

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB**

Mailed: 8/31/04

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Robert Fox, Inc.

Serial No. 76455401

Myron Amer of Myron Amer, P.C. for Robert Fox, Inc.

Jeffrey S. DeFord, Trademark Examining Attorney, Law Office
115 (Tomas Vlcek, Managing Attorney).

Before Seeherman, Hanak and Rogers, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Robert Fox, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register CATCH THE THRILL OF A GREAT BUY! as a mark for "retail store for ladies' clothing."¹ Registration has been refused on the

¹ Application Serial No. 76455401, filed September 30, 2002, and asserting first use and first use in commerce on January 1, 1998. The drawing, as originally filed, showed the mark, in typed format, as CATCH THE THRILL OF A GREAT BUY. With its reply brief, applicant has submitted an amended drawing which includes the exclamation point. Normally, a proposed amendment to a drawing, filed after the appeal, would have to be submitted with a request for remand. However, in this case, the Examining Attorney has, throughout examination, stated that the omission of

basis that the specimen does not show use of the mark as it appears in the drawing.

The appeal has been fully briefed; applicant did not request an oral hearing.

Trademark Rule §2.51(a) provides that, "in an application under section 1(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services." It is the Examining Attorney's position that CATCH THE THRILL OF A GREAT BUY! is a mutilation of the mark actually shown in the specimen, namely, FALL IN LOVE WITH SHOPPING AND CATCH THE THRILL OF A GREAT BUY!

It is well settled that an applicant may apply to register any element of a composite mark if that element, as shown in the record, presents a separate and distinct commercial impression which indicates the source of the applicant's goods or services. See *In re Miller Sports Inc.*, 51 USPQ2d 1059 (TTAB 1999). See also, TMEP §807.14(b) (3d ed. rev. May 2003). Therefore, we turn to a

the exclamation point from the drawing was one of the problems with the drawing. Because applicant seeks to comply with this particular requirement by the Examining Attorney, and because the addition of the exclamation point is clearly not a material alteration of the mark, we see no need to delay the appeal further by remanding the application to the Examining Attorney. Accordingly, the amendment to the drawing has been accepted, and Office records now reflect this amendment.

consideration of the specimen submitted by applicant, and depicted below, to determine whether CATCH THE THRILL OF A GREAT BUY! presents a separate and distinct commercial impression.



As the Examining Attorney has noted, the words CATCH THE THRILL OF A GREAT BUY! do not appear alone, but are part of the phrase FALL IN LOVE WITH SHOPPING AND CATCH THE THRILL OF A GREAT BUY! Further, these words do not even appear separately on a single line; rather, the line contains the words AND CATCH THE THRILL OF A GREAT BUY! The word "AND" is visually part of the phrase, being depicted in the same size and type font as CATCH THE THRILL OF A GREAT BUY!

This line, AND CATCH THE THRILL OF A GREAT BUY! is visually subordinate to the words FALL IN LOVE WITH SHOPPING. As the Examining Attorney has suggested, FALL IN

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LOVE WITH SHOPPING may create a separate commercial impression because it is in larger, bolder type and stands out from the entire sentence of which it is a part. However, the subordinate phrase AND CATCH THE THRILL OF A GREAT BUY! does not stand out in this way. That is, consumers viewing the specimen advertisement are not likely to view the latter phrase as a separate trademark. Further, for those consumers who move beyond the dominant FALL IN LOVE WITH SHOPPING to read the rest of the sentence, the phrase beginning with the word "AND" would only be perceived as part of the whole sentence and not as a separate mark merely placed below FALL IN LOVE WITH SHOPPING.

Because AND CATCH THE THRILL OF A GREAT BUY! does not create a separate and distinct impression from the entire slogan FALL IN LOVE WITH SHOPPING AND CATCH THE THRILL OF A GREAT BUY!, neither does the portion of that phrase--CATCH THE THRILL OF A GREAT BUY!--which is an integral part of AND CATCH THE THRILL OF A GREAT BUY! We wish to make it clear that our decision herein is based solely on the commercial impression of CATCH THE THRILL OF A GREAT BUY! as it appears on applicant's specimen herein. Under other circumstances, two phrases, even when joined by the word "and," might well create the impression of two separate trademarks, such as, for instance, if the word "and"

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appeared on a separate line, and in smaller letters, between two prominently displayed phrases. Nor has our decision been based on the question of whether CATCH THE THRILL OF A GREAT BUY!, as required by Trademark Rule 2.51(a), is a substantially exact representation of AND CATCH THE THRILL OF A GREAT BUY!, i.e., the question of whether the AND is a significant element of the proposed mark. Because, as shown in the specimen, CATCH THE THRILL OF A GREAT BUY! does not create a separate commercial impression apart from FALL IN LOVE WITH SHOPPING AND CATCH THE THRILL OF A GREAT BUY!, the mark shown in the drawing, CATCH THE THRILL OF A GREAT BUY!, is not a substantially exact representation of the mark shown in the specimen.

Decision: The refusal of registration is affirmed.