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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Great Books Foundation

Application Serial No. 78775079

Oral Hearing July 9, 2008

George E. Bullwinkel, Bullwinkel Partners Ltd. for The Great Books Foundation.

Ellen J.G. Perkins, Examining Attorney, Law Office 110,
Chris A.F. Pederson, Managing Attorney.

Before Quinn, Bucher, and Mermelstein, Administrative Trademark Judges.

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark SHARED INQUIRY for "educational services, namely providing classes, seminars and courses of instruction in the field of reading and literature using a proprietary method of learning," in International Class 41.

Applicant and the examining attorney submitted briefs, and an oral hearing was held before the Board.

We affirm.

I. Issues on Appeal

As an initial matter, we find it necessary to address

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just what issues are on appeal. Both the examining attorney and the applicant have made confusing statements on this threshold question.

First, the examining attorney contends that applicant has conceded the descriptiveness of its proposed mark by seeking registration pursuant to Trademark Act § 2(f), 15 U.S.C. § 1052(f). The subject application was electronically filed on December 16, 2005, and includes the following statements:

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.

...

Applicant submits herewith ... the declarations of numerous prominent educators and others having personal knowledge of the facts set forth in their respective declarations. Applicant additionally submits ... a detailed and current multiple-strategy Internet search conclusively demonstrating that in the current usage, the term SHARED INQUIRY is perceived as being neither generic nor merely descriptive. Instead, the search report shows that the term is either indicative, suggestive, or both, of a continuing long-standing association with Applicant, The Great Books Foundation.

In her first Office action, the examining attorney refused registration of the proposed mark as merely

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descriptive, and noted that "[a]pplicant's claim of acquired distinctiveness is insufficient to overcome the refusal."

Nonetheless, no mention of acquired distinctiveness was made in the March 30, 2007, final Office action. To confuse matters further, on August 8, 2007, in applicant's request for reconsideration of the final refusal, applicant "request[ed] amendment of this application to § 2(f) based on a claim of acquired distinctiveness." (It is not clear why an amendment was believed necessary, since a claim of acquired distinctiveness was clearly made in the original application.) Again, although the "amendment" was not explicitly made in the alternative, applicant simultaneously requested reconsideration of the finding that the mark is merely descriptive. In response, the examining attorney denied applicant's request for reconsideration, this time addressing applicant's § 2(f) argument and evidence.

We find that the record supports applicant's contention that its claim of acquired distinctiveness was made in the alternative. Although a claim to registrability under Trademark Act § 2(f) normally presumes descriptiveness, an applicant is permitted to argue both issues without conceding descriptiveness, so long as its intention to do so is clear. While the better practice is to explicitly state this strategy, this record makes applicant's intent clear. We therefore disagree with the examining attorney's

contention that applicant has conceded that its mark is merely descriptive by seeking registration under Trademark Act § 2(f).

Second, we note applicant's insistence throughout its briefs and at oral argument that its mark is not generic.¹ To be clear, although the examining attorney noted at several points during examination that the mark is "possibly generic," (or similar words) no refusal to register has been made on that basis. The examining attorney clarified at oral argument that it was not her intention to refuse registration on the ground of genericness, and we thus give the matter no further consideration.

Accordingly, our task on appeal is to decide whether applicant's proposed mark is merely descriptive of its recited services, Trademark Act § 2(e)(1), and, if so, whether it has nonetheless acquired distinctiveness, Trademark Act § 2(f).

II. Applicable Law

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir.

¹ Even when arguing the issue of mere descriptiveness, many of the authorities cited by applicant are cases discussing genericness. Many of these cases are inapposite, since a mark may be descriptive without being generic.

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1987). Whether a particular term is merely descriptive is determined in relation to the products for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass'n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); see also *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980). Even where individual terms are descriptive, combining them may evoke a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, without the combination of terms creating a unique or incongruous

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meaning, then the resulting combination is also merely descriptive. *In re Tower Tech.*, 64 USPQ2d at 1317-1318.

Notwithstanding a refusal to register based on the descriptiveness of a proposed mark, an applicant may nonetheless be entitled to registration upon a showing that the mark

has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made.

Trademark Act § 2(f).

The ultimate burden of demonstrating entitlement to registration under Trademark Act § 2(f) rests with applicant, who must prove by a preponderance of the evidence that, due to the length and manner of its use of the mark, the mark has become distinctive of applicant's goods or services. "[L]ogically[,] that standard becomes more difficult to meet as the mark's descriptiveness increases." *Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1008 (Fed. Cir. 1988).

