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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Signs Plus, New Ideas-New Technology, Inc.

Serial No. 76225929

Mark D. Schneider and Ernest I. Gifford of Gifford Krass
Groh Sprinkle Anderson & Citkowski for Signs Plus, New
Ideas-New Technology, Inc.

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

Before Simms, Quinn and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Signs Plus, New Ideas-New Technology, Inc. seeks
registration on the Principal Register of the mark shown
below:



as a trademark allegedly used in connection with "non-luminous signs, non-mechanical metal signs, metal numbers and letters with means for temporarily affixing to the signs," in International Class 6.¹

The Trademark Examining Attorney has refused registration of applicant's marks based upon the ground that this matter does not function as a trademark for applicant's identified goods under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127, and that applicant has failed to submit acceptable specimens demonstrating good trademark usage.²

Applicant argues there is no support in the record or in the cited case law for this refusal. Moreover, while applicant's responses throughout the prosecution reference neither the concept of acquired distinctiveness nor the application of Section 2(f) of the Act, applicant argues that it has demonstrated on this record that members of the

¹ Application Serial No. 76225929 was filed on March 16, 2001, based upon applicant's allegation of first use anywhere at least as early as July 1, 1993 and use in commerce at least as early as November 10, 1993. The mark is lined for the colors red and green.

² In issuing his final refusal, the Trademark Examining Attorney continued to charge that the specimens of record fail to show use of the mark in connection with applicant's signs. However, rather than viewing this as a separate requirement or basis for refusal to register, we deem this to be part and parcel of the refusal under Sections 1, 2 and 45 of the Act, as discussed throughout this decision.

relevant public view the claimed mark as a source indicator for its signs.

Applicant and the Trademark Examining Attorney have fully briefed this case, but applicant did not request an oral hearing before the Board.

We affirm the refusal of registration.

Based upon this entire record, it is clear that applicant is involved in manufacturing and selling outdoor signs directed to not-for-profit organizations - especially targeting schools and churches. These signs have allegedly been available in the marketplace since 1993.

The refusal to register herein is grounded in the basic statutory definition of a "trademark." The function of a trademark, after all, includes a device used by a person "to identify and distinguish his or her goods ... from those manufactured or sold by others and to indicate the source of the goods" A mark is deemed to be in use on goods "when ... it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto... ." As argued by the Trademark Examining Attorney, the manner of use on the specimens must be such that potential purchasers would readily perceive the subject matter as identifying and distinguishing the applicant's goods and indicating their

source, even if that source is unknown. See Section 45 of the Trademark Act, 15 U.S.C. §1127.

In support of his refusal to register this design under Sections 1, 2 and 45 of the Act, the Trademark Examining Attorney argues as follows:

If a proposed mark is part of a larger thought or is not distinguishable from other matter in the specimens, then that word or phrase fails to function as the source identifier of the goods, and thus fails as a mark. [citations omitted] In this case, the apple and the A+ design represent decorative features which tie in with the educational services suggested by the overall theme of the sign.

It is common practice for an entity to employ a design on its signage suggesting the services provided by the entity ...

In this case, the public would simply view the proposed mark as suggesting the educational services referenced in the sign. There is no apparent reason for purchasers to view the proposed mark as a source of the sign itself, rather than as a decorative feature of the sign ...

The commercial impression that the applicant wishes to impart for its mark must be readily apparent from the use of that mark. The A+ and apple design blends in so well with the educational matter shown on the sign that it would be difficult to discern that the design was supposed to constitute a trademark for [signs]...

(Trademark Examining Attorney's appeal brief, pp. 3 - 4)

By contrast, applicant states its case as follows:

The undisputed testimony of record indicates that the relevant public views the mark as an indicator of source and not as simply a "tie in" with an educational service. According to the Examining

Attorney, the testimony of record "does not address the issue of whether the design is a trademark and a source indicator **for the goods themselves**". See Office Action of March 14, 2003 at 2 (*emphasis in original*). How the Examining Attorney reached that conclusion is unknown. Many of the letters from purchasers of the goods clearly make mention of: 1) the mark; 2) the goods; and 3) Applicant. For example: "When I see a sign with the A+ insignia, I know it is from Signs Plus" (Raceland Lower); "I am able to recognize signs by Signs Plus by the A+ logo that appears on their signs." (Ryder Elementary). Based upon this undisputed testimony that the mark does function as an indicator of source, Applicant respectfully submits that the Examining Attorney's decision be reversed.

