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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Vertex Technologies, Inc.**

Serial No. 75/**262,618**

Kimberly Gambrel and Jody H. Armstrong of Killworth, Gottman, Hagan & Schaeff, L.L.P. for **Vertex Technologies, Inc.**

Vanessa J. Cooper, Trademark Examining Attorney, Law Office 113
(**Meryl Hershkowitz**, Managing Attorney).

Before **Cissel, Hohein** and **Holtzman**, Administrative Trademark Judges.

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

Vertex Technologies, Inc. has filed an application to register the term "SUPPLY CHAIN LINK" for "computer programs for use in automating tool dispensers, monitoring and reporting on transactions conducted at tool dispensers, and for linking

individual tool dispensers to internal and external information centers."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "SUPPLY CHAIN LINK" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

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). It is not necessary that a term describe all of the properties or functions of the goods or 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. Moreover, whether a term is merely descriptive is determined not in the abstract, but in

¹ Ser. No. 75/262,618, filed on March 24, 1997, which alleges dates of first use of January 10, 1997.

relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

By way of background, applicant explains in its initial brief that its "SUPPLY CHAIN LINK" computer software is designed for use with its automatic tool and supply dispensing machines. According to applicant:

These machines are similar to vending machines; they contain various tools and hardware necessary for various construction and shop applications. The goods subject to this application comprise computer software designed to operate Vertex's dispensing machines. The software serves to automate the machinery. As provided in the description of goods, the SUPPLY CHAIN LINK software monitors the dispensation of tools and provides the system operator with the capability to generate reports. The software is capable of connecting the dispensing machines with internal and/or external data systems. This allows data relating to the dispensation and use of tools, hardware, and etc. to be recorded

with accounting, inventory, purchasing and tool control systems. In addition, data relating to the dispensation of tools and hardware can be transmitted to the supplier of such goods so that inventory can be monitored and adjusted as needed.

In light of the above, applicant argues that the term "SUPPLY CHAIN LINK" is not merely descriptive of the operating software for its tool dispensing machines because "the words SUPPLY CHAIN LINK convey no 'tolerably distinct' knowledge of the goods, and ... could describe any number of things," thereby "render[ing] the mark as a whole incongruous." In particular, applicant contends that:

Even if it could be argued that any of the terms contained in Vertex's mark are singularly descriptive, the terms used together are not. The mark in its entirety has no recognizable meaning. SUPPLY CHAIN LINK is not a readily recognized phrase. There are two recognizable phrases within Vertex's mark. The first is "SUPPLY CHAIN." A "supply chain" is a phrase commonly used to describe the path that goods take to reach purchasers. A "supply chain" begins with the manufacturer of goods which are transported to a distributor which distributes the goods to retailers who ultimately sell the goods to purchasers. That is the "supply chain" for goods. "Supply chain" may be viewed as suggestive of Vertex's goods. Vertex's computer programs control tool dispensers; the tool dispensers could be viewed as supplying tools in a manner analogous to the "supply chain" as defined above.

....

The second phrase in Vertex's mark is "CHAIN LINK." "Chain link" is a phrase used to describe a particular type of fencing in which metal bars or strips are interlocked. It is a strong and resilient type of fencing and is therefore suggestive of strength generally. In this regard it could be deemed suggestive of Vertex's goods in that Vertex's software provides a strong connection between the dispensation of tools and the systems designed to monitor such tool use. "Chain link" connotes a source of connection. With respect to Vertex's goods, it connotes a connection of various functions performed by the software; a chain of events linked together.

In addition, applicant maintains that the term "SUPPLY CHAIN LINK" is at best only suggestive of its goods inasmuch as the words comprising such term "typically are not used together" and that, when they are used together, the words "are not compatible." Specifically, applicant insists that (footnote omitted):²

There is a tendency to break-up the mark into recognizable phrases, i.e., "SUPPLY CHAIN" or "CHAIN LINK." Then the purchaser must consider, what is a "SUPPLY CHAIN" - LINK or what is a SUPPLY - "CHAIN LINK."