III. Discussion

Applicant seeks registration of SHARED INQUIRY for "educational services, namely providing classes, seminars

and courses of instruction in the field of reading and literature using a proprietary method of learning.”²

A. Descriptiveness

We begin with an examination of the words of the proposed mark itself. For the sake of completeness, we note³ that to “share” means “to have a share or part; take part (often fol. by in).” RANDOM HOUSE UNABRIDGED DICTIONARY, (online 2006), Dictionary.com Unabridged (v 1.1) (September 16, 2008). Likewise an “inquiry” is “a seeking or request for truth, information, or knowledge.” *Id.* As will be seen, these words are used in their ordinary sense in the proposed mark.

² Applicant does not contend that the wording in its recitation of services - “using a proprietary method of learning” - is a factor which supports registration, and we do not see how it would be so. Applicant’s “proprietary method” is not described in the recitation of services, and thus does not describe any services which are or are not covered by the application. We thus construe this wording as a rhetorical flourish, rather than a meaningful limitation, although we would reach the same result even if the services were considered to be limited.

Nonetheless, we note that there is nothing in this record (such as a patent) which would indicate that applicant’s teaching method actually is proprietary, *i.e.*, that applicant has a legal right to prevent others from providing classes using the educational model discussed herein. We therefore assume (without deciding) that the evidence of third-party activities in this case indicates lawful activities which do not themselves infringe on applicant’s rights. Our decision is limited only to whether applicant may obtain registration of an asserted mark to identify such activities in commerce.

³ The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

Both applicant and the examining attorney have submitted a number of materials reflecting on the meaning and use of the term SHARED INQUIRY.⁴ Applicant's materials are clearly either authored by applicant or about applicant's programs, and include references dated as early as 1972. The examining attorney's submissions are more recent and involve uses of the term by other parties. Nonetheless, the references are consistent in their use of the term and in the type of educational model to which it refers.

A sample of these sources is instructive. The following are representative excerpts from applicant's submissions:

Junior Great Books Discussions are usually led by two people. Their job is to increase your understanding of what you have read by encouraging you to think for yourself about what it means. They conduct the discussion by asking questions that help to interpret the author's meaning. In addition to being interpretive, their questions have another important characteristic: They are questions to which the discussion leaders themselves are not sure of the answer. Often, this is because they think their questions can be answered correctly in more than one way, or they

⁴ Both have also made arguments based on the number of "hits" resulting from various searches using the Google search engine, and the examining attorney submitted with her first Office action the "results" page from such a search. We have given the examining attorney's search summary (and her arguments based upon it) very little weight because search summaries "provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link." *In Re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007). On the other hand, applicant submitted no search summaries in support of its "Google" arguments, and we accordingly give them no weight at all.

may not have found any answer that satisfies them even after two careful readings of the selection. In either case, the discussion leaders share real questions of meaning with you and seek your help in answering them. For this reason, we call our method of discussion shared inquiry.

In shared inquiry, you are free to answer the discussion leaders' interpretive questions in any way that you like. You are equally free not to answer them at all if you have nothing to say at the moment. If you do answer the questions, the leaders may ask you to point out what is in the story that makes you think your answer is correct. Other participants are free to agree or disagree with you, but they too may be asked to support their answers with evidence from the story. As a result of what your fellow participants say in the discussion, you may change your mind about how you interpret something in the story. Shared inquiry offers the opportunity to learn from the author and to learn from one another.

The Great Books Foundation, *The Individual and Society*, 216-17 (1975).

Shared inquiry is a "Socratic" method in that the instructor does not lecture or offer opinions, but only asks questions. The instructor guides students in carrying their thinking forward purposefully, not by steering them towards a predetermined conclusion or even consensus, but rather by helping each student to develop an original point of view. Students are responsible for generating and defending their answers in light of the text and in dialog with each other.

The Great Books Foundation, *Great Books in the College Classroom*, 1 (1994).

Shared Inquiry discussions follow close reading of the selections, vocabulary study, and directed note taking. Teachers lead heterogeneously grouped classes in extended conversations around open-ended questions that draw students into the literature. Because the questions that teachers raise have no single right answer, students must probe the text for evidence that supports their

answers and listen to others who have different points of view to develop a deeper interpretation of the author's meaning and purpose. In the process, students learn to think critically and develop ideas with others.