The Examiner's reliance on *In re Morganroth* is also not well taken. In *Morganroth*, the proposed service mark was a slogan that occupied a subordinate position in the advertising specimen. In fact, mark was so obfuscated by the whole advertising scene that it was "hardly likely to make any impact, much less a significant impression on the individual encountering the advertisement." *Morganroth*, 208 USPQ at 288. In this case, the facts are completely different. It is the testimony of numerous purchasers of the goods that the mark can be seen and, in fact, "stands out". One reason for this is that the mark is positioned well apart from other elements on the sign so that mark is itself readily distinguishable. Clearly, the mark is not part of some imaginary "larger thought". Accordingly, Applicant requests that the decision of Examining Attorney be reversed.

(Applicant's appeal brief, p. 5)

The sole manner of use demonstrated on this record is as a graphic design or pictorial on outdoor school signs. Applicant's specimens of record, along with screen prints of several webpages from applicant's website that were

placed into the record by the Trademark Examining Attorney, play a critical role in our determination of registrability herein, and so we begin our analysis with a complete review of the ways in which applicant has used this alleged trademark.

The specimen of record is a photograph showing an outdoor, aluminum school sign from applicant's "Books Series." According to applicant's website, the school that purchases a sign from this series is encouraged to utilize the school's own mascot or logo in a circle place holder, or to utilize applicant's so-called "traditional A+ apple logo," as shown below on applicant's specimen of record:



Moreover, we see from applicant's website the various choices - i.e., other than the A+ apple design - that schools have made for this embellishment, including Rockvale (Tennessee) Elementary School's rocket logo and

the Hinesville (South Carolina) Middle School's tiger mascot:



In the face of this showing by the Trademark Examining Attorney, applicant argues strenuously that its targeted customers would perceive this symbol as a source indicator for the identified goods, namely signs.

We do not question but that applicant expected that this design feature would distinguish its signs from similar signs manufactured and sold by others. On the other hand, having chosen a suggestive, informative pictorial, and then having employed it in a context totally consistent with its ordinary usage, applicant accepted the risk that this prosaic design may not function as a source indicator for its goods. See In re The Standard Oil Company, 275 F.2d 945, 125 USPQ 227 (CCPA 1960) [GUARANTEED STARTING for winterizing automobile engines].

The Trademark Examining Attorney's refusal to register herein is clearly premised on the statutory language "to identify and distinguish his or her goods ... from those manufactured or sold by others ...". If the involved design does not identify and distinguish applicant's goods, then as a matter of statutory construction, it is simply not functioning herein as a trademark.

Accordingly, the overall thrust of the refusal to register is that the claimed matter, in the context of these signs, is not inherently distinctive as a source indicator for signs. This is a question of fact determined by looking into whether the design is a common basic design, whether it is unusual in a particular field, and whether it is a mere refinement of a commonly-adopted and well-known form of ornamentation for a particular class of goods. See Wiley v. American Greetings Corporation et al., 226 USPQ 101 (1st Cir. 1985) [red heart affixed to left breast of teddy bear, like ordinary geometric shape, carries no distinctive message of origin to consumers and hence does not serve to distinguish it from hearts on other stuffed animals, such characteristics being commonly adopted and well known form of ornamentation], citing to Seabrook Foods, Inc. v. Bar-Well Foods, Ltd., 568 F.2d 1342, 1344, 196 USPQ 289, 290-291 (CCPA 1977).

Where, as here, an alleged mark serves as part of the aesthetic ornamentation of goods, the size, location, dominance, and significance of the alleged mark as applied to the goods, are all factors that figure prominently in our determination of whether the involved matter also serves as an indication of origin. In re Astro-Gods Inc., 223 USPQ 621 (TTAB 1984) ["ASTRO GODS design" would not be perceived as anything other than part of the thematic whole of the ornamentation of applicant's T-shirts]. In order to be protected as a valid mark, a designation must create "a separate and distinct commercial impression, which ... performs the trademark function of identifying the source of the goods to the customers." In re Chemical Dynamics, Inc., 839 F.2d 1569, 5 USPQ2d 1828 (Fed. Cir. 1988). As argued by the Trademark Examining Attorney, a design does not function as a trademark unless it is used in a manner that projects to purchasers a single source of the goods. In re Morganroth, 208 USPQ 284 (TTAB 1980).³

³ While applicant is correct that the facts in the instant case (e.g., large, prominent design claimed as a trademark) are quite different from the facts of Morganroth (e.g., a subordinate slogan claimed as a service mark), the Trademark Examining Attorney is correct in applying the teaching of Morganroth herein, namely that the matter does not function as a mark unless it is used in a manner that projects to purchasers a single source of the goods.

