

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB    OCT. 29,99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **TBT International, Inc.**

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Serial No. 75/092,630

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**Hugh D. Jaeger** of Hugh D. Jaeger, P.A. for applicant.

**Asmat A. Khan**, Trademark Examining Attorney, Law Office 104  
(**Sidney Moskowitz**, Managing Attorney).

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Before **Seeherman**, **Quinn** and **McLeod**, Administrative Trademark  
Judges.

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

An application has been filed by TBT International, Inc.  
to register the designation shown below for "computer services,

**OnlineClass**

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namely, leasing access time to a computer database offering, in real time, elementary, junior and senior high school educational materials and offering a live, interactive experience over a global computer network."<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 U.S.C. § 1052(e)(1), on the ground that applicant's designation, when applied to applicant's services, is merely descriptive.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was originally requested, but the request was later withdrawn by applicant.

Applicant argues that the mark is suggestive, and that it does not immediately convey to the relevant public the extent of services or variety of materials offered by applicant. Applicant acknowledges that "online" and "class" may be commonly used industry terms. However, applicant contends that the combination of the two words into one word -- ONLINECLASS -- creates an unusual and distinctive mark. Applicant maintains, among other things, that the unitary designation is suggestive because the term "class" has several definitions,

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<sup>1</sup> Application Serial No. 75/092,630, filed April 15, 1996, alleging dates of first use of March 1, 1996.

and it is not used by any other company to identify online educational goods or services.

The Examining Attorney argues, on the other hand, that the applied-for mark is merely descriptive of applicant's services. According to the Examining Attorney, the mark immediately conveys to consumers that class instruction is offered on a global computer network. The Examining Attorney maintains that the combination of two descriptive words "online" and "class" into a unitary designation creates no incongruity. Moreover, the Examining Attorney submits that the mark need not describe all characteristics, features or details of applicant's services in order to be found merely descriptive. In support of the refusal to register, the Examining Attorney submitted dictionary definitions for the terms "online" and "class."

Before turning to the substantive issue before us, we must address a procedural issue. For the first time in its brief, applicant has asserted an alternative basis for registration. Specifically, applicant argues, in the alternative, that the mark ONLINECLASS has acquired distinctiveness. The Examining Attorney objected to the consideration of this issue on appeal.

We agree that applicant's assertion of acquired distinctiveness in its brief is untimely. Trademark Rule 2.142(d) provides that the record in the application should be complete prior to the filing of an appeal and that if applicant

wishes to introduce additional evidence after an appeal is filed, it may file a request for remand. See TBMP § 1207. Applicant did not file a request for remand nor has it offered any reason why it failed to raise this issue prior to filing the appeal. Accordingly, applicant's claim of acquired distinctiveness has been given no consideration.

Turning to the merits of the refusal, a term is merely descriptive of services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it immediately describes a quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the services. *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505 (CCPA 1980), citing *In re Abcor Development Corp.*, 588 F.2d 811, 813-14, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. *In re Gyulay*, 820 F.2d 1216, 1218, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Furthermore, whether a term is merely descriptive is determined not in the abstract but in relation to the services for which registration is sought. *Abcor Development*, 588 F.2d at 814, 200 USPQ at 218; *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

The evidence of record persuades us that, when used in connection with the identified services, the combined designation "OnlineClass" immediately conveys that educational class instruction and materials are offered to students via a global computer network. As noted by the Examining Attorney, the term "online" is defined as "activated and ready for operation; capable of communicating with or being controlled by computer. For example . . . a database is online when it can be used by a person who connects with the computer on which it is stored." *Microsoft Press Computer Dictionary* 246 (1991). The term "class" is defined as "a group of students studying the same subject," *Webster's II New Revised University Dictionary* 268 (1994), and "a course of instruction." *Webster's Third New International Dictionary* 416 (1971).<sup>2</sup>

Applicant acknowledges that "online" and "class" are commonly used industry terms. In fact, applicant uses the terms descriptively in its own literature to refer to its services:

Welcome to TBT International's OnlineClass Home Room, where you'll find original Internet programming for the K-12 **classroom**. (emphasis added).

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<sup>2</sup> The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Add e-mail addresses at \$25 ea. for multiple **classes** or team-teaching settings. (emphasis added).

OnlineClass programs we offer for Winter and Spring, 1997: . . . Mythos: Zeus Speaks! The history of Ancient Greece and the inhabitants of Mount Olympus come alive as students receive e-mail versions of the basic Greek myths and discuss **online** their reactions to the stories. (emphasis added).

**[O]nline** field reports from Rivers of Life staff and guests such as river managers, barge pilots, biologists, poets, musicians, historians, archaeologists and lock and dam operators and e-mail Q & A. (emphasis added).

We reject applicant's contention that the combined terms form an unusual, distinctive and registrable mark. Whether a term which is created by combining two or more descriptive words may achieve registration depends on whether, in combination, a new and different commercial impression is created and/or the combination imparts an incongruous meaning as used with the goods or services. *See In re National Shooting Sports Foundation*, 219 USPQ 1018 (TTAB 1983) and cases cited therein.

In this case, applicant has done nothing more than combine two words which describe significant features of applicant's services. The term "online" describes the mode through which applicant offers its services. Further, the term "class" describes the nature of applicant's services. *See In re Putman*

*Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996)(FOOD & BEVERAGE ON-LINE merely descriptive for news and information service updated daily for the food processing industry, contained in a database). There is nothing unique or incongruous about the combined designation "OnlineClass," and no imagination is required to understand the nature of applicant's services.

In this regard, the present situation differs from the cases relied upon by applicant in which two admittedly descriptive terms, when combined, were found to result in a composite which was not merely descriptive. See *Dial-A-Mattress Operating Corp. v. Mattress Madness*, 841 F.Supp. 1339, 33 USPQ2d 1961 (E.D.N.Y. 1994); *Regal Indus. v. General Strap*, 33 USPQ2d 1289 (E.D. Pa. 1994). We believe that this case falls in a line of cases where two descriptive terms, when combined, remain merely descriptive. See e.g. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)(SCREENWIPE for a premoistened, antistatic cloth for cleaning computer and television screens not registrable); *In re United States Steel Corp.*, 225 USPQ 750, 751 (TTAB 1985)(SUPEROPE no less descriptive than SUPER ROPE); *In re Wink Corporation*, 218 USPQ 739 (TTAB 1983)(FULLVIEW merely descriptive of vehicle rear view mirrors); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977)(BREADSPRED merely descriptive of jellies and jams); *In re The Perkin-Elmer Corp.*, 174 USPQ 57

(TTAB 1972)(LASERGAGE merely descriptive of interferometers);  
*In re Hycon Mfg. Company*, 169 USPQ 622 (TTAB 1971)(HYCONTRAST  
merely descriptive of ambient light filters and image  
enhancers).

Finally, the fact that the term "class" is broad and may  
encompass other meanings or that the combination does not  
describe every feature of applicant's services is not  
persuasive of a different result. See *In re Acuson*, 225 USPQ  
790 (TTAB 1985). Also, the fact that applicant may be the  
first or only user of the designation is not dispositive. *In  
re Eden Foods Inc.*, 24 USPQ2d 1757, 1761 (TTAB 1992), citing  
*National Shooting Sports, supra*.

Decision: The refusal to register is affirmed.

E. J. Seeherman

T. J. Quinn

L. K. McLeod  
Administrative Trademark  
Judges, Trademark  
Trial and Appeal Board

Ser No. 75/092630