

**THIS DISPOSITION  
IS NOT A PRECEDENT  
OF THE TTAB**

Mailed: November 14, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re SRS Labs, Inc.

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Serial No. 78841707

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Deborah S. Shepherd of Knobbe, Martens, Olson & Bear LLP  
for SRS Labs, Inc.

Kelly A. Choe, Trademark Examining Attorney, Law Office 113  
(Odette Bonnet, Managing Attorney).

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Before Rogers, Kuhlke and Taylor, Administrative Trademark  
Judges.

Opinion by Taylor, Administrative Trademark Judge:

SRS Labs, Inc. has filed an application to register on  
the Principal Register the mark SRS MOBILE HD (in standard  
character format) for goods ultimately identified as  
"[m]ono, stereo, and multichannel surround sound processor  
for headphones, earbuds, speakers, vehicle entertainment  
systems, gaming devices, home entertainment devices,  
digital media players, and mobile phones" in International

Class 9.<sup>1</sup> Applicant disclaimed the exclusive right to use the letters "HD."<sup>2</sup>

The examining attorney issued a final requirement that applicant disclaim the exclusive right to use the term "MOBILE HD" pursuant to Section 6 of the Trademark Act, 15 U.S.C. § 1056, because it merely describes applicant's surround sound processors.

Applicant appealed and both applicant and the examining attorney filed briefs. We affirm the refusal to register for applicant's failure to disclaim "MOBILE HD" in connection with the identified goods.

An examining attorney may require an applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 6 of the Trademark Act, 15 U.S.C. § 1056. Merely descriptive or generic terms are unregistrable under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(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

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<sup>1</sup> Application Serial No. 78841707 filed March 20, 2007 and alleging a bona fide intention to use the mark in commerce.

<sup>2</sup> Applicant also offered to disclaim the term "MOBILE" with respect to mobile phones only. While this disclaimer was found inadequate and was not accepted by the examining attorney, we note that applicant has effectively conceded that the wording "MOBILE HD" is descriptive of its surround sound processors for use in connection with mobile phones.

refusal of registration. See *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006).

A term is merely descriptive if it immediately describes the ingredients, qualities or characteristics of the goods or if it conveys information regarding a function, purpose, or use of the goods. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). We look at the mark not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used or intended to be used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use. *In re Recovery, Inc.*, 196 USPQ 830 (TTAB 1977). It is well settled that to be "merely descriptive" a term need only describe a single significant quality or property of the goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

The examining attorney maintains that MOBILE HD is merely descriptive of applicant's surround sound processors for all of the identified goods. The examining attorney particularly argues that "'HD' is the commonly used acronym for 'high-definition,' and refers to the high-definition attribute of an audio/visual format. ... Thus, the wording,

HD, merely describes applicant's sound processors that process and deliver quality, high-definition audio, such as surround sound." (Br. unnumbered p. 5). She further points out that in accordance with this determination, applicant disclaimed "HD" and, therefore, the descriptiveness of HD will not be further discussed in her brief. The examining attorney also argues that the term MOBILE "clearly refers to the wireless or portable feature of electronic devices. Thus when used on applicant's sound processors, the term, MOBILE, immediately conveys to consumers information that the goods feature wireless technology, and that it is compatible with wireless or portable devices." (Br. unnumbered pp. 5-6). Finally, she contends that "the combination of the descriptive words, MOBILE and HD creates no incongruity, and no imagination is required to understand the nature of the goods." (Br. unnumbered pp. 9-10).

In support of the refusal, the examining attorney made the following definitions of "mobile" of record during examination of the application:

Remote, portable, on-the-go. The term "mobile" used by itself is wireless parlance for the client device, such as a cellphone, PDA or laptop.<sup>3</sup>

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<sup>3</sup> [www.techweb.com](http://www.techweb.com).