Inasmuch as our determination herein is a question of fact, it is critical to our analysis that the involved goods in this application are outdoor signs. We are constrained to establish the ordinary significance of this design and evaluate it in the context of usage by applicant and other sign makers. Given the simplicity, legibility and recognition of pictures, it is undeniable that people relate to simple images easier and faster than to words. Hence, in the process of designing a sign to be read from automobiles speeding by on a highway, for example, there is no better way to attract the viewer's attention than to add graphic designs or pictorials. All the signs shown graphically on applicant's website have at least one graphic image.

It is not unusual for outdoor signs to include decorative imagery suggesting what the establishment is all about. The more directly the imagery relates to the nature of the business⁴, however, the less likely it is that the imagery can function as a source indicator for the sign itself. In order for such imagery to function as a trademark for the sign itself, it must be readily apparent

⁴ For example, the design of a steer for a steak house, the design of a hammer or wrench for a hardware store, the design of a fish for a seafood restaurant, etc.

to a viewer that the design identifies the manufacturer of the sign. While we are unaware of any cases dealing with the precise issue of such informative graphics on outdoor signs, this is analogous to reported decisions where other ornamental matter does not inherently serve a source-indicating function for the involved goods. See In re David Crystal, Inc., 296 F.2d 771, 132 USPQ 1 (CCPA 1961) [red and blue colored bands on men's white, ribbed socks cannot support exclusive right to use such bands]; In re Petersen Manufacturing Co., 2 USPQ2d 2032 (TTAB 1987) [designs on the rear panel of container for hand tool are not distinctive]; and In re The Original Red Plate Co., 223 USPQ 836 (TTAB 1984) [While the phrase "You Are Special Today" was used ornamentally by applicant on 500,000 ceramic plates, applicant failed to meet its burden of showing that the phrase would be regarded by the purchasing public as an indication of source].

In this regard, we note that on the "Books Series" signs, the A+ apple design, like the images of the spines of a "Math," "Writing" and "Reading" book, suggests a school or other educational activities.

The current Trademark Examining Attorney cites to cases decided by this Board and our primary reviewing Court where slogans - often due to the nature of the wording or

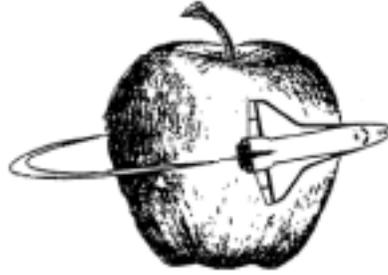
the specific manner in which the words are used - were found not to be service marks. As was the case in each of these decisions, it is most appropriate herein, given the circumstances of the instant case, to raise the question of whether there is any source-indicating association or nexus between the involved mark and applicant's signs.

In the slogan cases cited by the Trademark Examining Attorney, the real issue is whether or not the slogan or other designation would be perceived as a mark when encountered by consumers on a regular basis. On occasion, the outcome turns on whether the matter has the requisite degree of cleverness or ingenuity that might cause prospective consumers to see the involved slogan or design as having source-indicating significance.

In this context, we conclude that apples and the A+ designation are not uncommon as symbols for educational services. The Trademark Examining Attorney included several third-party registrations to show that the apple design (e.g., "an apple for the teacher") is associated with educational services:



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As to the immediate connotation for the designation "A+" on a school sign, we take judicial notice of the fact that "A+" tends to reflect the highest grade a student can earn in school.⁷ With a national focus on academic excellence, this designation would appear to be an important component of the way primary and secondary schools would like to portray their educational services. See In re J. Kinderman & Sons Inc., 46 USPQ2d 1253 (TTAB 1998) [configuration of container for Christmas decorations that resembles wrapped Christmas gift are not inherently distinctive and hence, prospective purchasers would not regard these designs as trademarks for applicant's goods,

⁵ Reg. No. 1302543 issued on October 30, 1984, Section 8 affidavit accepted.

