decision under Section 2(e)(1) but recognizing "that in ex parte cases involving a refusal to register on the basis of mere descriptiveness, it is the practice of this Board to resolve doubts in the favor of the applicant and pass the mark to publication").

Neither the evidence in the record nor the application of the law to the facts supports the Examining Attorney's position in the instant case. The odd combination of the modifier

"CORPORATE" with the arbitrary noun "FUEL" creates a unitary whole CORPORATE FUEL, a coined, fictional phrase used by Applicant to suggest that Applicant's services will provide the CORPORATE FUEL or drive needed to propel its consumers to be the leader in their respective market. When viewed in context, the purported descriptiveness of the modifier "CORPORATE" as used in odd modification of the noun "FUEL," thus creating the fictional CORPORATE FUEL, evaporates in favor of the adjectives arbitrary role as a unique source identifier. Ultimately, any ambiguity should be resolved in Applicant's favor, and Applicant's mark should be passed on to publication without disclaimer.

* * * * *

CONCLUSION

For the foregoing reasons, Applicant Corporate Fuel Partners, LLC respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney's final refusal to register its trademark, allowing for publication for opposition.

Respectfully submitted,

CORPORATE FUEL PARTNERS, LLC

Dated: August 3, 2009

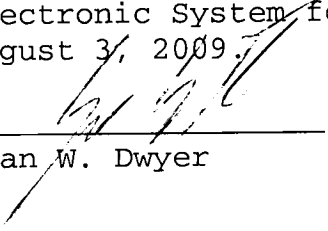
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CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that this Brief is being electronically submitted to the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals (ESTTA) on August 3, 2009.


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