

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

Hearing: January 28, 2020

Mailed: February 26, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Steve Harrold*  
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Serial No. 87631770  
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James C. Wray, Esq.,  
for Steve Harrold.

Justine D. Parker, Trademark Examining Attorney, Law Office 101,  
Ron Sussman, Managing Attorney.

—  
Before Greenbaum, Heasley and English,  
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Steve Harrold (“Applicant”) seeks registration on the Principal Register of the  
mark **ORGANIC NATURAL ENERGY** and Design, displayed as

 **ORGANIC  
NATURAL  
ENERGY**, for

Meal replacements being a nutritional supplement in the  
form of bars, snacks, and shakes consisting primarily of  
organic and natural ingredients adapted for functional  
health benefit, in International Class 5, and

Organic nut based food bars; organic fruit based ready to eat food bars also containing organic cacao, organic seeds, organic coffee and organic yerba mate; organic vegetable based food bars; vegetable, nut and fruit based food beverages, all the foregoing consisting primarily of organic and natural ingredients; vegetable, nut and fruit based powders for making vegetable, nut and fruit based food beverages and shakes consisting primarily of organic and natural ingredients, also containing organic seeds, organic cacao, organic coffee and organic yerba mate, in International Class 29.<sup>1</sup>

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), based on Applicant's failure to comply with the requirement to disclaim ORGANIC NATURAL ENERGY on the ground that the wording is merely descriptive of Applicant's goods within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1051(e)(1). When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We reverse the refusal to register.

#### I. Applicable Law and Analysis

The Director of the USPTO "may require the applicant to disclaim an unregistrable component of a mark otherwise registrable." Trademark Act Section 6(a), 15 U.S.C. § 1056(a). Merely descriptive terms are unregistrable under

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<sup>1</sup> Application Serial No. 87631770 was filed on October 3, 2017, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b) of the Trademark Act. The application includes the following description of the mark: "The mark consists of the words ORGANIC NATURAL ENERGY, arranged vertically in a row, with a box around the first letter of each word, a leaf in the 'O' and a line under the word 'ENERGY.'"

Trademark Act Section 2(e)(1), and therefore are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is a ground for refusal of registration. *See In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087 (Fed. Cir. 2005); *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46 (CCPA 1975).

Applicant argues that no disclaimer is required because the combination of wording and design elements results in a unitary mark. We agree.

A mark is unitary if it creates a single, distinct commercial impression. *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1400 (Fed. Cir. 2006) (citing *Dena Corp. v. Belvedere Int'l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991)). If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required.<sup>2</sup> TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1213.05 (Oct. 2018). *See also Dena*, 21 USPQ2d at 1052. The commercial impression is determined by various factors, including whether the matter is physically connected by lines or other design features, and the relative location of the respective elements. *Id.*



Here, the first letter of each word in the mark  forms the word “ONE,” displayed vertically. The mark therefore would be read as the telescoped words ONE ORGANIC NATURAL ENERGY. The combination of the black box

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<sup>2</sup> The Examining Attorney contends that the wording is merely descriptive and not unitary. Although Applicant presented arguments on both issues, we make no finding as to whether the wording is merely descriptive because even if it is, it is not separable from the mark as a whole and thus need not be disclaimed.

around the letters “O,” “N” and “E,” with the rest of the letters appearing with no background design, the leaf design inside the letter “O,” and the stacking of the words ORGANIC NATURAL ENERGY to form a rectangle, reinforce this single, integrated commercial impression. Telescoped words are considered unitary. Consequently, there is no need to disclaim an individual portion of the telescoped wording. *See* TMEP § 1213.05(a)(i). *Compare Dena*, 21 USPQ2d at 1052 (finding EUROPEAN FORMULA and design not unitary because the “elements are not so merged together that they cannot be regarded as separate” and the proximity of the words to the design feature “does not endow the whole with a single, integrated, and distinct commercial impression.”) and *In re EBS Data Processing, Inc.*, 212 USPQ 964, 966 (TTAB 1981) (noting that “if the elements are so merged together that they cannot be regarded as separable elements, the mark is a single unitary mark”).

## II. Conclusion

In view of the above, and considering that the registration of  and the presumptions afforded registrations under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), pertain to the mark as a whole rather than to its components, *per se*, and that the registration of  cannot serve to preclude others from making fair use of the terms ORGANIC NATURAL ENERGY in describing their nutritional supplements and food bars, the requirement for a disclaimer of ORGANIC NATURAL ENERGY is unnecessary. *In re Hampshire-Designers*, 199 USPQ 383, 384 (TTAB 1978).



**Decision:** The refusal to register Applicant's mark **ORGANIC NATURAL ENERGY** is reversed.