

THIS DISPOSITION IS
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fleet Mortgage Group, Inc.

Serial No. 75/109,738

W. R. Duke Taylor of Harness, Dickey & Pierce, P.L.C. for
Fleet Mortgage Group, Inc.

Caryn L. Hines, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Cissel, Hairston and Wendel, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Fleet Mortgage Group, Inc. has filed an application to register the mark EXPEDITER for "home mortgage loan programs which provide expeditious credit approval without an underlying security property, or expeditious credit approval with an underlying security property."¹

¹ Application Serial No. 75/109,738, filed May 24, 1996, alleging a date of first use and first use in commerce of January 7, 1987.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1) on the ground that, when used in connection with applicant's services, the mark EXPEDITER is merely descriptive of them. Registration also has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its services, so resembles the mark EXPEDITE SERVICES as shown below, which is registered for "banking services,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

Turning first to a consideration of the issue of mere descriptiveness, the Examining Attorney maintains that the mark EXPEDITER is merely descriptive of applicant's services because it immediately describes a feature of applicant's home mortgage loans, namely that they feature

² Registration No. 1,823,187 issued February 22, 1994. The word SERVICES is disclaimed apart from the mark as shown.

quick or expedited credit approval. In support of her position, the Examining Attorney submitted a dictionary definition of "expedite" as, inter alia, "speed up the progress of; hasten." The Random House College Dictionary (1980).

Applicant, in arguing against the refusal, simply contends that the Examining Attorney has misapplied the test for mere descriptiveness.

It is well settled that a term 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).

In this case, we agree with the Examining Attorney that the mark EXPEDITER is merely descriptive of applicant's services. There is no question that providing expeditious credit approval is a significant feature of applicant's home mortgage loan programs. We note, in this regard, applicant's own recitation of services wherein the services are described as "home mortgage loan programs

which provide expeditious credit approval . . .” Also, we note the following statement in applicant’s specimen brochure: “The Expediter credit approval program provides those applicants who have not yet selected a property, a quick and reliable decision . . .” (emphasis added). When prospective loan applicants encounter applicant’s mark EXPEDITER, especially as used in the context of the specimen brochure, we have no doubt that the mark immediately conveys to them a feature of applicant’s home mortgage loans, namely, that they feature “expedited” credit approval. Accordingly, applicant’s mark, when used in connection with applicant’s services, is merely descriptive of them, so the refusal under Section 2(e)(1) of the Act must be affirmed.

Turning next to a consideration of the refusal to register under Section 2(d), applicant argues that the services which registrant actually renders under the cited mark are very different from those of applicant. In particular, applicant contends that registrant uses its mark to identify a process of communicating business-to-business information electronically, which is very different from applicant’s home mortgage loan programs. Applicant points out that registrant’s actual services are

utilized by sophisticated purchasers and that such services are not offered to ordinary consumers.

However, as the Examining Attorney correctly observes, it is well settled that the issue of likelihood of confusion must be determined on the basis of the services as they are set forth in the involved application and the cited registration, rather than on what the evidence shows the actual practice to be. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Here, the cited registration reads simply "banking services." It has no limitations of any sort. The banking services listed therein must therefore be presumed to include all the services normally offered by a bank, including home mortgage loans. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Also, it must be presumed that registrant's banking services are offered to all potential customers, and this would include ordinary consumers. Thus, for our purposes of analyzing likelihood of confusion, applicant's home mortgage loan programs and registrant's banking services are closely related services, which if rendered under similar marks, would be assumed to be rendered by a single entity.

Turning then to a consideration of the marks, it is essentially the Examining Attorney's position that the

marks are very similar because applicant's mark EXPEDITER is derived from the word "expedite," which is the dominant part of registrant's mark EXPEDITE SERVICES.

We agree with applicant, however, that the marks convey different commercial impressions. We recognize that the word SERVICES in registrant's mark is descriptive and thus typically would be accorded less weight when comparing the marks. The word SERVICES, however, cannot be ignored and the combined term EXPEDITE SERVICES is distinguishable from applicant's mark EXPEDITER. First, as we have already indicated, EXPEDITER has a readily understandable meaning when used in connection with applicant's services, namely, that applicant's home mortgage loan programs feature expedited credit approval. EXPEDITE SERVICES, on the other hand, has no readily understandable meaning when used in connection with banking services. The cited mark is an unnatural combination of the words "expedite" and "services," and includes a design element.

In sum, we find that EXPEDITER and EXPEDITE SERVICES and design project different commercial impressions such that confusion as to the origin or affiliation of the respective services of applicant and registrant is unlikely.

Decision: The refusal to register under Section 2(e)(1) is affirmed; the refusal to register under Section 2(d) is reversed.

R. F. Cissel

P. T. Hairston

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

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