⁶ Reg. No. 1808041 issued on November 30, 1993, Section 8 affidavit accepted, Section 15 affidavit acknowledged; renewed.

⁷ **a:** ... 5a. a grade assigned by a teacher or examiner rating a student's work as excellent, best, first or superior in quality <receiving an A in a science course> ... Webster's Third New International Dictionary of the English Language Unabridged, 1993.

plus: ... 3a. falling high in the range (as of quality or size) specified - usu. used postpositively <a grade of C plus in French> ... Webster's Third New International Dictionary of the English Language Unabridged, 1993.

despite the fact there is no evidence in the record that anyone is using identical designs]; In re Tilcon Warren, Inc., 221 USPQ 86 (TTAB 1984) [WATCH THAT CHILD on bumper stickers on large construction vehicles does not function as a trademark for construction materials hauled in the vehicles]; and In re Schwauss, 217 USPQ 361 (TTAB 1983) [the word "Fragile" shown in special form and used on labels and bumper stickers is a message or information statement and does not function as a trademark].

While the Trademark Examining Attorney has not produced examples of where this exact combination is employed by others as a visual design for school signs, neither does it strike us as anything more than merely a possible refinement of ornamental symbols that would be employed on school signs. See Goodyear Tire and Rubber Co. v. Interco Tire Corp., 49 USPQ2d 1705, 1719-21 (TTAB 1998) [applicant did not show that the difference in appearance of its tire tread design is source-indicating, tire tread design being a mere refinement of common basic designs; purchasers of applicant's goods would regard pictures of the goods in ads as nothing more than illustrations of the product being offered for sale].

We agree that, as argued by the Trademark Examining Attorney, the A+ apple design is not used on the specimens

in a manner calculated to project to prospective purchasers of school signs an indication of the source or origin of such goods. Instead, due to its manner of use on the signs, the A+ apple design merely informs potential purchasers the establishment is a school, given the common practice, to which the purchasing public is accustomed, of seeing pictorial images on outdoor signs. Consequently, as used on the specimens, the A+ apple design does not function as a trademark for applicant's goods.

The Trademark Examining Attorney has also correctly raised the specter of competitive harm to others growing out of the Office's blithely issuing such a registration:

...[A]pplicant's registration of the A+ and apple design would harm others in the educational field who might wish to employ this common apple and A+ design to suggest their educational services on their signs...

(Trademark Examining Attorney's appeal brief, pp. 4 - 5).

To the extent that the symbol of an apple suggests schools and the A+ designation suggests academic excellence, issuing such a registration could well create a chilling effect on the use of such informative images on outdoor signs for schools nationwide.

That apples are logically connected to schools is supported by applicant's own webpages. Specifically, applicant uses the generic picture of an apple in a circle

to represent its line of school signs - much as it uses the cross in a circle to represent its line of church signs:



Moreover, the position taken by the Trademark Examining Attorney in analyzing the involved A+ apple design is directly supported by the analogous way in which applicant markets its church signs. Applicant argues in its reply brief that the Trademark Examining Attorney's raising of other school images (e.g., schools' mascots or other logos) and various religious symbols is irrelevant herein. However, we agree with the Trademark Examining Attorney that applicant's use of the graphic of a cross for church signs helps to clarify the context in which both of these symbols or pictorials are used. Given the exact parallel usage by applicant on its website, this is most relevant to the impressions of consumers exposed to these signs. The embellishing designs for churches actually portrayed by applicant include a cross against the sun logo of the Immanuel Baptist Church, the well-known flames of the Holy Spirit with the cross logo of the United Methodist Church, and the dove of the New Life Church:



We find that it would seem most preposterous to argue that a cross or a Star of David, when used on a sign for a house of worship, would function as a source indicator for the sign-maker.

While applicant argues strenuously that its targeted customers would perceive the involved symbol as a source indicator for its signs, we disagree. Nowhere does the appearance of this image strike us as a trademark for signs. The Trademark Examining Attorney has made the argument most forcefully that this record reflects a total absence of either a direct or an indirect association or nexus between the alleged mark and applicant's signs - any more than could a school's mascot or a religious symbol be a trademark for the signs themselves.

