

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re AAA Customer Services, LLC

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Serial No. 75/827,994

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Claire Foley for AAA Customer Services, LLC

Tracey Cross, Trademark Examining Attorney, Law Office 103  
(Michael Hamilton, Managing Attorney).

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Before Hanak, Quinn and Holtzman, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge.

AAA Customer Services, LLC (applicant) seeks to register on the Principal Register the initialism EBO in typed drawing form for "real estate agencies." The application was filed on October 20, 1999 with a claimed first use date of August 1999.

In the final Office Action the Examining Attorney refused registration on the basis that EBO is merely descriptive of applicant's services. See Section 2(e)(1) of the Trademark Act. When the refusal to register was made final, applicant appealed to this Board. Applicant

and the Examining Attorney filed briefs. Applicant did not request a hearing.

At the outset, one matter should be clarified. As just noted, in her final Office Action the Examining Attorney refused registration on the basis that the initialism EBO was merely descriptive of applicant's services (real estate agencies). At page 4 of its brief, applicant stated that the "issue on appeal ... is whether applicant's mark is merely descriptive of its services." However, in her brief the Examining Attorney erroneously stated that applicant was seeking to register the initialism EBO on the Supplemental Register, and further stated that the issue on appeal was whether the initialism EBO was generic for applicant's services. This Board contacted the Examining Attorney and she explained that these two errors in her brief were caused by the fact that applicant had also sought to register the phrase EXCLUSIVE BUYERS OFFICE on the Supplemental Register for the identical services, and that she merely prepared essentially the same brief for both appeals. In this regard, it should be noted that in a decision dated November 22, 2002 this same panel of the Board found that the phrase EXCLUSIVE BUYERS OFFICE was not generic for real estate agencies, and accordingly permitted this mark to be

registered on the Supplemental Register. See Serial No. 75/828,319. Because in her three Office Actions the Examining Attorney adequately set forth her reasoning as to why the initialism EBO is merely descriptive of real estate agency services, and because applicant briefed this issue, we have elected not to request an additional brief from the Examining Attorney.

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986).

In an effort to show that EBO is merely descriptive of real estate agencies, the Examining Attorney has made of record various Internet stories which contain the phrase "exclusive buyers office" and the initialism EBO. As pointed out at page 3 of our decision of November 22, 2002, in some of these Internet stories the term "exclusive buyers office" is used in a generic manner, but that in other stories this term is used in a proprietary manner (as a mark) in that it is depicted with initial capital letters. However, even if we assume that the phrase "exclusive buyers office" is merely descriptive of real

estate agencies that work only with home buyers, it does not automatically follow that the initialism EBO is likewise merely descriptive. In this regard, we note that in every Internet story submitted by the Examining Attorney the initialism EBO was accompanied by an explanation that it stood for "exclusive buyers office."

The test for determining whether an initialism is merely descriptive was established by the predecessor to our primary reviewing Court in Modern Optics, Inc. v. Univis Lens Co., 234 F.2d 504, 110 USPQ 293 (CCPA 1956).

This test is as follows:

It does not follow, however, that all initials of combinations of descriptive words are ipso facto unregistrable. While each case must be decided on the basis of the particular facts involved, it would seem that, as a general rule, initials cannot be considered descriptive unless they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith. 110 USPQ at 295 (emphasis added).

The Modern Optics rule for determining whether initials are merely descriptive has been favorably received by other Courts of Appeal. See Anheuser-Busch, Inc. v. Stroh Brewery Co., 750 F.2d 631, 224 USPQ 657, 659 (8 Cir. 1984) ("We find the reasoning of Modern Optics persuasive."); G. Heileman Brewing Co. v. Anheuser-Busch Inc., 873 F.2d 985, 10 USPQ2d 1801, 1808 (7 Cir. 1989). Of course, this Board would be bound to follow the rule of

Modern Optics regardless of its favorable reception by other Circuits.

If the initialism EBO was truly "generally understood as representing descriptive words [exclusive buyers office] so as to be accepted as substantially synonymous therewith," then one cannot explain why the writers of these Internet stories felt compelled to always explain that the initialism EBO meant "exclusive buyers office." Moreover, we take note of the fact that the Examining Attorney has not made of record a single story from the vast Nexis database where the initialism EBO appears. For that matter, the Examining Attorney has not made of record a single Nexis story where the phrase "exclusive buyers office" appears.

Moreover, this Board has taken judicial notice of the Acronyms, Initialisms & Abbreviations Dictionary (29<sup>th</sup> ed. 2001). This is a massive four volume work with over 4,700 pages. This work contains six listings for the initialism EBO. However, not one of the six listings defines the initialism EBO to mean "exclusive buyers office." Moreover, not one of the six listings in any way relates to real estate agencies.

In sum, given the fact that this very comprehensive dictionary does not define the initialism EBO to mean

"exclusive buyers office"; the fact that the Examining Attorney was unable to locate from the vast Nexis database even one story which contained the initials EBO; and the fact that in all of the Internet stories where the initials EBO appeared it was accompanied by an explanation that it meant "exclusive buyers office," we find that the Examining Attorney has simply failed to establish that the initials EBO has "become so generally understood as representing descriptive words [exclusive buyers office] as to be accepted as substantially synonymous therewith." Modern Optics, 110 USPQ at 295.

Decision: The refusal to register is reversed.