The ability to move around, it also refers to anything that can be moved around (or transported) and still functioning [sic] properly. It usually describes handheld devices such as PDAs and cell phones, but it can also refer to laptops and other portable devices.<sup>4</sup>

1. able to move or be moved from one place to another.<sup>5</sup>

The examining attorney also submitted articles and excerpts from articles and web pages retrieved from a search of the Internet using the Google search engine, to illustrate that the term "mobile" describes a wireless or portable feature of electronic goods, including audio devices and entertainment systems such as gaming and home theater systems. Excerpts from a representative sampling of these articles and web pages are shown below (emphasis supplied):

... Could SONY'S latest **mobile gaming system** beat out Apple's forthcoming mPod?  
Silicon Valley Watcher, October 21, 2007;

The Ultimate 'Next Generation' **Mobile Gaming System**  
Wireless Watch Japan, retrieved on October 18, 2007;

Acme unveils 'ideal' **mobile** gaming PC  
Most people seeking a **portable gaming system** are happy with a Sony PSP. But in the US ...  
[www.reghardware.com](http://www.reghardware.com);

Tapwave competes with **mobile gaming system**. (New Products and Services)

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<sup>4</sup> [www.netlingo.com](http://www.netlingo.com).

<sup>5</sup> [www.wordsmyth.net](http://www.wordsmyth.net).

Start-up company Tapwave has provided details of its forthcoming **mobile gaming system**, based on the Palm operating system (version 5.2). New device is code-named Helix, and is expected to launch in fourth quarter 2003 in US. Helix is targeted at consumers who have outgrown the Game Boy **mobile** system, primarily those in their 20's and early 30's. ...  
Screen Digest, 2003;

Phillips Ultra-slim Home Entertainment System Adds Style to Homes  
This DVD/Super Audio CD (SACD) home theatre system features the first 6.1 **wireless surround sound system** by Dolby Digital EX. The sound quality is ensured by the three channel uncompressed digital wireless transmission and an amazing immunity for interference.  
[www.hardwarezone.com](http://www.hardwarezone.com); and

Sony Ericsson **Mobile Home Audio System**  
[www.amazon.com](http://www.amazon.com).

In urging reversal of the disclaimer requirement and refusal to register based thereon, applicant argues that MOBILE is not descriptive of the goods in its application except for mobile phones, i.e., it is not descriptive for "mono, stereo, and multichannel surround sound processor for headphones, earbuds, speakers, vehicle entertainment systems, gaming devices, home entertainment devices [and] digital media players." Further, applicant argues that at most, MOBILE is merely suggestive in connection with sound processors as it does not immediately convey information about these goods, nor does it describe a significant attribute, idea, or purpose relating to these goods.

Applicant also argues that “[t]he combination of MOBILE HD in Applicant’s mark is suggestive because it requires imagination and a mental pause in order for a consumer to make a connection between the mark (SRS MOBILE HD) and Applicant’s non-mobile phone goods” and because “most consumers do not associate the term HD or ‘high-definition’ with mobile products nor with the sound processors therein.” (Br. at unnumbered p. 6). Applicant further argues, although without any evidence to support the contention, that “[i]n the mind of consumers, HD is still a technology used with large stationary devices; therefore, a consumer would have to pause and consider the meaning of MOBILE in connection with Applicant’s devices simultaneously described as HD.” (Br. at unnumbered p. 5).

We disagree. The record sufficiently demonstrates that the designations MOBILE and HD immediately convey to the consumer a significant feature or attribute of applicant’s goods. First, we find the definitions of the term “mobile” clearly reference the portability or mobile nature of many identified items. For example, headphones and earbuds are items which are not restricted in the identification to use with stationary entertainment systems and could be used with mobile devices. In addition, gaming devices and digital media players can clearly be mobile

devices. Finally, applicant's vehicle entertainment systems are mobile because they are in vehicles. Thus, surround sound processors used in all of the foregoing items would be, just as the items themselves, "mobile." Moreover, even if we were to read the identification to limit many of these items to devices used in the home, there is nothing in the identification that limits the items to stationary, hard-wired configurations. Items used exclusively in a home that have wireless attributes may be "mobile" in that they can be carried around the home. Therefore, surround sound processors used in these items also would be "mobile," albeit within a defined area. This conclusion is corroborated by the Internet evidence which illustrates that electronic devices, such as gaming and home theatre systems, often incorporate wireless technology to enable mobile, portable and wireless capability. Additionally, applicant's disclaimer of the acronym "HD" is a concession that HD directly describes an attribute of all of its goods.