In short, we conclude, on this record, that applicant fully intended for this A+ apple image to function as its

trademark for school signs. However, we also agree with the Trademark Examining Attorney that use of this particular symbol on applicant's signs, in and of itself, is insufficient to demonstrate that this design would be perceived as a trademark to identify applicant's signs and distinguish them from the outdoor signs of others.

Instead, we believe purchasers would view this familiar and readily understood symbol, in all the uses illustrated in the record, as no more than a graphic embellishment on outdoor school signs, and possibly as an indication of the school's academic excellence. Given the absence in this record of any nexus between the A+ apple design and applicant's signs, we affirm the refusal of the Trademark Examining Attorney to registration of this mark for applicant's signs.

Apart from the specimens of record, we see nothing in applicant's webpages that would support a finding that consumers would view this design as applicant's trademark. Rather, the photographs of the design on the school signs would likely be perceived as nothing more than a photograph of applicant's goods.⁸

⁸ Obviously, a manufacturer or merchant may have multiple marks for the same goods or services. However, it is instructive to note how applicant uses its primary source indicator throughout its website. A quick review shows that applicant uses another prominent designation in the manner of a service mark and

As noted earlier in this opinion, applicant does not admit non-distinctiveness for this matter, and never purports to make an explicit showing of acquired distinctiveness. Nonetheless, whether one looks to the explicit terms of Section 2(f) of the Lanham Act, or to a similar showing of acquired distinctiveness in a parallel fashion,⁹ in the event that it was applicant's intention to submit the evidence that it did in order to show acquired distinctiveness, we turn to a discussion of applicant's showing of consumer recognition of its A+ apple design as an indicator of a single source for these signs. See In re Owens-Corning Fiberglas Corporation, 774 F.2d 1116, 227 USPQ 417 (Fed. Cir. 1985).

Analogizing to the possible registrability of merely descriptive terms which may nevertheless acquire

trademark repeatedly and prominently, i.e., its SIGNS PLUS name, alone and in conjunction with its corporate logo:



On these webpages, this designation will immediately be perceived as the sole indicator of origin for applicant's goods and services. Moreover, applying all the criteria discussed above (e.g., the size, location, dominance and significance of the matter as applied to the goods), it contrasts nicely with the design that is the subject of this application. This latter design, especially if placed in a discrete manner somewhere on the school signs, suffers from none of the infirmities discussed above, but rather, inherently projects to purchasers a single source of the goods.

⁹ See, e.g., discussion of secondary source for ornamental matter used on collateral goods, In re Paramount Pictures Corporation, 213 USPQ 1111, 1114 (TTAB 1982) viz., footnote 8 and surrounding text.

distinctiveness, we note that the lesser the degree of inherent distinctiveness, the heavier the burden to prove it has acquired distinctiveness. Cf. Yamaha International Corp. v. Hoshino Gakki Co. Ltd., 6 USPQ2d 1008. See also In re Bongrain International (American) Corp., 894 F.2d 1316, 13 USPQ2d 1727, 1728 (Fed. Cir. 1990) at n. 4. In this regard, the practices in the trade may be relevant in assessing applicant's burden of proving that its mark has become distinctive. Typically, more evidence is required if the proposed mark is a type of ornamental matter frequently used in that industry so that consumers may be less apt to perceive source-indicating significance from these uses. In view of the fairly ordinary nature of this graphic device used by applicant, we believe that a commensurately greater amount of evidence would be required to establish that this particular design has acquired distinctiveness for applicant's signs. See In re Anton/Bauer Inc., 7 USPQ2d 1380, 1383 (TTAB 1988) [The Board found no evidence of promotion of a parallelogram used as a background design in a way that would set it apart from the word mark for which it served as a background].

In its request for reconsideration dated January 30, 2003, applicant submitted a declaration of applicant's

president, Robert W. Klinger, attesting to the distinctiveness of the A+ apple design.

However, the major deficiency in applicant's responses to the refusal to register, including Mr. Klinger's declaration, lies in the absence of any evidence of applicant's promotion of the design as a trademark for its signs. Significantly, the declaration from Mr. Klinger contains no evidence of any advertising activity at all, much less advertising activity that shows how the applicant promotes or advertises the A+ apple design apart from the other ornamental or decorative features on the sign. The record is otherwise devoid of any supporting examples of how applicant advertises and promotes its A+ apple design as a trademark for its signs.¹⁰

Furthermore, there is no evidence in Mr. Klinger's declaration as to the extent of applicant's sales of goods under the alleged mark, either in terms of dollars or units.

