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IS NOT CITABLE AS PRECEDENT  
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Paper No. 13  
AD

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Brand Institute, Inc.

Serial No. 75/643,085

Mark J. Speciner of Buchanan Ingersoll for Brand Institute,  
Inc.

Cynthia Esparza Crockett, Trademark Examining Attorney, Law  
Office 111 (Craig Taylor, Managing Attorney).

Before Cissel, Bucher, and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 16, 1999, Brand Institute, Inc.  
(applicant) filed a trademark application to register the  
mark BRAND POLL (typed drawing) for services identified as  
"market research service used for conducting surveys for  
advertising and business purposes via a global computer  
network," in International Class 35.<sup>1</sup>

<sup>1</sup> Serial No. 75/643,085. The application is based on an  
allegation of a bona fide intention to use the mark in commerce.

The Examining Attorney refused to register the mark on the ground that the mark, if used in connection with the services, would be merely descriptive under Section 2(e)(1) of the Trademark Act. 15 U.S.C. § 1052(e)(1).

After the Examining Attorney made the refusal final, applicant filed a notice of appeal. Both applicant and the Examining Attorney have filed briefs. While applicant originally requested an oral hearing, in a paper dated July 10, 2001, it withdrew its request.

We affirm the Examining Attorney's refusal to register.

The Examining Attorney's position is that the mark BRAND POLL:

immediately tells something about the applicant and a service it provides, conducting a poll regarding brands. In other words, consumers of the applicant's market research services could readily understand that the term "BRAND POLL" refers to market research obtained via a survey/poll about brands of their products as well as their competitors.

Examining Attorney's Br., p. 6 (parenthetical omitted).

The Examining Attorney has made of record dictionary definitions of the terms "brand" and "poll." "Brand" is defined as a "trademark or distinctive name identifying a product or a manufacturer" and "a product line so identified." *American Heritage Dictionary of the English Language, Third Edition* (1992). A "poll" is defined as a

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"survey of the public or of a sample of public opinion to acquire information." *Id.*

The Examining Attorney also made of record numerous printouts of articles from printed publications retrieved from the NEXIS database. While many of these stories are not relevant to the issue in this case, others do support the Examining Attorney's position.

Systems Inc, wound up battling for market dominance among the three hardware product categories included in the **brand poll**.

*Computer Reseller News*, March 27, 1997, p. IS35.

Its Japanese parentage notwithstanding, Sony is considered one of the top brands in the United States: The 1997 "best **brands**" **poll** by Louis Harris & Associates ranked Sony No. 3.

*New York Times*, April 17, 1997, p. D7.

This was apparent in the latest Benchmarks **brand poll** for modem products, in which U.S. Robotics, Skokie, Ill., was cited as the most widely used modem.

*Computer Reseller News*, September 16, 1996, p. 41.

The winner of "Best **Brand**" **poll** in the credit card category as New York-based issuer American Express Co. *Card News*, January 26, 2000, Vol. 15, No. 1.

Stevens earlier this year will probably result in the first real competition for Cannon since the inception of the top **brand poll**.

*Discount Store News*, October 10, 1988, p. 113.

Based on this evidence, the Examining Attorney concluded that the term "BRAND POLL" is merely descriptive of the services with which applicant intends to use the mark.

On the other hand, applicant argues that the term "BRAND POLL" is not defined in a dictionary and it does not have an established meaning.<sup>2</sup> Applicant also argues that competitors are not using the term and, furthermore, there is no need for competitors to use the term "BRAND POLL." In addition, these competitors "remain free to use the words 'brand' and 'poll' separately in a non-trademark manner." Applicant's Br., p. 7. Finally, applicant submits that its mark is incongruous because of the many definitions of the terms "brand" and "poll." Therefore, applicant contends that its mark does not immediately convey information about the nature of the services, and it is not merely descriptive.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). A term may be held descriptive

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<sup>2</sup> In its appeal brief, applicant refers to the registration of two other marks. No copies of these registrations were ever submitted, and we, therefore, do not give any weight to these allegations by applicant in its appeal brief. TBMP § 703.02(b) (emphasis in original)("[A] party may *not* make a third-party registration of record simply ... by referring to the registration in its brief or pleading (the Board does not take judicial notice of registrations residing in the PTO)").

even if it only describes one of the qualities or properties of the goods or services. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 588 F.2d at 814, 200 USPQ at 218.