Anne Wheelock, *Junior Great Books: Reading for Meaning in Urban Schools*, 57 *Educational Leadership* 47, 48 (Oct. 1999).

It is clear from the foregoing excerpts and others in the record that SHARED INQUIRY is a pedagogical practice involving intensive interpretation of a text by non-hierarchical discussion groups. While the discussion may be led, the leader's role is not to lecture, but to focus the discussion on questions that have no clear-cut answers. The emphasis is on the process by which the group analyzes and discusses the questions, offering opinions supported by the text itself. The viewpoint of each participant is discussed and valued - so long as it is based on a defensible analysis of the text. This approach thus consists of an "inquiry," which is "shared" equally by members of the group, including the leader.

We find that the evidence submitted by applicant is itself sufficient to establish the descriptiveness of SHARED INQUIRY with respect to the identified educational services. Applicant conducts classes, seminars, and courses "in the field of reading and literature using a proprietary method of learning." Applicant's evidence describes its method in considerable detail. As is readily apparent, those

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utilizing the identified services "take part" in a "seeking or request for truth, information, or knowledge," *i.e.*, in a "shared" "inquiry."

Applicant correctly argues that the combination of merely descriptive words may nonetheless result in an arbitrary mark. See App. Br. at 17. But as applicant notes "[i]n those cases and others the descriptiveness of the components was either lost in the combination or the composite was so incongruous or unusual that it possessed only suggestive significance." *Id.* quoting *In re Nat'l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983). Applicant does not indicate, however, why the words "shared" and "inquiry" are unusual or incongruous in combination or with respect to the identified services, and we do not find them to be so. As noted, the words themselves accurately describe applicant's services.

Moreover, applicant's materials typically do not use the term "shared inquiry" as a trademark - *i.e.*, an indicator of the source of applicant's services - but rather as a descriptive term referring to a feature of applicant's educational services. Further - while not in itself dispositive - we note that the asserted mark is rarely capitalized in applicant's literature, and does not ever appear to have been used with any clear indication that the term is asserted to be a trademark. For example, applicant

does not refer to its "Shared Inquiry services" or "Shared Inquiry classes." While we do not require technically "correct" trademark usage in all instances, applicant's consistent non-trademark use of the proposed mark over a long period of time is strong evidence that those exposed to applicant's own usage of the term would perceive it as describing a particular method of teaching, and not as an identifier of the source of such services.

The evidence submitted by the examining attorney focuses on use of the term SHARED INQUIRY by those other than applicant. Nonetheless, the evidence is highly consistent in showing descriptive use of the term. Among the examining attorney's submissions were the following:

Shared inquiry in a collaborative setting allows for a dialogue focused on learning as a continuing process. The most proficient teachers know that their work is never quite done... in fact more questions arise than do answers. Shared inquiry is a means to frame both the questions and the answers in ways that make sense for both students and teachers. Shared inquiry is the process that personalizes the curriculum development process and adds dimension to content. Shared inquiry allows the profession to reconceptualize the core of his or her expertise so that all learners may have access to the importance of the knowledge. If all parties come to the process with an open mind and the willingness to learn, the result can have tremendous power to shape insight and discourse.

Charles S. Serns, *Collaboration and the Community of Leaders*, www.yale.edu/hnhti/pubs/A14/sems.html (May 3, 2006).

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With the goal of enriching our academic program, Augustana will expand on a long tradition of faculty/student collaboration by introducing shared inquiry projects within students' major fields.

To support our plan to move shared inquiry to the center of the curriculum, the college is developing more collaborative opportunities for students and faculty.

....

Shared inquiry challenges students within the security of a supportive environment, but what really distinguishes our program is a component that encourages students to reflect on the value of their inquiry, not only to themselves and their education, but also to a larger community.

Augustana College, Student Research Fellowship, www.augustana.edu/acaemics/special/studentresearch/index.php
(June 28, 2006).

College for Kids is a summer program for students who are talented and have achieved a high degree of success in school. Instructors use teaching methods that are appropriate to a college classroom, including lectures, group discussions, shared inquiry, and lab activities.

Monmouth College, Welcome to the Education Department, College for Kids, <http://department.monm.edu/education/c4kids.htm> (Feb. 2, 2007).