Mr. Klinger's declaration states that in response to the Office's refusal to register this mark, applicant

¹⁰ As noted earlier, the only evidence in the record demonstrating the manner of applicant's use of the designation is limited to the photograph submitted with the application and the pictures on applicant's webpages. However, we conclude that these photographs are likely to be perceived by purchasers merely as informational depictions of the ornamental and/or functional

"solicited comments from past customers concerning the distinctive nature of the mark." Applicant attached copies of letters written to applicant from nine different elementary schools that had in the past purchased one of applicant's school signs. Applicant received these nine letters during a six-week period, between September 30 and November 12, 2002. These terse letters contained the following excerpted statements:

... [W]e recognize the "A+" signs as coming from Signs Plus... . (Lake County, MT)

... [W]e are very pleased with the trademark A+ on the sign and the unique design called Books II. It is very impressive and when we see it¹¹ on other signs we recognize the fact that Signs Plus has sold another sign in our community. (Colorado Springs, CO)

... Each time the students and staff at Kieberger Elementary see the red apple with the A+ we will think of Signs Plus and you [Rita]. (Aransas Pass, TX)

... When I see a sign with the A+ insignia, I know it is from Sign (sic) Plus! (Raceland, LO)

... The A+ design is unique to Signs Plus; we certainly recognize signs in our area with the A+ design as a "Signs Plus" product. (Post Falls, ID)

features of applicant's signs, of which the A+ apple design is one ornamental component.

¹¹ We note that this customer expressly combined the "trademark A+ on the sign" with "the unique design called Books II" and proceeds to discuss both as comprising a single, source-indicating feature.

The A+ symbol on the Sign (sic) Plus Signs stands out as a symbol to identify the Sign (sic) Plus Signs Company. It is truly (sic) a trademark for the sign. (Ezel, KY)

... The A+ logo on the sign is unique to Signs Plus signs. I am able to recognize signs by Signs Plus by the A+ logo that appears on their signs. (Miami, FL)

It is obvious that when we see the A+ logo on a sign at other schools or advertisers, we know that it is a Signs plus sign. (Vidor, TX)

We find that these statements - totally conclusory in nature - do not suffice to prove that applicant's design has acquired distinctiveness as a source-indicating trademark. The existence of a relatively small number of people who associate the alleged mark with applicant is simply insufficient for us to find that the term functions as a trademark for applicant's goods. See In re Dimitri's Inc., 9 USPQ2d 1666 (TTAB 1988). The probative value of the statements is limited by the fact that they are unsworn. See Aromatique, Inc. v. Gold Seal, Inc., 28 F.3d 863, 31 USPQ2d 1481 (8th Cir. 1994); and In re Flex-O-Glass, Inc., 194 USPQ 203 (TTAB 1977). Moreover, applicant has not shared with us the circumstances under which the letters were solicited (i.e., the exact wording of the solicitation), thereby limiting the statements' probative value. Judging by the uniformity of the letters, we

suspect that purchasers' recognition may well have been guided as much by this very request as any earlier association on the part of the purchasers between the involved image and applicant. Clearly, there is nothing else in the record to show how these purchasers would have come to perceive this graphic design as a mark.

Finally, other than applicant's solicitation of letters related to the prosecution of this application, we are not persuaded, based on this record, that applicant has done anything that has resulted in consumer recognition of this design as a source-indicating trademark. See In re Kwik Lok Corp., 217 USPQ 1245 (TTAB 1983).

Hence, in view of the absence of evidence as to the extent of applicant's sales and advertising, the absence of evidence showing that applicant has promoted the design, *per se*, as a trademark, and the absence of evidence showing that the relevant consumers generally would look to such graphic images (i.e., images so readily associated with the enterprises purchasing the sign) as source-indicators for signs, the underlying factual basis for the conclusory opinions set forth in the nine purchasers' statements is not apparent, and the probative value of these statements is lessened accordingly.

Hence, we find that the evidence of record concerning applicant's use of the A+ apple design is insufficient to establish that this pictorial has acquired distinctiveness, and we reject applicant's claim of entitlement to registration on the Principal Register. Therefore, we affirm the Trademark Examining Attorney's refusal to register on the ground of non-distinctiveness. See Trademark Act Sections 1, 2, and 45.

Decision: The refusal to register is affirmed.