² Additionally, in both its initial and supplemental briefs, applicant contends that the term "SUPPLY CHAIN LINK" should be registrable because a companion application it has filed, involving the mark "DEMAND CHAIN LINK" for the same goods as those herein, was allowed for registration. While consistency of examination is of course desirable, the mark in applicant's companion application is plainly different from the one in this case and we have no idea as to the evidentiary record therein, much less whether the mark was likewise refused registration as being merely descriptive of applicant's goods. Consequently, the allowance of registration for the mark "DEMAND CHAIN LINK" cannot serve to mandate registration of the term "SUPPLY CHAIN LINK" in this case.

This is the same type of reasoning process which the Board has held to be indicative of a suggestive mark.

The Examining Attorney, on the other hand, asserts that (*italics in original; footnotes omitted*):

The mark is merely descriptive because it describes a function of the software. The phrase SUPPLY CHAIN LINK is a term of art in the business arena which denotes the development of goods or services from raw materials into consumer products. The management of the "supply chain" includes all aspects of the product development cycle, including monitoring the inventory and supply of parts and tools which are not the core business of an entity, but are necessary ancillary implements to produce the core goods or services. Furthermore, the term identifies a *genre of software* which facilitates "supply chain" management. This type of software helps corporations manage and track their inventory, internally and externally, alerting customers and suppliers alike, regarding the status of raw materials, finished goods and services and the ancillary implements needed to produce the core goods and services.

....

The term LINK is descriptive for the connectivity function of the software to internal and external information systems. The goods are describe[d] by the applicant as the following[:] "... the software is capable of *connecting* the dispensing machines with internal and/or external data systems in addition, *data* relating to the dispensation tools and hardware can be *transmitted* to the supplier of such goods so that inventory can be monitored and adjusted as needed." The description of the software[,] as stated by the applicant, correlates directly with the dictionary

meaning of the term LINK. In addition, [t]he diagram found on the inside of applicant's exhibit A outlines the function of the software. This diagram evidences that the software monitors and tracks the tool dispensers and informs entities and their suppliers about the status of tool and supply inventory by "linking" the dispensers to internal and external information networks. The software monitors the SUPPLY CHAIN and LINKS the information to internal and external systems. Therefore, the mark is descriptive of the goods A mark which combines two descriptive terms will not be registrable if the composite creates a unitary mark which is descriptive. *In re Ampco Foods, Inc.*, 227 USPQ 331 (TTAB 1985).

In support of her position, the Examining Attorney relies upon excerpts from various searches of the "NEXIS" database to show the meaning of the term "supply chain," including the fact that such term not only merely describes, but generically designates, a category of computer software. As to the former, the following examples, which are representative, indicate that the term "supply chain" is indeed a term of art which, contrary to applicant's contentions, is inclusive among other things of the particular kinds of tool dispensing, monitoring and reporting functions performed by its computer programs (**emphasis added**):

"**supply chain** management is the purchasing profession's, maybe even the industry's, most discussed, analyzed, and practiced philosophy. While some practitioners merely adopt the **supply chain** banner, focusing only on fundamental activities, purchasing's leaders and

visionaries seize the opportunity to extend their scope of responsibility and achieve increasingly sophisticated supplier management.

....

In addition, Walter J. Pietrak ... believes '**supply chain** management is not a standalone process, and is more than just procurement.'

Creation of extended **supply chain linkages**. Michael Katzorke ... sees a 'growing number of increasingly strong linkages between buyers and their suppliers.' Katzorke, who designed and initiated the **supply chain** management rollout as director of materials at Allied Signal ..., lists the following examples of extended purchasing responsibility" -- Supplier Selection & Management Report, April 1999 (article headlined: "Purchasers Can Use The **Supply Chain** to Extend its Capabilities");

"**Supply chain** management is built on the premise that managers must be able to locate all items, parts, and finished goods at any given time. Automatic identification technology makes that possible by attaching a sort of nametag to a pallet, box, or container

....

