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Paper No. 11
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AAA Customer Services, LLC

Serial No. 75/828,319

Claire Foley for AAA Customer Services, LLC.

Tracey Cross, Trademark Examining Attorney, Law Office 103
(Michael Hamilton, Managing Attorney).

Before Hanak, Quinn and Holtzman, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

AAA Customer Services, LLC seeks to register on the
Supplemental Register EXCLUSIVE BUYERS OFFICE in typed
drawing form for "real estate agencies." The application
was filed on October 20, 1999 with a claimed first use date
of August 1999.

The Examining Attorney has refused registration on the
basis that the phrase EXCLUSIVE BUYERS OFFICE is generic
for "real estate agencies." 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.

It is beyond dispute that "the burden of showing that a proposed trademark [or service mark] is generic remains with the Patent and Trademark Office." In re Merrill Lynch, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Moreover, it is incumbent upon the Examining Attorney to make a "substantial showing ... that the matter is in fact generic." Merrill Lynch, 4 USPQ2d at 1143. Indeed, this substantial showing "must be based on clear evidence of generic use." Merrill Lynch, 4 USPQ2d at 1143. Thus, "a strong showing is required when the Office seeks to establish that a term is generic." In re K-T Zoe Furniture Inc., 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994). Moreover, any doubt whatsoever on the issue of genericness must be resolved in favor of the applicant. In re Waverly Inc., 27 USPQ2d 1620, 1624 (TTAB 1993).

Obviously, the mark which applicant seeks to register (EXCLUSIVE BUYERS OFFICE) is a phrase, and not a compound word. Thus, the PTO cannot establish that this mark is generic by simply citing definitions and generic uses of the constituent terms of a mark. Rather, the PTO must establish that the phrase as a whole has been used in a

generic manner. In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999).

In this case, the Examining Attorney could not find even a single story from the vast Nexis database where the phrases "exclusive buyers office" or "exclusive buyer's office" were used in a generic manner by others for real estate agencies, or even very similar services. Moreover, while the Examining Attorney need not necessarily provide dictionary definitions of a word or phrase to establish that it is generic, in this case the Examining Attorney has not provided any dictionary definition of EXCLUSIVE BUYERS OFFICE. Instead, the Examining Attorney has made of record "stories" appearing on the Internet where the term EXCLUSIVE BUYERS OFFICE appears.

However, this evidence shows that in some cases the term EXCLUSIVE BUYERS OFFICE is used in a generic manner, but that in other cases this term is used as a mark. An example of this latter situation is an Internet "story" submitted by the Examining Attorney entitled "Exclusive Buyer's Office Link Exchange." It contains the following sentence: "Not all Exclusive Buyer's Offices have a web site listed on this page. If you are not able to locate an agency to assist you in your home buying efforts please

contact the National Association of Exclusive Buyer Agents (NAEBA) for further assistance."

Given the fact that from the vast Nexis data base the Examining Attorney could not find even one example of the use of the phrase "exclusive buyers office" and the additional fact that the Examining Attorney's Internet evidence is mixed in that it contains both generic and proprietary uses of this term, we find that the Examining Attorney has simply failed to make the "substantial showing" (Merrill Lynch, 4 USPQ2d at 1143) or the "strong showing" (K-T Zoe, 29 USPQ2d at 1788) required to establish that the term EXCLUSIVE BUYERS OFFICE is generic for real estate agencies. At an absolute minimum, we have doubts as to whether this term is generic for applicant's services, and as previously noted, such doubts on the issue of genericness are resolved in favor of the applicant. Waverly, 27 USPQ2d at 1624.

Decision: The refusal to register is reversed.