In response to the need for a more situated knowledge base in the preparation of science teachers, Drs. Tippins and Thompson will work with pre-service teachers, middle school science teachers, & university science education faculty in exploring existing science education cases that link theory to practice. Pre-service teachers will also create their own cases. Experienced teachers and university faculty will explore a shared inquiry-based process of "reciprocal mentoring" by providing feedback to the student teachers' cases and whole group discussion.

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Northeast Region PRISM, 2004-2005 Grant Awards, www.coe.uga.edu/prism/prism_short_summaries_2004_2005.html (Jan. 20, 2007).

Master of Science in Education - Professional Development - Shared Inquiry Communities

The shared inquiry process is a learning method in which students search for answers to fundamental questions raised by a text, lecture, or experience.

Quality Educator Interactive, <https://qei.wisconsin.edu> (Mar. 17, 2007).

A second dimension of teaching is Shared Inquiry. In the teaching of History, English, and current events teachers employ a disciplines seminar format as the means for students to explore the significant ideas of these domains. In open discussions based on the reading of classic literature or original source material, students learn to formulate their own interpretive questions, support their own ideas through specific reference to the readings, and respond thoughtfully to the opinions of others. The teacher acts as the facilitator of discussion in Shared Inquiry, rather than as the final arbiter of thought. Outside of the discussion students are encouraged to explore their own thoughts and feelings through a variety of means including journalizing, poetry and story writing, and other creative endeavors.

The Elizabeth Ann Clune Montessori School of Ithaca, Middle School Program www.eacmsi.org/middle.html (Feb. 28, 2007).

It might be surprising to learn that some studies show students acquire information just about as well with a teacher as without one. (Indeed, teachers learn the same way students do.) These are some general reasons why our Eastern philosophy course is not a course designed to be primarily informational, instead the class is more adequately described as an introduction to shared inquiry into the clarification of life's values.

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I think you will find that learning, inquiry, and problem solving are most enjoyable human experiences. I expect to learn a great deal from our shared inquiry. You and I both have a personal stake in the quality of the class and personal responsibility for making it challenging.

Course Syllabus, Philosophy 312, <http://philosophy.lander.edu/oriental/syllabus.node4.html> (July 26, 2007).

You should know from the outset that the way I teach calls upon students to "do something" rather than hear or watch me do something. What this means is that you will need to take responsibility for your own learning; hold yourself accountable for your own choices; interact, question, respond, and introspect; deal constructively with complexity, ambiguity, uncertainty, ambivalence, and nuance; contribute to shared inquiry by a community of learners; and be ever receptive to, and resilient in, intellectual risk-taking.

Instructor Class Description, Senior Seminar, www.washington.edu/students/icd/B/bis/4901swatts.html (Sept. 8, 2007).

I've been teaching Working-Class Literature at Pitt for 25 years. The course engages students in shared inquiry about the nature of work, the experience of class, and the uses of literature in a culture like ours (now and in the past).

Nick Coles, Integrating Online Discussions Into a Literature Course, www.pitt.edu/~ciddeweb/teachingtimes/2007/march/coles.html (July 19, 2007).

As noted, the examining attorney's evidence is consistent with the descriptions of SHARED INQUIRY set out in the materials provided by applicant, and both are clearly within the services identified in the application. Such use of the term by others in the field of education supports the

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examining attorney's contention that SHARED INQUIRY is a well-recognized term, readily understood in the field, describing a method of teaching, and that it is widely used in the same manner as it is used by applicant to describe the same services as those recited in the subject application.

In response to the examining attorney's first Office action, applicant submitted the declaration of applicant's President, George L. Schueppert. Mr. Schueppert alleges that he replicated the examining attorney's Internet search and investigated the first ten "hits."⁵ Mr. Schueppert reports that of these references, some were related to applicant or - after being contacted by applicant - agreed to modify their websites to give "[f]ull credit ... to Junior Great Books" for the term SHARED INQUIRY.

On the issue of descriptiveness, the Schueppert declaration is unconvincing for two reasons. First, it was submitted with applicant's December 28, 2006, response to the first Office action. As such it does not address the evidence submitted by the examining attorney in connection with her March 30, 2007, and September 28, 2007, Office

⁵ While it is not entirely clear, the websites discussed by Mr. Schueppert appear to focus on the examining attorney's search rather than the evidence submitted in support of the examining attorney's refusal. As a result, Mr. Schueppert discusses some websites which were not submitted by the examining attorney, and does not discuss some which were, including pages from the websites of institutions such as Yale, the University of

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actions. Although Mr. Schuppert's investigation and actions have resolved or clarified some of the evidence in applicant's favor, there is no question that there remain numerous third party uses of SHARED INQUIRY in connection with educational services.

