

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

FEB. 22, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Western Wireless Corporation**

Serial No. 75/039,811 and 75/039,813

Jessica Stone Levy of **Preston, Gates & Ellis LLP** for
Western Wireless Corporation.

Angela Micheli, Trademark Examining Attorney, Law Office
108 (**David E. Shallant**, Managing Attorney).

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

Opinion by **Hairston**, Administrative Trademark Judge:

Western Wireless Corporation has filed applications to
register the mark TEXTSTREAM for "computer software, namely
disks, diskettes and CD-ROMS for use in the transmission of
data between pagers and computer terminals"¹ and

¹ Application Serial No. 75/039,811 filed January 3, 1996 under
Section 1(b) of the Trademark Act; amended to allege a date of
first use and first use in commerce of March 1, 1996.

telecommunications services, namely wireless voice and data transmission."²

The Examining Attorney has finally refused registration in each application on the ground that the mark is merely descriptive of the identified goods and services.

Applicant has appealed and, because both cases involve similar records and the same issue, we will consider them in a single opinion.

In support of her position, the Examining Attorney has made of record the following definition taken from Webster's New World Dictionary Of Media And Communications (1990):

stream: flow [computers] a flow of data such as an *input stream*, *output stream*, *format stream* or ***text stream***. (emphasis added)

In addition, she has submitted excerpts of articles taken from the NEXIS data base, including the following:

The text window displays a continuous text stream divided into paragraphs, with graphics, tables, and icons representing multimedia objects appearing between paragraphs. (PC Magazine; February 7, 1995);

² Application Serial No. 75/039,813 filed January 3, 1996 under Section 1(b) of the Trademark Act; amended to allege a date of first use and first use in commerce of March 1, 1996.

JPress documents are compact because the program does not carry the entire text stream in JPress format.

(Industry Express; May 1997); and

. . . it not only displays the closed-captioned text that accompanies most programs, it can search that text stream in real time, pop up the ATI TV Player when it spots keywords, and save the information.

(The Washington Post; April 25, 1997).

The evidence shows that the term "text stream" is a term of art in the computer field which is used to refer to a flow or stream of data in text form. As shown from the specimens of record, applicant's software may be used to create text messages on a computer which are then transmitted via applicant's telecommunication services to a wireless phone. Thus, a feature of applicant's computer software and telecommunication services is the transmission of a stream of text or "text stream." We find, therefore, that the mark TEXTSTREAM is merely descriptive of applicant's goods and services. There is nothing unique about the combining of the terms "text" and "stream" to form TEXTSTREAM, nor would the combined term have any meaning other than "text stream" when used in connection with applicant's goods and services. Simply put, the fact that applicant has created a compound word by joining the terms "text" and "stream" does not magically transform the

descriptive designation "text stream" into a source indicator.

We find unpersuasive applicant's argument that TEXTSTREAM is not merely descriptive because there is no evidence that competitors are using TEXTSTREAM in connection with their goods or services. The fact that none of applicant's competitors in the telecommunications field are using this designation does not alter the merely descriptive significance of this term. It is clear from the dictionary definition of the word "stream" that "text stream" would be an appropriate term to refer to what is transmitted with applicant's computer software and telecommunications services.

Finally, applicant has made of record copies of its registrations for other "STREAM" marks, i.e., INFOSTREAM and VOICESTREAM, and has argued that it has established a family of "STREAM" marks which increases the association of the involved goods and services with applicant. It appears that applicant's reliance on these registrations goes to an argument that TEXTSTREAM has acquired distinctiveness as a mark because the public would associate it with applicant's other "STREAM" marks. However, this argument is unavailing

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since applicant has not claimed that the mark is registrable pursuant to Section 2(f).³

Decision: The refusal to register is affirmed.

E. W. Hanak

P. T. Hairston

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

³ This should not be taken as a finding that this mark would be registrable under the provisions of Section 2(f).

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