The Communications **Link**

Successful **supply chain** management requires constant knowledge of the whereabouts of goods in the pipeline. That's why a second category of technology--communications, plays such an important role in enabling a company to implement this business strategy.

....

But another category of software ... has emerged to enable companies with different computer systems and software to **link** their systems together. '**Supply chain** management is about integrating different applications'

....

Indeed, many analysts believe that the real technological challenge facing companies interested in **supply chain** management is integration. Auto ID systems, communication systems, and software must all work in sync and exchange data if companies truly want to change the way they manufacture and distribute products." -- Logistics Management Distribution Report, March 31, 1999;

"[T]he manufacturing industry's concept of 'the enterprise' has evolved and expanded to include the company together with its **supply chain** of subcontractors, job shops, strategic partners, and others. To manage information flow and design collaboration among these groups, manufacturers are starting to use product data management (PDM) as a critical tool throughout the product definition life cycle. The technology facilitates communication and data exchange between the various systems, enables product development to be coordinated by OEMs, and makes important product information readily accessible up and down the **supply chain**. Just as PDM manages product definition in the **supply chain**, enterprise resource planning (ERP) controls the flow of parts and materials throughout production with capabilities for inventory control, shop floor scheduling, work order management, purchasing, etc. These transaction-based systems coordinate the manufacturing operation for peak efficiency and are virtually indispensable in keeping complex production facilities running smoothly, especially when components and assemblies are outsourced to suppliers." -- Computer-aided Engineering, February 1999;

"First, a quick definition for the uninitiated: A **supply chain** is the series of business processes that moves products ... from raw materials to end users." -- Sales & Marketing Management, February 1999;

"[C]ompanies need systems that do more than simply tell them what their inventory is and what their orders are. They need systems that interact with suppliers and customers. They need **supply chain** systems. Supply side manufacturers have always engaged in **supply chain** management, but the term, in its current meaning, has gained increasing currency over the last six years. The definition in use at Manufacturing Systems magazine is as follows: **Supply chain** management uses information technology to endow computerized intelligence to an ever-growing network of raw material suppliers, factories, warehouses, distribution centers, delivery vehicles, and points-of-sale. That way, each player in the **supply chain** conducts business with the latest and best information from everyone else. Product moves from point-of-origin to that of consumption as quickly as possible and at the smallest cost, as supply and demand fall into ever-more-perfect balance."
-- Manufacturing Systems, September 1998;

"Yet what is the **supply chain**? And why should companies take the time and considerable effort to develop a **supply chain** management process?

First, the definition. Of the many that are out there, one that nicely embodies the scope and collaborative nature of **supply chain** management comes from Donald J. Bowersox, ... professor of business administration at Michigan State University. '**Supply chain** management is a collaborative-based strategy to link cross-enterprise business operations to achieve a shared vision of market opportunity,' says Bowersox, who has researched and written extensively on the subject. 'It is a comprehensive arrangement that can span from raw-material sourcing to end-consumer purchase.'" -- Logistics Management & Distribution Report, June 30, 1998; and

"Mention the **supply chain**, and almost immediately it becomes synonymous with logistics and inventory management activities. After all, that's where the initial applications have been pursued, and moderate success enjoyed. However, there is a broader scope to the **supply chain** concept, one that ranges from the supplier's supplier to the customer's customer. It's also one that clearly gives the logistician and inventory manager a more strategic and influential voice.

The first significant effort at integrating the **supply chain** has been unveiled. The Supply Chain Operations Reference-model (SCOR) provides manufacturers, suppliers, distributors and retailers with a framework to evaluate the effectiveness of their **supply chains** and to target and measure specific process improvements. It's major contribution ... is in creating a common language for communicating among intra-company functions and with inter-company **supply chain** partners. Another step forward is in clarifying and defining common **supply chain** processes.