Second, and more importantly, even if the Schueppert declaration were successful in demonstrating that most or all Internet references to "shared inquiry" were references to applicant and its educational services, it would not necessarily demonstrate that the mark is not descriptive:

The fact that applicant may be the first and only user of this highly descriptive or generic designation does not justify registration if the term projects only merely descriptive significance. *In re Central Counties Bank*, 209 USPQ 884, 888 (TTAB 1981). What we said there ... is also applicable here:

[A]ny doubt as to the descriptive nature of the term is or would be readily dispelled by applicant's own literature in which the service is described and in which the notation is used, as exemplified by the abstracts therefrom quoted above. That is, applicant's own promotional literature serves to ingrain in the reader the descriptive character of the mark rather than to project the impression that it serves as an indication of origin for applicant's service alone.

Nat'l Shooting Sports Found., 219 USPQ at 1020.

Applicant argues that it was the first to use the term, and there is no indication that this is not so. But first use of a term which is or becomes descriptive of applicant's

Washington, and the University of Pittsburgh.

services counts for little. The focus instead is on the current perception of the term to the relevant consumer. Given the large number of descriptive uses of the term by third parties as well as applicant's own descriptive use of the term, we have no doubt that most students and educators would immediately understand the term SHARED INQUIRY as merely descriptive of applicant's classes, seminars and courses of instruction.

B. Acquired Distinctiveness

As discussed, applicant has asserted an alternative claim to registrability under Trademark Act § 2(f), arguing that if descriptive, its proposed mark has nonetheless become distinctive of applicant's educational services due to its "substantially exclusive and continuous use [of the mark] in commerce for at least ... five years...." In addition to the claim of five years' use, applicant also submitted the declarations of sixteen third parties, as well as the declaration of Mary L. Klein, an employee of applicant who has served as copy editor, and is familiar with applicant's archives and its historical use of the term SHARED INQUIRY. Ms. Klein's declaration provides background information regarding applicant's use of the proposed mark.

1. Applicant's Claim of Five Years' Use

The Trademark Act provides that the USPTO may accept as *prima facie* evidence of distinctiveness, applicant's use of

the mark for five years. Such use must be "substantially exclusive and continuous," and must evidence applicant's use of the designation "as a mark." Trademark Act § 2(f). The acceptance of five years' use as *prima facie* evidence of distinctiveness is not mandatory, and a declaration of five years' use may be insufficient if the mark appears to be highly descriptive. "[T]he greater the degree of description a term has, the heavier the burden to prove it has attained secondary meaning." *In re Bongrain Int'l Corp.*, 894 F.2d 1316, 13 USPQ2d 1727, 1728 n.4 (Fed. Cir. 1990); *Yamaha Int'l Corp.*, 6 USPQ2d at 1005.

The examining attorney argues that applicant's mark is highly descriptive of the identified services, and that applicant's declaration of five years' use of the mark is insufficient in itself to show acquired distinctiveness.

We agree. As noted above, the record evidence demonstrates that applicant and others have long used the asserted mark descriptively. While the standard for proving acquired distinctiveness is a preponderance of the evidence, the quantity of evidence necessary to demonstrate distinctiveness necessarily increases in proportion to the descriptiveness of the mark.

a. Substantially Exclusive

In order to establish that its designation has acquired distinctiveness, an applicant must demonstrate that it has

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made substantially exclusive use of it:

In respect of registration, there must be a trademark, *i.e.*, purchasers in the marketplace must be able to recognize that a term or device has or has acquired such distinctiveness that it may be relied on as indicating one source of quality control and thus one quality standard. When the record shows that purchasers are confronted with more than one (let alone numerous) independent users of a term or device, an application for registration under Section 2(f) cannot be successful, for distinctiveness on which purchasers may rely is lacking under such circumstances.

Levi Strauss & Co. v. Genesco, Inc., 742 F.2d 1401, 222 USPQ 939, 940-41 (Fed. Cir. 1984); *Target Brands Inc. v. Hughes*, 85 USPQ2d 1676, 1682 (TTAB 2007).

It is clear from the evidence of record that applicant's use of SHARED INQUIRY is not "substantially exclusive." Although the law does not require absolute exclusivity, *see L.D. Kichler Co. v. Davoil, Inc.*, 192 F.3d 1349, 52 USPQ2d 1307 (Fed. Cir. 1999), the numerous third-party uses demonstrated by the evidence of record leave no doubt that a substantial number of others have used and are using the proposed mark to describe identical educational services.

