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03/29/01

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re J&R Electronics, Inc.

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Serial No. 75/640,650

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Stewart J. Bellus of Collard & Roe for J&R  
Electronics, Inc.

Henry S. Zak, Trademark Examining Attorney, Law  
Office 108 (David Shallant, Managing Attorney).

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Before Simms, Hanak and Drost, Administrative  
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

J&R Electronics, Inc. (applicant) seeks to  
register in typed drawing form WALK IN, PHONE IN,  
LOG IN for the following services: computerized  
on-line ordering services in the fields of computer  
hardware, computer software, audio equipment, video  
equipment, and recorded music videos; retail store  
services featuring computer hardware, computer

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software, audio equipment, video equipment and recorded music videos; telephone shop-at-home services featuring computer hardware, computer software, audio equipment, video equipment, and recorded music videos; mail order services featuring computer software, computer hardware, audio equipment, video equipment and recorded music videos. The application was filed on February 16, 1999 with a claimed first use date of December 3, 1998.

The Examining Attorney refused registration on two grounds. First, the Examining Attorney contends that pursuant to Section 2(e)(1) of the Trademark Act applicant's mark is merely descriptive of applicant's services. Second, citing Sections 1, 2, 3 and 45 of the Trademark Act, the Examining Attorney contends that the phrase WALK IN, PHONE IN, LOG IN does not function as a service mark, but rather merely provides

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information to consumers as to how they might access applicant's retail services.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

As has been stated repeatedly, "a term is merely descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services]." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976).

We find that applicant's phrase WALK IN, PHONE IN, LOG IN is merely descriptive of applicant's retail services. Applicant's services include retail store services; telephone shop-at-home services; and computerized on-line ordering

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services. Applicant's phrase WALK IN, PHONE IN, LOG IN immediately informs consumers that applicant's retail services can be accessed by coming to applicant's retail store; by telephoning applicant; or by logging on to applicant's web site and placing an order with applicant.

Applicant has made of record three specimens of use: its catalogue; an advertisement which it placed in The New York Times; and a web site bearing applicant's trade name. In each of the three specimens, the words WALK IN are followed by applicant's address; the words PHONE IN are followed by applicant's 800 telephone number; and the words LOG IN are followed by applicant's web address.

Finally, it should be noted that the Examining Attorney has made of record excerpts of stories from the NEXIS data base showing that the phrases "walk in" and "phone in" are used repeatedly to

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describe other retailers. For example, an article appearing in the December 1, 1999 issue of PC/Computing describes various "walk-in stores like KIDS R US" and many others. An article appearing in the July 22, 1999 edition of The Orlando Sentinel uses the phrase "phone in" in connection with pharmacies. These numerous stories demonstrate that the American public has been exposed to at least the expressions "walk in" and "phone in" in conjunction with retail services. Consequently, upon seeing applicant's phrase WALK IN, PHONE IN, LOG IN the American public would readily understand that this phrase indicates how applicant's retail services can be accessed.

In addition to finding that applicant's phrase is merely descriptive, we also find that applicant's phrase would not be perceived as a service mark, but rather would be perceived as merely informational in nature. In each of

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applicant's three specimens, applicant's phrase is depicted in standard block lettering that is in no way distinctive. Moreover, applicant's phrase is depicted in lettering which is much smaller than that used for applicant's trade name and service mark, namely, J&R. Finally, applicant's true service mark and trade name (J&R) is depicted in a very stylized manner which catches the reader's eye.

In order to function as a service mark, the applicant must use the mark to identify the source of the services for which registration is sought. In re Advertising & Marketing, 821 F.2d 641, 2 USPQ2d 2010, 2014 (Fed. Cir. 1987). Put quite simply, applicant's use of the phrase WALK IN, PHONE IN, LOG IN does not serve to inform the public that the retail services emanate from one particular source (i.e. applicant), rather the phrase serves to inform the public how to access

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applicant's retail services. See also 1 J. McCarthy, McCarthy on Trademarks and Unfair Competition Sections 7:22 and 7:23 (4th ed. 2000) and In re Standard Oil Co., 275 F.2d 945, 125 USPQ 227, 229 (CCPA 1960).

Decision: The refusal to register on both grounds is affirmed.