

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Telpro Inc.

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Serial No. 74/620,602

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Robert E. Kleve for Telpro Inc.

Karen K. Bush, Senior Examining Attorney, Law Office 104  
(Sidney I. Moskowitz, Managing Attorney).

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Before Hanak, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Telpro Inc. has filed an application to register the mark reproduced below for "construction equipment, namely [a] manually operated dry wall lifter".<sup>1</sup>



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<sup>1</sup> Ser. No. 74/620,602, filed on January 11, 1995, which alleges dates of first use of January 1, 1975.

Registration has been finally refused pursuant to Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§ 1051, 1052 and 1127, on the ground that, rather than constituting "instruction pamphlet[s], included in the packaging of [the] goods," as stated in the application, the specimens, according to the Senior Examining Attorney, "are unacceptable as evidence of actual trademark use because they are advertising brochures." The back and front of applicant's specimens, and the inside pages thereof, are respectively reproduced below:

**PANELIFT**  
PATENT 3,628,942

The **PANELIFT** Drywall Lift collapses easily to fit into the trunk of most cars, ships via UPS in two Cartons, (net weight: approx. 100 lbs.), and requires no tools to assemble.

- Welded steel construction
- Fast action, single stage winch with silent, cam lock brake
- High tensile, 1/8" aircraft cable
- Easy rolling, 5" casters

TRY A BETTER WAY WITH **PANELIFT**,  
from:

The **DRYWALL LIFTER**  
MODEL 138-2

- One-man operation
- 60 lb. capacity
- Sheet sizes to 4x16
- Ceilings or walls to 15'

AVAILABLE:  
Special telescoping sections for ceilings or walls up to 15'

**Telpro Inc.**  
3300 Star - Springfield - Mass 01101 - (781) 775-0551  
175247001 - 775-0529

[Go to library for copy of other spec. pages]

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal that the specimens fail to evidence trademark use.

Applicant, while conceding in its brief that its brochures or pamphlets "are admittedly advertisements" within the commonly accepted meaning of such term, argues that the specimens "are more than mere advertisements" because "they are clearly and

obviously instructional in nature". Specifically, applicant asserts that:

In this instance, the brochure describes and instructs as to how to use and assemble the device in seven different situations, with seven pictures showing and instructing its use in these seven different situations. This is more than ... [a] mere advertisement, illustration or announcement[.] This is clearly ... [a product] booklet instructing primarily as to its use ... in how to load, how to install a drywall on a ceiling, how to install drywall on upright walls, upper and lower, how the legs are foldable ... to pass through doorways, and how to disassemble the components for storage. While the instructions [in the brochures] may be less detailed than a ... comprehensive instructional manual ..., there is no case law supporting a position that they are not acceptable specimens ... simply because they are brief in their instructional nature ... or because they are not as comprehensive as a full[-]fledged manual. That has not been a requirement by any case law.

In addition, applicant contends that in order to be acceptable as specimens, brochures or pamphlets need not pertain solely to instructions as to assembly of the goods. Instead, applicant maintains, if brochures or pamphlets contain instructions as to use or operation of the goods, then such materials are acceptable as specimens evidencing trademark use.

While we have no quarrel with applicant's contention that an instructional pamphlet or brochure may indicate the use or operation of goods rather than, or in addition to, just providing instructions in their assembly, we concur with the Senior Examining Attorney that the specimens furnished by applicant are merely advertising brochures which tell and

illustrate only information about the principal capabilities and attributes of applicant's manually operated dry wall lifters. As such, the specimens are not instruction sheets and are thus unacceptable as evidence of actual trademark use.

It is settled, as the Senior Examining Attorney correctly points out in her brief, that invoices, announcements, order forms, bills of lading, leaflets, flyers, brochures, publicity releases and other printed advertising materials are generally not acceptable as specimens of trademark use. See, e.g., In re Bright of America, Inc., 205 USPQ 63, 71 (TTAB 1979). Moreover, while the Board in In re Ultraflight Inc., 221 USPQ 903, 906 (TTAB 1984), held that an "assembly instruction manual packed with applicant's gliders and bearing the 'LAZAIR' mark is an acceptable specimen of use" because such a specimen was, "by any reasonable interpretation, part of the goods themselves" and, hence, "application of the mark to such an 'insert' or 'instruction sheet' is an application of the mark to the goods," the Board in its opinion was also careful to state that:

A similar situation would be presented in the case of a mark applied to a user's guide for a computer program, which guide must be considered an integral part of the goods themselves. By contrast, a package insert that is no more than an invoice or advertisement on which the mark appears may not be proper affixation of the mark to the goods.

Here, applicant's specimens do not instruct one as to the assembly, use or operation of its dry wall lifters; instead, the specimens are nothing more than advertising brochures which

contain eight photographs of applicant's dry wall lifter and accompanying text or captions that, while respectively depicting and/or summarizing various capabilities and attributes of the product, simply do not provide any instructions as to its manner of assembly, use or operation. Merely illustrating applicant's dry wall lifter in use and highlighting certain features thereof is not the same as instructing purchasers and other users of the product on how to use it.

We agree, therefore, with the following observations made by the Senior Examining Attorney in her brief:

[A]n examination of the specimens does not reveal any "how to" instructional characteristics. The booklet shows various pictures of the dry wall lifter in use with captions about the photographs. These captions include "cradle also tilts longitudinally (as shown) up to 10 degrees"; "supports sheets on walls up to 11 feet"; "tripod legs fold to allow assembled unit to pass through doorways"; "easily portable components" and "easy rolling, 5" casters". The Examining Attorney fails to see how the caption "cradle also tilts longitudinally (as shown) up to 10 degrees" instructs one "how to" load the product, or how the terms "easily portable components" instructs [sic] one "how to" disassemble the product.

... The captions do nothing more than inform one about the product: it can support a sheet of dry wall up to 11 feet in length; the tripod legs can be folded to allow the unit to pass through doorways without disassembling it. But the captions fail to inform one how to assemble the product so that it will hold that 11[-]foot piece of dry wall or how to fold the legs so it can be moved through a doorway. Furthermore, a photograph of the disassembled dry wall lifter with the wording "easily portable components" has no verb, let alone any

instructional value as to how to disassemble the product in order to make it easily portable. The specimens do not instruct; they merely tout characteristics and capabilities of the product. They are not

instructional manuals or instructional guides and are therefore not acceptable specimens.

It is thus readily apparent that the specimens submitted by applicant are just advertising and nothing more. The photographs of applicant's product and the captions to such photographs neither illustrate nor describe how applicant's dry wall lifter is to be assembled, used or otherwise operated. Furthermore, the fact that applicant's brochures or pamphlets are placed inside the packaging for its goods does not transform such advertising, by any reasonable interpretation, into instruction sheets or any other component of the goods. Applicant's specimens consequently are unacceptable as evidence of actual trademark use for its goods.

**Decision:** The refusal on the ground that the specimens fail to evidence trademark use is affirmed.

E. W. Hanak

T. J. Quinn

G. D. Hohein  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board