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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Applied Chaos Technology Corporation

Serial No. 75/038,500 and 75/051,463

Ralph M. Tener of Tener & Callahan, P.C. for Applied Chaos
Technology Corporation.

John Tingley, Trademark Examining Attorney, Law Office 102
(Tom Shaw, Acting Managing Attorney).

Before **Cissel**, Hanak and Bucher, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On December 29, 1995, applicant filed the first of the
above-referenced applications to register the mark "APPLIED
CHAOS." The services were listed in that application as
"scientific and industrial research, consulting services,
and product design and development in the fields of
mathematics, chaos technology, nonlinear dynamics, medical

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research, modeling of neurodynamical systems, modeling of the brain, data analysis, real time applications of nonlinear dynamics, signal detection, signal processing, control of nonlinear dynamical systems, control of chaos, synchronization of chaos, and the modeling, simulation, prediction, estimation, and smoothing of stochastic processes; Computer programming services for others," in Class 42. The basis for the application was applicant's assertion of use of the mark in commerce since July 1, 1994.

The later-filed application, filed on January 31, 1996, sought registration of the same mark for what were subsequently identified by amendment as "computer programs for: preventing damage to computer display screens by generating and displaying continually changing images; generation, processing, and display of images and patterns; signal detection, identification, and processing; modeling, simulation, and medical research with respect to the brain, neuronal membranes, and other neurodynamical systems; modeling, simulation, analysis, prediction, estimation, and smoothing of stochastic processes and nonlinear and dynamical systems; and user manuals provided therewith," in Class 9. The basis for that application was

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applicant's claim of use of the mark in commerce on the goods since July 20, 1994.

The Examining Attorney refused registration in both applications under Section 2(e)(1) of the Act on the ground that the term sought to be registered is merely descriptive of the goods and services set forth in the respective applications. Attached to the refusals were copies of entries from a computer dictionary wherein the term "chaos" is defined as "the science that deals with the underlying order of the seemingly random nature of the universe. See 'fractals.'" "Fractals" is defined in the same dictionary as "a technique for describing and greatly compressing images, especially natural objects, such as trees, clouds and rivers. It turns an image into a set of data and an algorithm for expanding it back into the original."

In both applications, applicant filed responses arguing against the refusals based on mere descriptiveness. The Examining Attorney then issued Office Actions making the refusals final. Attached to these actions were copies of excerpts from published articles retrieved from the Nexis® automated database. This evidence was asserted to show that the term sought to be registered is merely descriptive in connection with the goods and services set forth in these applications.

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Applicant appealed to the Board from both final refusals to register. Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral hearing on this matter.

Because the issue on appeal is the same for both applications, we are issuing this single opinion explaining our rulings affirming both refusals to register.

The test for determining whether a mark is unregistrable under Section 2(e)(1) because it is merely descriptive of the goods or services with which it is used is well settled. If the mark forthwith conveys information about a quality, characteristic, feature, function or purpose of the goods or services, the mark must be refused registration under Section 2(e)(1), but the mark is only suggestive of the goods or services, and therefore is registrable in connection with them, if some imagination, thought or perception is required to understand, from consideration of the mark and the goods or services with which it used, anything specific about the nature or quality of the goods or services. *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1971).

Applicant admits (brief p.5) that "there is a narrow field of science known as chaos," and that "a subject of

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the science may sometimes be referred to as applied chaos." Applicant maintains, however, that "APPLIED CHAOS" is not merely descriptive as used with applicant's goods and services.

Several of the excerpts from the Nexis® database made part of the record by the Examining Attorney clearly do not support the contention that the term sought to be registered is merely descriptive of the goods and services set forth in these applications. For example, "When force is applied, chaos ensues," is hardly proof that "applied chaos" is a term used descriptively in connection with either the computer programs listed in the application listing those goods, or with the research, design, development or consulting services set forth in the other application.

Other excerpts use the term in a general sense, rather than in a way related to mathematics or science which would show the term to describe with sufficient particularity anything about the goods and services set forth in these two applications. An example of this is "[t]he plot is a carefully constructed as a study in applied chaos..."

A few of the excerpts do, however, show that "applied chaos" is a term used not only to refer to an abstract mathematical theory, but also to the practical application

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of the principles of chaos in fields outside of mathematics. When these excerpts are considered in addition to the specimens of record and in view of the ordinary meaning of the word "applied,"¹ it is clear that the term sought to be registered immediately and forthwith conveys the fact that applicant's goods and services involve the application of chaos theory to particular goods and services.