We have considered in this regard the fact that after issuance of the first Office action, applicant contacted several such third parties and was successful in some cases in requesting that the term SHARED INQUIRY be removed from their website, or that applicant be given "credit" for the

term. But applicant's efforts are too little, too late. Given the number of third-party uses of the term, acknowledgement by several such users that applicant was the originator of the SHARED INQUIRY method and designation is insufficient to show that the public has come to understand the mark as a source indicator for applicant's own services.

b. Use as a Trademark

In addition to showing substantially exclusive use of a term, an applicant under Trademark Act § 2(f) must also demonstrate that such use was actually use as a trademark. *In re Craigmyle*, 224 USPQ 791, 793 (TTAB 1984) (registrability under §2(f) not established by sales over a long period of time where there was no evidence that the subject matter had been used as a mark). This is because if applicant uses the designation in a descriptive manner, there is no reason to believe that the relevant consumers will perceive the designation to be a mark, even if such use is exclusive.

As we remarked when considering applicant's evidence above, applicant's own use of SHARED INQUIRY is largely descriptive. In many cases, the term is actually defined by applicant in detail, and is not used in such a way as to suggest to the reader that it is asserted as a trademark. Applicant's own definition of the mark is consistent with the meaning of the words themselves, and refers to a

particular educational method, rather than to the source of applicant's services. Thus, even if applicant's use of the mark were "substantially exclusive and continuous," we would nevertheless be constrained to find applicant's § 2(f) showing insufficient, because as it is used by applicant, SHARED INQUIRY would not be perceived as a trademark.

2. Declarations in Support of Acquired Distinctiveness

As indicated, applicant submitted the declarations of sixteen third parties, mostly educators or educational publishers who are familiar with applicant's services, who in many cases have worked with or for applicant in developing its services. Each of the declarants lavishes praise on the success of the SHARED INQUIRY method in teaching, and on applicant's services in particular. The declarants indicate that they associate SHARED INQUIRY with applicant and each declaration includes the following paragraph (or a variation):

For these reasons, and based on my own personal observation and experience in my field, it is my opinion that the term Shared Inquiry is generally understood by people in the publishing industry and in education as referring to the proprietary teaching and learning method originated and developed by the Great Books Foundation.

While we have carefully considered applicant's declarations, we nonetheless do not believe that they are sufficient - alone or in conjunction with other evidence - to establish the acquired distinctiveness of the proposed

mark. First, many of the declarants focus primarily on the success of applicant's teaching method. While this praise may be well-deserved, it is simply beside the point. The question is not whether applicant's services are effective in teaching, but whether the relevant segment of the public perceives SHARED INQUIRY to be an indicator of source, rather than a descriptive indicator of the type of educational services.

Second, as indicated by the quoted paragraph, the declarants place reliance on their belief that the proposed mark refers to "the proprietary teaching and learning method originated and developed by" applicant. In doing so, they emphasize their understanding that this particular teaching method and the term SHARED INQUIRY originated with applicant. In academics, great weight is often placed on crediting those who originate ideas. But in emphasizing this point, these educators indicate a misunderstanding about trademark law. As discussed above, the question we must decide is not whether applicant is the originator and developer of what appears to be an excellent teaching model, nor is it whether applicant was the first to use the term SHARED INQUIRY in connection with such services. Instead, the only issue is whether that term is descriptive of such services and if so, whether consumers nonetheless have come to view the mark as an indicator of source.

Third, the declarations each refer to applicant's "proprietary teaching and learning method." However, there is no evidence that applicant's method is "proprietary" see note 2, *supra*, and it is clear from the record that others have employed essentially the same techniques in the classroom.

While we have fully considered applicant's declarations, we conclude that they provide weak support, at best, for applicant's position that its mark has acquired distinctiveness. Given the nature of the mark and the record evidence of third-party use, applicant's declarations are insufficient to meet its burden under Trademark Act § 2(f).

III. Conclusion

After careful consideration of the record, we conclude that applicant's mark is merely descriptive of the identified services. Trademark Act § 2(e)(1). We further conclude that applicant has not demonstrated that it is entitled to a registration on the basis of acquired distinctiveness. Trademark Act § 2(f).

Decision: The refusal to register is affirmed.