

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB NOV. 3, 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 ZD Inc.<sup>1</sup>

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Serial No. 75/186,844

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Mark D. Engelmann and David A. Cohen of Fross, Zelnick,  
Lehrman & Zissu for applicant.

Gary R. Thayer, Trademark Examining Attorney, Law Office  
103 (Michael A. Szoke, Managing Attorney).

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Before Seeherman, Hohein and Walters, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

ZD Inc. has filed a trademark application to register  
the mark PC SHOPPER for "providing multiple-user access to  
a global computer information network featuring news and  
information about computers, computing, systems, technology  
and information networks; providing on-line information

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<sup>1</sup> Applicant has indicated in the headings of its submissions that there  
has been a change of name or entity of applicant from Ziff-Davis  
Publishing Company to Ziff-Davis Inc.; and, further, to ZD Inc.  
Applicant is advised that this name change must be recorded with the  
Patent and Trademark Office for any registration that may issue from  
this application to issue in applicant's new name.

about computers, computing, systems, technology and information networks via a global computer network."<sup>2</sup>

The Trademark Examining Attorney has finally refused registration on the ground that applicant's mark is merely descriptive of its services, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1).<sup>3</sup>

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that the mark PC SHOPPER merely describes "the intended audience or subject matter of [applicant's] services, namely '*PC shoppers*' - i.e., those who may be '*shopping*' the market for buying or selling personal computers ('*PC's*')"; and that the mark is merely descriptive if it refers to "*either those end-user consumers who are 'shoppers' for personal computers, or those professional 'shoppers' who are shopping the personal computer market on behalf of others, or both.*" In support

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<sup>2</sup> Serial No. 75/186,844, in International Class 42, filed October 24, 1996, based on an allegation of a bona fide intention to use the mark in commerce.

<sup>3</sup> In his brief, the Examining Attorney indicated for the first time that he is refusing registration, alternatively, on the ground that the mark is deceptively misdescriptive, under Section 2(e)(1) of the Act. It is inappropriate to raise a new ground of refusal for the first time in an appeal brief. We have given no consideration to this ground of refusal.

of his position, the Examining Attorney submitted with his brief, and we take judicial notice of, dictionary definitions of "PC" as "(personal computer) although the term PC is sometimes used to refer to any kind of personal computer ... in general, PC refers to computers that conform to the PC standard originally developed by IBM"<sup>4</sup> and "shopper" as "(1) one that shops (2) one whose occupation is shopping for customers or for an employer."<sup>5</sup>

The Examining Attorney also submitted excerpts of articles from the LEXIS/NEXIS database in support of his position. The excerpts, for the most part, use the term "PC shopper" to refer to buyers of personal computers, which would encompass both types of shoppers indicated in the above-noted dictionary definition of "shopper." In fact, several of these excerpts are from applicant's publications, *PC Week* and *Computer Shopper*.<sup>6</sup>

Applicant contends that its mark is suggestive of the identified "Internet-related" services, that the Examining

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<sup>4</sup> *The Computer Glossary* (7<sup>th</sup> ed.) by Alan Freedman.

<sup>5</sup> *Webster's Ninth New Collegiate Dictionary*.

<sup>6</sup> Examples thereof include the following: "... are being made to improve the low-cost passive-matrix or dual-scan liquid crystal displays (LCDs) that notebook PC shoppers consider the poor relations of active-matrix screens" *Computer Shopper*, September 1997; "Those savvy PC shoppers should stick to the rules" *PC Week*, May 26, 1997; "Not long ago, there were two kinds of PC shoppers: those who hit the bricks, walked the floors, and checked out systems in retail stores, and the savvy folks who read ..." *Computer Shopper*, March 1997.

Attorney "has not adequately considered" the services identified in the application, and that "the record is devoid of meaningful evidence demonstrating that PC SHOPPER is merely descriptive of applicant's specific services." Applicant contends that its identification of services "does not suggest that [its] services will be intentionally aimed at those who shop for computers," although its "services may, in fact, be used by people who intend to buy a personal computer." Arguing that a term that conveys information about the type of consumer who uses the services is suggestive, rather than merely descriptive, applicant states that "the fact that some of the relevant consumers may shop for computers does not make the mark PC SHOPPER merely descriptive of Internet-related services which will provide access or feature information of interest to those consumers."

Applicant argues, additionally, that the mark PC SHOPPER is not merely descriptive because it has several equally viable connotations, none of which accurately describes applicant's services. In this regard, applicant contends that, in addition to the two definitions noted by the Examining Attorney, "shopper" may mean "a commercial employee who fills mail or telephone orders," and that

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"applicant's services may be directed toward commercial sellers who are interested in obtaining information about market conditions, consumer buying habits, demographic information and so forth."<sup>7</sup> Concluding that its mark is "ambiguous" in relation to its services, applicant urges us to resolve any doubt in its favor.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that

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<sup>7</sup> Applicant submitted with its brief, and we take judicial notice of, a definition of "shopper" from *The American Heritage Dictionary* (3<sup>rd</sup> ed.) which supports these additional meanings of the term.

it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Turning to the case before us, while applicant posits several possible connotations of the term "shopper," we must consider the meaning of the term as it appears in the mark as a whole, PC SHOPPER, and in connection with the identified services. Applicant's proposed services, as identified, make available to users information about, *inter alia*, computers, including PCs. In the context of the identified services, PC SHOPPER connotes persons interested in purchasing a personal computer, whether for themselves or on behalf of others. This connotation renders the mark PC SHOPPER merely descriptive of the consumers likely to utilize applicant's services. Applicant has offered no other viable connotation of the mark that would render it ambiguous in connection with the identified services. We note that, contrary to applicant's contentions, a mark that merely describes the relevant class of purchasers is merely descriptive, rather than suggestive, because such information is a significant aspect of any service. *See, Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER merely describes those to whom magazine directed, i.e., readers or subscribers); *In re Sentry*

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*Chemical Co.*, 230 USPQ (TTAB 1986) (HOSPICE immediately informs purchasers that goods are designed for use in hospices); and *In re Camel Manufacturing Company, Inc.*, 222 USPQ 1031 (TTAB 1984) and cases cited therein (MOUNTAIN CAMPER merely describes the type of customer to whom applicant's retail and mail order services in the field of outdoor equipment and apparel are directed).

*Decision:* The refusal under Section 2(e)(1) of the Act is affirmed.

E. J. Seeherman

G. D. Hohein

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