

TTAB Affirms Trademark Refusal on Grounds of Failure to Designate Source

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This article explores a precedential holding by the Trademark Trial and Appeal Board (TTAB) that an applied-for term fails to function as a trademark. In *In re TracFone Wireless, Inc.*, TracFone filed a trademark application to register the phrase UNLIMITED CARRYOVER on the Principal Register based on "acquired distinctiveness." TracFone had owned a registration for the mark on the Supplemental Register, covering various telecommunication services. The USPTO examiner had refused to register the mark on the Principal Register on the grounds that the phrase was "informational and common." TracFone appealed the refusal to the TTAB.

The TTAB explained that the "critical inquiry" is how the phrase would be perceived by the public and examined the record evidence to discern how the phrase UNLIMITED CARRYOVER was actually used in the marketplace. Affirming the refusal to register, the TTAB found that the phrase would be perceived as a feature of TracFone's telecommunications services, rather than as a mark designating the source of the services. These findings focused on the manner in which the term was used in printed materials.

The case highlights the importance of input from counsel on the appearance and placement of a mark in marketing materials.

Read "[Why do some marks fail to function as trademarks?](#)" in its entirety.

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