

THIS DISPOSITION IS CITABLE
AS PRECEDENT OF THE TTAB FEB. 25, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ralph Mantia, Inc., d/b/a Zē Design

Serial No. 74/657,328

B. Joseph Schaeff of Killworth, Gottman, Hagan & Schaeff
for Ralph Mantia, Inc. d/b/a Zē Design.

Andrew P. Baxley, Trademark Examining Attorney, Law Office
114 (Mary Frances Bruce, Managing Attorney).

Before Quinn, Hairston and Walters, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Ralph Mantia, Inc., doing business as Zē Design, seeks
to register the mark set forth below for "commercial art
design services." The intent-to-use application was filed
on April 7, 1995. The word "design" has been disclaimed
apart from the mark as shown.

On September 24, 1996 applicant filed a statement of use pursuant to Trademark Rule 2.88 wherein he states that "[t]he mark is used on letterhead [stationery], in advertising literature, business cards and other ways common in the industry." Applicant submitted as specimens letterhead stationery, an envelope and a business card.

The Trademark Examining Attorney, in an Office Action mailed March 28, 1997, stated that:

The specimens do not show use of the mark for any services identified in the statement of use. Specimens are unacceptable if they do not show use of the service mark in relation to the identified service. The specimens must show use of the mark "in the sale or advertising of services." (citations omitted).

The Examining Attorney then required that applicant submit specimens showing use of the mark for the identified services. Also, applicant was required to submit an

affidavit or declaration in support of the substitute specimens.

Applicant, in its September 30, 1997 response to the Office Action, argued that the specimens were acceptable because "[they] all prominently feature the word 'design.'" However, to further assist in the examination, applicant submitted as "supplemental" specimens printouts from applicant's web site and a post card.

The Examining Attorney, in an Office Action mailed February 12, 1998, stated that, while the later-filed specimens appeared to be acceptable in that they showed use of the mark in relation to the identified services, they were "substitute" rather than "supplemental" specimens and, therefore, an affidavit or declaration supporting the specimens was necessary. The Examining Attorney made final the requirement for an appropriate affidavit/declaration.

Applicant, on August 17, 1998, filed an appeal and request for reconsideration. In its request for reconsideration, applicant argued that the original specimens were indeed acceptable and that along with the later-filed specimens, there could be no doubt that applicant renders commercial art design services.

The Examining Attorney, in an Office action mailed December 30, 1998, continued to maintain that the original

Ser No. 74/657,328

specimens were unacceptable and that an affidavit/
declaration in support of the later-filed specimens was
necessary.

Both applicant and the Examining Attorney have filed
briefs in connection with the appeal, but no oral hearing
was requested.

We turn first to the issue of whether the specimens
filed with the application are acceptable. The relevant
portions of applicant's letterhead, envelope and business
card are reproduced below.

Letterhead

Envelope

Business Card Front/Back

In support of his position that the specimens are unacceptable, the Examining Attorney relies on TMEP Section 1301.04 which states, in relevant part, that:

Letterhead stationery or business cards bearing the mark may be accepted if the services are **clearly indicated** thereon. (emphasis added) . . . However, letterhead or business cards which bear only the mark and a company name and address are not adequate specimens (unless the mark itself has a descriptive portion which identifies the service), because such items are not evidence that the mark is used in the sale or advertising of the particular services recited in the application. (citations omitted)

The Examining Attorney contends that the nature of applicant's services are not clearly indicated on the specimens filed with the application and, thus, the specimens are unacceptable. In particular, the Examining Attorney argues that:

Although design services of some sort are indicated by the specimens, the examining attorney submits that one must inquire further to determine the field or industry in which the applicant renders its design services. Based on the specimens of record, the examining attorney submits that one could not determine without further inquiry whether the applicant designs commercial art, computer software, clothing, architecture, landscaping, etc.
(Brief, p. 5)

Applicant, however, contends that neither the Lanham Act nor the Trademark Rules require that specimens such as letterhead stationery specifically spell out the type of services rendered. Applicant argues that it is enough that the letterhead stationery, envelope and business card contain the word "design" because that is applicant's business.

In this case, we agree with applicant that the specimens filed with its application are acceptable evidence of service mark use. We do not view TMEP Section 1301.04 as requiring that specimens such as letterhead stationery and the like indicate the specific nature of an applicant's services. Stated differently, in this case, it is enough that the word "design" appears on applicant's letterhead stationery, envelope and business card. It is not necessary that the specific field of design, i.e., commercial art, also appear thereon. Here, the word "design" alone is sufficient to create in the minds of purchasers an association between the mark and applicant's commercial art services.

Without deciding the question of whether the later-filed specimens are substitute or supplemental specimens, we nonetheless note that the Examining Attorney has indicated that these additional materials demonstrate that

Ser No. 74/657,328

applicant renders commercial art design services. We agree with this finding inasmuch as the wording "a creative graphic design studio" appears thereon. Thus, there is no question that applicant renders the particular services identified in its application.

Decision: The refusal to register is reversed.

T. J. Quinn

P. T. Hairston

C. E. Walters
Administrative Trademark Judges
Trademark Trial and Appeal Board