The Examining Attorney's evidence demonstrates that the term "BRAND POLL" is descriptive of a significant feature of applicant's services.

A review of all of the Examining Attorney's evidence clearly shows that the terms "brand" and "poll" are individually descriptive of applicant's services. A "poll" is another term for a survey of the public. *American Heritage Dictionary of the English Language, Third Edition* (1992). An organization performing a market research service used for conducting surveys is, in effect, taking a poll. Brands are obviously trademarks or distinctive names identifying products or manufacturers. *Id.* Surveys for advertising and business purposes would include as their subject the recognition or reputation a particular brand or trademark would have among members of the public. As such, each of words in applicant's mark is individually descriptive of the services identified in its application.

However, even if the individual terms are descriptive, we must determine if the mark as a whole is merely descriptive of the services because, when the words are combined, the mark may not be merely descriptive. In this case, the evidence demonstrates that applicant's mark is merely descriptive. If there were any doubts about the descriptiveness of the mark BRAND POLL, the NEXIS evidence demonstrates the descriptiveness of the mark. The term "BRAND POLL" is used to describe a survey or poll to determine the recognition or reputation of a brand. The articles show that there are brand polls for market dominance among computer hardware and modem producers, a "best brands" poll, a best brand poll in the credit card category, and a top brand poll. When the term is used in relation to services involving market research surveys for advertising and business, it immediately informs prospective purchasers that applicant conducts surveys regarding brand dominance or recognition.

Attempting to show that its mark is not descriptive, applicant poses the following question:

There is nothing directly or indirectly in these words suggesting market research. The services of Applicant have not been defined as "Research as to a brand or brands." How is the consumer who has never seen this mark before to know what it is for? There is no immediate conveyance by these words of the Applicant's services or even an aspect of those services.

Applicant's Br., p. 3.

The test of whether a mark is descriptive is not conducted in the abstract. We must consider descriptiveness in relation to the particular goods or services for which registration is sought. Abcor, 588 F.2d at 814, 200 USPQ at 218. Therefore, the question is whether the term "BRAND POLL" is merely descriptive for market research services for conducting surveys for advertising and business purposes via a global computer network, not for services in the abstract. Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959); Gyulay, 820 F.2d at 1217, 3 USPQ2d at 1009. Here, one of the types of surveys or polls that market research services would conduct for businesses is a survey to determine brand recognition or a "brand poll." When viewed in relation to the specifically identified services for which applicant is proposing to use the mark, there is nothing incongruous about the mark. It is clear that the term "BRAND POLL" is a significant feature of its polls for advertising or business purposes.

Also, applicant argues that since "competitors are not using the mark, ... it cannot be considered descriptive." Applicant's Br., p. 7. Applicant also argues that the term is not descriptive because its competitors do not need to use the term. These arguments are not persuasive. In re Helena Rubinstein, Inc., 410 F.2d 438, 441, 161 USPQ 606, 609 (CCPA 1969) ("Applicant's long use of the wording, and the fact that others have not used it up to this time, does not make it any less an apt description for the goods"). Indeed, here the term "BRAND POLL" is used in the media, and it immediately conveys information about a significant feature of the services. Competitors should be free to describe their polls of brand dominance or recognition as "brand polls." Such a term is descriptive and it is not registrable under Section 2(e)(1) of the Trademark Act.

Decision: The Examining Attorney's refusal to register the mark BRAND POLL on the ground that it is merely descriptive of the involved services is affirmed.