

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB JAN. 28, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re eFusion, Inc.

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Serial No. 75/201,215

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Michael W. Hicks of Blakely, Sokoloff, Taylor & Zafman for  
eFusion, Inc.

Kathleen M. Vanston, Trademark Examining Attorney, Law  
Office 103 (Michael Szoke, Managing Attorney).

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Before Cissel, Hanak and Chapman, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

eFusion, Inc. (applicant) seeks to register PUSH TO  
TALK PTT for "computer hardware, namely global computer  
network communication servers that allow users various  
telecommunication connection and routing options; computer  
peripherals and computer software for facilitating  
connection to a global computer network." The intent-to-  
use application was filed on November 20, 1996.

The Examining Attorney has refused registration pursuant to Section 2(e)(1) of the Trademark Act on the basis that applicant's mark is merely descriptive of applicant's goods. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

As has been stated repeatedly, a term is merely descriptive "if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (emphasis added); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976).

Moreover, in determining whether a mark is descriptive, the mark must not be considered in the abstract, but instead, it must be considered as "applied to the goods or services involved." Abcor Development, 200 USPQ at 218. In addition, the fact that a term may be descriptive of certain types of goods does not establish that it is likewise descriptive of other types of goods, even if the goods are closely related. Abercrombie & Fitch, 189 USPQ at 766. See also, In re The Stroh Brewery Co., 34 USPQ2d 1796, 1797 (TTAB 1994).

The Examining Attorney has made of record excerpts from numerous stories found in the NEXIS database. These stories are of two types. The first group of stories demonstrates that the phrases "push to talk" and its shortened form "PTT" have a specific meaning in the field of radio communications. This point is not disputed by applicant. Indeed, early on in this proceeding applicant made the following statements in a response dated February 26, 1998: "As used in the references provided by the Examiner, 'Push To Talk' or 'PTT' is the means by which a clear channel is established for the purpose of enabling radio communication. By way of illustration, a walkie-talkie audio transmitter will utilize a 'push to talk' mechanism to clear an audio channel, preventing any incoming transmissions, for user to talk or send an audio message. Pressing the mechanism is usually an instantaneous means for engaging an audio channel."

The second group of stories made of record by the Examining Attorney demonstrates that when the phrase PUSH TO TALK is used in connection with computer hardware and software, it is used solely to indicate applicant's particular product.

Moreover, in the second group of stories, the phrase PUSH TO TALK is uniformly depicted with, at least, initial capital letters.

The Examining Attorney does not contend that there is any evidence demonstrating that the phrases PUSH TO TALK or PTT have been used in a descriptive manner by others for computer hardware or computer software of any type, much less the specific computer hardware and computer software set forth in applicant's description of goods. Rather, the Examining Attorney argues that "applicant has simply borrowed the acronym from the radio communications field to describe a very similar application in the computer communications field." (Examining Attorney's brief page 6). However, the Examining Attorney has simply failed to explain how the phrases PUSH TO TALK or PTT are descriptive in the computer communications field. Again, early on in this proceeding applicant explained how, as applied to its goods, the phrases PUSH TO TALK and PTT were, at most, simply suggestive. The following passage from applicant's response of February 26, 1998 cogently describes the suggestive nature of applicant's mark as applied to applicant's goods:

In its descriptive sense in connection with a

radio transmitter and its channels, "Push to Talk", or its acronym, denotes a button or knob which is physically pushed by the operator. The meaning of "push to talk" is quite literal; one "pushes" the button "to talk." This differs substantially from [applicant's] computer network link activated by pointing the cursor or mouse to a graphic interface icon and clicking on the icon. A click is not "push", nor is a screen icon a button which can be physically "pushed." This unique phraseology, while suggestive in the sense of borrowing meaningful slogan from a wholly unrelated industry and applying it in an arbitrary context, is the essence of a "good mark." PUSH TO TALK PTT does not aptly describe any function or operation of the identified goods.

Based on the foregoing, we find that the Examining Attorney, while establishing that PUSH TO TALK and PTT are descriptive of radio communications, has simply failed to establish that either term is descriptive of computer communications. As noted in Stroh Brewery, "the fact that a term may be descriptive of certain types of goods does not establish that it is likewise descriptive of other types of goods, even if the goods are closely related (e.g. hats and coats)." 34 USPQ2d at 1797. In Stroh Brewery, it was held that proof that the word "virgin" was descriptive

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of one type of alcoholic beverage did not prove that it was likewise descriptive of another type of alcoholic beverage.

Decision: The refusal to register is reversed.

R. F. Cissel

E. W. Hanak

B. A. Chapman  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board