

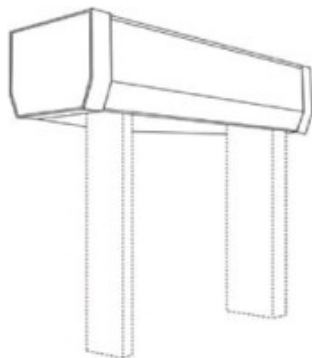
World Trademark Review Daily

Shape of 'pole spanner sign' is refused registration
United States - Leason Ellis LLP

Examination/opposition
National procedures

December 14 2010

In a precedential decision, *In re Chevron Intellectual Property Group LLC* (Serial 78/490,836, November 23 2010), the Trademark Trial and Appeal Board (TTAB) has affirmed the denial of the registration of Chevron Intellectual Property Group LLC's configuration of a "bevelled pole spanner sign in the shape of a tri-dimensional beam on the top and in the shape of... a tri-dimensional hexagon on the bottom", as shown below, for use with "vehicle service station services":



The configuration is used to display the Chevron logo and other information atop the gas pump area in a service station. Registration was refused on the grounds of non-distinctiveness and for failure to demonstrate acquired distinctiveness.

The TTAB affirmed the examining attorney's decision that the configuration is not inherently distinctive. Noting that a trade dress must be "of such a design that a buyer will immediately rely on it to differentiate the product from those of competing manufacturers", the TTAB recited precedential factors used in determining whether a design is arbitrary or distinctive. Specifically, one considers whether a design is:

- a common or basic shape;
- unique or unusual in the relevant field;
- a mere refinement of a commonly adopted form of ornamentation in the field; and
- capable of creating a commercial impression distinct from accompanying words.

The TTAB agreed with the examining attorney that Chevron's pole spanner sign "is a mere refinement of a commonly adopted and well-known form of ornamentation" based on evidence in the record showing multiple competing service stations using pole spanners comprised of common geometric shapes for signs above gasoline pumps. Chevron's unsupported argument that its six-sided bevelled shape was recognisable and distinctive did not convince the TTAB otherwise. Rather, the TTAB concluded from the evidence that consumers would rely on other elements of the service station, particularly the Chevron logo, in making their purchasing decision and, instead, would view the pole spanner designs as part of the gasoline pump and as a means for displaying the world/logo marks thereon.

Addressing Chevron's claim of acquired distinctiveness, the TTAB noted that Chevron had a heavy burden in view of the nature of the mark. Chevron relied on 22 years of use in 8,000 service stations seen by over 500 million people in a two-year period. The TTAB looked beyond these seemingly impressive numbers and found that there was nothing to indicate that Chevron's customers viewed the pole spanner design as anything other than a feature of the gas pump. The TTAB also noted the lack of evidence that Chevron had promoted the pole spanner design as a source indicator. Evidence submitted by Chevron was found lacking on this point as not probative and/or unreliable.

The case is instructive to show how long use by a successful business will not be sufficient to turn a common design into a protectable trade dress. Those seeking trade dress protection need to adopt more unique designs and need to promote them as trademarks before the US [Patent and Trademark Office](#) will find them protectable.

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