Two of the excerpts which show descriptive use of the term are as follows: "This study applied chaos theory to bankruptcy prediction using a pairmatched sample of bankrupt firms."; and "Everything from economics to weather forecasting has become a branch of applied chaos theory."

This is one of the other excerpts made of record by the Examining Attorney: "... We've applied the 'chaos principle' up to now, and it's worked very well." Applicant argues that this evidence is irrelevant to our inquiry, in that the term "chaos principle" is not what applicant is attempting to register. This excerpt, however, does have relevance to the issue before us, in that it shows that the principal or theory known as "chaos" may be applied to something. In the same sense, the

¹ The New College Edition of the American Heritage Dictionary of the English Language, Houghton Mifflin Company, 1976, defines the

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dictionary definitions referred to in the first Office Action show that the theory or principles known as "chaos" have practical applications.

Perhaps the strongest evidence of the descriptiveness of "APPLIED CHAOS" in connection with the goods and services specified in these applications is provided by applicant itself in the form of the specimens of use submitted with the application as it was filed. In these printed promotional materials, applicant states that its objective is to develop new technology utilizing recent advances in the phenomenon of chaos. The specimens go on to note that Dr. Braden "is developing applications of neurobiology and chaos to organizational behavior." Fields of practical endeavor to which applicant's experts offer to apply their knowledge of the principals of chaos are listed in the advertising specimen as, inter alia, "chaos"; "signal processing"; "nonlinear dynamics"; "general medicine"; "dynamics of the brain"; and "commercial design." The advertisement concludes by claiming that "Applied Chaos provides a bridge between government/university research in nonlinear science and the development of commercial products by industry."

word as "put in practice; used."

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In summary as to this point, it is clear from this record that in addition to the ordinary use of "chaos" in reference to general disorder, the word is also used to refer to the mathematical theory or principles of chaos, and that those principles may be applied in a number of different fields in addition to mathematics.

In view of this evidence and the undisputed meanings of both "applied" and "chaos," we conclude that "applied chaos" is a term used in connection with the practical application of the theory or principles known as "chaos" to different areas outside of the field of theoretical mathematics.

It is apparent from this record that "APPLIED CHAOS," when used in connection with the goods and services listed in these applications, e.g., computer programs for modeling, simulation, analysis and prediction of nonlinear systems, consulting services, product design and development, and conducting industrial research in the fields of chaos technology, conveys the significant fact that a feature or characteristic of the products and services is that they involve the practical application of chaos theory. As such, "APPLIED CHAOS" clearly runs afoul of Section 2(e)(1) of the Act.

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Applicant's argument that its mark is not merely descriptive, that it is only suggestive, and therefore registrable, because it creates a "memorable" trademark by being "incongruous, surprising, paradoxical and humorous" (reply brief, p. 1), is simply not supported by the record in this application. Nothing in this record shows that the combination of "APPLIED" and "CHAOS" results in a new meaning different from what one would expect when the ordinary meanings of the two words which comprise the mark are combined. Applicant admits that the goods and services listed in the applications encompass fields which fall within chaos science. (reply brief, p. 2). That "the bulk" of the fields into which applicant's goods and services fall have not yet benefited from the application of chaos theory does not alter the fact that some have, or that many might benefit if the theory or principles of chaos were applied in those areas.

Applicant's argument that registration in these two cases is justified because of third-party registrations for marks which combine the word "applied" with other words which are descriptive as applied to the goods or services set forth in those registrations is not well taken. The propriety of issuing those registrations is not before the Board in this appeal. This appeal is concerned with

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determining whether "APPLIED CHAOS" is merely descriptive of the goods and services set forth in these two applications. As discussed above, the record in these applications supports the conclusion that it is.

In summary, the mark for which registration is sought in these two applications is merely descriptive as it is used in connection with the listed goods and services because it immediately and forthwith conveys the fact that they involve the application of the principals of chaos to these products and activities. Accordingly, the refusals to register are affirmed in both applications, and registration to applicant is denied.

R. F. Cissel

E. W. Hanak

D. E. Bucher
Administrative Trademark Judges,
Trademark Trial and Appeal Board

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