

THIS DISPOSITION IS NOT
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AUG 7, 97

Paper No. 9
GDH/CJ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Physicians' Online, Inc.

Serial No. 74/618,290

Anthony H. Handal of Handal & Morofsky for Physicians' Online,
Inc.

Craig D. Taylor, Senior Examining Attorney, Law Office 107
(Janice O'Lear, Acting Managing Attorney).

Before Quinn, Hohein and Walters, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Physicians' Online, Inc. has filed an application to register the phrase "BY PHYSICIANS FOR PHYSICIANS" for "computer services, namely, leasing access time to computer databases in the field of drugs and health treatment in printed and electronic form, [and] providing health maintenance and diagnostic and treatment information."¹

¹ Ser. No. 74/618,290, filed on January 5, 1995, which alleges a bona fide intention to use such phrase.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the phrase "BY PHYSICIANS FOR PHYSICIANS" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a phrase is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a phrase describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the phrase describes a significant attribute or idea about them. Moreover, whether a phrase is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the phrase would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether

consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, citing the cases of BellSouth Corp. v. Planum Technology Corp., 14 USPQ2d 1555, 1556 (TTAB 1990) [mark "PHONE FORWARD" held highly suggestive of automatic telephone call diverters] and United States Hosiery Corp. v. Gap, Inc., 10 USPQ2d 1721, 1729 (W.D.N.C. 1989) [mark "WORKFORCE" found suggestive of work socks directed primarily toward blue collar workers], argues that its "mark BY PHYSICIANS FOR PHYSICIANS is, at best, merely suggestive of the type of information which can be obtained through Applicant's services," but it is not merely descriptive thereof because "[i]t does not remotely tell the nature of the services provided". According to applicant:

The nature of the services provided by the Applicant involves leasing access time to computer databases by professionals for the purpose of obtaining health maintenance, diagnostic and treatment information. Clearly the services contemplated by the Applicant are in the nature of making available information to professionals who are, in some way, connected to the health care industry. While some of those individuals may be physicians, the services are not exclusive to physicians but include any individual who is in need of medical information such as health maintenance, diagnostic and treatment information.

Applicant consequently maintains that because those other than physicians may also use its services, the phrase "BY PHYSICIANS FOR PHYSICIANS" is no more than suggestive of its services.

The Examining Attorney, on the other hand, contends that such phrase "is merely descriptive because it conveys an immediate idea of an essential feature of the services." Specifically, the Examining Attorney asserts that the phrase "BY PHYSICIANS FOR PHYSICIANS identifies the class of purchasers for whom applicant's computer services are designed to serve" or, at the very least, an appreciable group of the users thereof. In support thereof, the Examining Attorney, notes that:

The Trademark Trial and Appeal Board has found marks merely descriptive if they describe the group for whom [an] appreciable portion of the services are directed. *In re Camel Manufacturing Company, Inc.*, 222 USPQ 1031 (TTAB 1984). In *Camel Manufacturing*, [the] applicant sought registration of **MOUNTAIN CAMPER** for "retail and mail order services in the field of outdoor equipment and apparel." The examining attorney refused registration on grounds that the mark was merely descriptive because it described the type of purchaser or customer for whom the services were directed. Applicant argued that the refusal was inappropriate because the majority of the goods sold were not primarily for mountain campers and that most of the goods were not suitable for mountain camping. The Board, however, affirmed the refusal stating that "we embrace the holding that a mark is merely descriptive if it describes the type of individuals to whom an appreciable number or all of a party's goods or services are directed." *Id* at 1032. Here applicant has made it clear that physicians constitute at least a significant part of the group for whom its computer services are directed, and therefore the entire mark is considered to be merely descriptive. See also *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1996 [sic]) (**SYSTEMS USER** found merely descriptive of a trade journal directed toward users of data processing systems).

We agree with the Examining Attorney that the phrase "BY PHYSICIANS FOR PHYSICIANS" immediately describes, without conjecture or speculation, a significant aspect or feature of applicant's computer services, namely, that its accessible computer databases relating to the field of drugs and health treatment and for providing health maintenance, diagnostic and treatment information are developed by physicians for physicians to utilize in their medical practices. Unlike the marks in the cases relied upon by applicant, there is nothing about the phrase "BY PHYSICIANS FOR PHYSICIANS" which is incongruous, indefinite or susceptible to multiple connotations, nor is the use of imagination, cogitation, mental processing or the gathering of further information necessary in order for applicant's customers to readily and precisely perceive that such phrase names the types of individuals to whom an appreciable volume of applicant's services would be directed and used. Applicant, in fact, concedes that "some of those individuals may be physicians" and, by the very nature of applicant's services, it is clear that doctors, surgeons and other physicians would constitute a significant portion of the group to whom such services are directed.²

² In any event, it is also clear that applicant's services, as identified in the application, would include those computer services in which the accessible databases in the field of drugs and health treatment and for providing health maintenance, diagnostic and treatment information are exclusively designed by physicians for physicians. It is well settled that registration must be denied if a mark is merely descriptive of any of the services or goods for which registration is sought. See, e.g., *In re Quick-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980) and *In re American Society of Clinical Pathologists, Inc.*, 442 F.2d 1404, 169 USPQ 800, 801 (CCPA 1971).

Accordingly, because the phrase "BY PHYSICIANS FOR PHYSICIANS" conveys forthwith a significant aspect or feature of applicant's computer services, namely, that its accessible databases in the field of drugs and health treatment and for providing health maintenance, diagnostic and treatment information are developed by physicians for physicians and, thus, such phrase names an appreciable category or segment of those for whom the services are designed and rendered, the phrase is merely descriptive within the meaning of the statute. See, e.g., In re Camel Manufacturing Co., Inc., supra at 1032; Hunter Publishing Co. v. Caulfield Publishing Ltd., supra at 1998; and In re Hunter Publishing Co., 204 USPQ 957, 962 (TTAB 1979) [phrase "JOBBER AND WAREHOUSE EXECUTIVE" for a trade magazine circulated to jobbers and warehouse executives in the automotive aftermarket merely describes "the class or classes of purchasers to whom applicant's publication is primarily directed"].

Decision: The refusal under Section 2(e)(1) is affirmed.

T. J. Quinn

G. D. Hohein

C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board