In view of the above, we find that the individual terms MOBILE and HD have descriptive significance as used in connection with all or substantially all of the identified goods.

When two or more merely descriptive terms are combined, we must determine whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, then the resulting combination is also merely descriptive. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER held merely descriptive of commercial and industrial cooling towers).

We find that the record establishes that the designation MOBILE HD, as a whole, is descriptive of all of the identified goods. When the designation MOBILE HD is viewed on or in connection with the goods listed in the application, there is nothing in the combination which is incongruous, nor is there anything which would require the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to prospective purchasers of the goods. See, for example, *In re Abcor Development Corp., Inc.*, 588 F.2d 811, 200 USPQ 215 (CCPA) (Rich, J., concurring) [GASBADGE described as a shortening of the name "gas monitoring badge"]; and *Cummins Engine Co., Inc. v. Continental Motors Corp.*, 359 F.2d 892, 149 USPQ 559 (CCPA 1966) [TURBODIESEL held generically descriptive of engines having exhaust driven turbine superchargers]. That is, the combination of the word "mobile"

and the acronym "HD" fail to create a new and distinct commercial impression.

As evidenced by the informational literature submitted by applicant with its response to the first Office action, the purchasing public would perceive the designation MOBILE HD as descriptive of applicant's surround sound processors for headphones, earbuds, speakers, vehicle entertainment systems, gaming devices, home entertainment devices, digital media players and mobile phones. The literature reads, in relevant part, as follows:

**Overview**

SRS Mobile HD™ is a full audio rendering solution that enables portable products to take advantage of multichannel content by providing a personal 5.1 experience over headphones. With SRS Mobile HD, consumers can now enjoy home-theater surround sound on portable devices such as mobile phones and media players.

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**Applications**

Optimized for portable devices and a personal surround sound experience, SRS Mobile HD renders the stereo and surround sound audio output from video, music, and games and is well-suited for the following product categories:

- Mobile phones (video on demand, DVB-H, MediaFLO, DMB)
- Portable media players
- Portable DVD players
- Laptops and personal computers (DVD, downloads, games)

- Vehicle rear-seat entertainment (DVD, satellite radio and TV)
- Portable gaming units
- Multimedia headphones (in-line value add)
- Audio/Visual receiver

When prospective consumers encounter the designation MOBILE HD in this context, it is clear that it would immediately inform consumers of a significant attribute of applicant's goods. That is, and by applicant's own description, that applicant's surround sound processors function to provide home-theater surround sound on portable devices. Moreover, and as noted by the examining attorney, "a third-party review describes applicant's surround sound processor as '... a single audio solution for the **mobile** market ... [that] deliver[s] immersive, **surround sound** ...'<sup>6</sup> [emphasis added]."

Based on the foregoing, we conclude that a disclaimer of the designation "MOBILE HD" is necessary.

Lastly, while applicant correctly points out that any doubt as to the descriptiveness of the designation MOBILE HD should be resolved in applicant's favor, the record leaves us no doubt to be resolved.

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<sup>6</sup> [www.thefreelibrary.com/SRS+Named+Most+Widely+Employed+Enhanced+Stereo\\_Process\\_in\\_the World%3B...-a0151343332](http://www.thefreelibrary.com/SRS+Named+Most+Widely+Employed+Enhanced+Stereo_Process_in_the+World%3B...-a0151343332).

**Decision:** The refusal to register SRS MOBILE HD based on applicant's refusal to disclaim the exclusive right to use the designation "MOBILE HD" is affirmed.

However, we note applicant's alternative request that, in the event the Board should affirm the refusal to register, the following disclaimer be entered into the record:

No claim is made to the exclusive right to use MOBILE HD apart from the mark as shown.

The refusal having been affirmed, the disclaimer is hereby entered. The above decision is therefore set aside and the application will proceed to publication in due course with the referenced disclaimer.