SCOR focuses on four basic **supply chain** processes. Plan, source, make, and deliver are the four principle components of the **supply chain**" -- Inventory Reduction Report, February 1997 (article headlined "Inventory Manager Role Enhanced with New **Supply Chain** Model").

With respect to the fact that the record demonstrates that the term "supply chain" generically designates a type of computer software for performing supply chain activities and operations, the following "NEXIS" excerpts are representative (**emphasis added**):

"Well, it's official now: The Acronym Specialists Society has formally changed the

designation of the back-office and **supply chain software** market formerly known as ERP to BURP. The society's official stance is that the new acronym, which stands for Beyond Utilitarian Resource Planning, is more accurate than stuffy old Enterprise Resource Planning, and that the acronym ERP was about to be obscured" -- InformationWeek, March 29, 1999;

"The universe of what's commonly called **supply chain software**--but may be more aptly named 'advanced planning and scheduling' software--is in the midst of some dramatic changes that will have a big effect on what's available to logistics managers, and how they deploy it.

Supply chain software suppliers are shifting their emphasis. Until recently, the biggest buyers of this planning and scheduling software were Fortune 500 companies.

....

Equally important is that existing business processes are integrated with a **supply chain software** system. Hugh McGinness ... has analyzed many of the out-of-the-box supply chain offerings. 'The companies bringing in **supply chain software** have difficulty using it because without the right process, the software isn't worth a thing,' he says. 'Often purchasing managers expect the software to do things exactly the same way they've always been done, only automated.' This is very short-sighted, according to McGinness

....

Integration is not just an issue within an organization, though. One of the hottest issues in the **supply chain software** world is connectivity outside the enterprise.

....

.... So more and more, logistics and **supply chain software** is component-based rather than provided as a single entity." -- Purchasing Magazine, March 25, 1999;

"Mr. Johnston was the president of Descartes Systems Group, a leading **supply chain software** company." -- Washington Times, February 15, 1999;

"Several recently introduced software products from Optum, Inc. and from PricewaterhouseCoopers can help integrate ERP with WMS and various other **supply chain software**." -- Transportation & Distribution, February 1, 1999;

"**Supply chain software** provider EXE Technologies of Dallas has formed an alliance with Vastera of Chantilly, Va., which provides international trade software." -- Logistics Management Distribution Report, January 31, 1999;

"The Atlanta-based **supply chain software** company" -- Atlanta Journal & Constitution, January 28, 1999;

"Retailers first automated their financial and ordering systems, then came **supply chain software** and data mining." -- Boston Herald, January 20, 1999;

"Reuland told of one large retail customer for whom they've taken inventory turns from six to 15, with zero out-of-stock, all while bringing buffer stock down. They did that before implementing any **supply chain software**. Now that their material handling and logistics disciplines are up to speed, they intend to use the i2 software to boost order fill rates, factory accuracy and forecast accuracy to 95%, and respond to market requirements within five days." -- Material Handling Engineering, January 1, 1999;

"Electronic commerce forms an increasingly important part of how companies use their **supply chain software**." -- Supply Management, December 3, 1998; and

"No question about it, **supply chain** planning and execution **software** is hot, and this market is poised for rapid, substantial growth." -- Manufacturing Systems, September 1997.

In addition, we judicially notice³ that the Dictionary of E-Business: A Definitive Guide to Technology & Business

Terms (2000) at 279 defines "supply chain" as meaning:

A course or evolution which begins with raw materials and ends with the sale of a finished product or service. It includes entities such as buyers, manufacturers, distributors, suppliers and consumers. It is an e-commerce company's set of functions which may be internal or external, and allows the value chain to make or produce products and deliver services to customers. A supply chain includes information, communications and processes that bind the link between the supplier and the customer.

We also judicially notice, as requested by the Examining Attorney

³ It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

in her brief, that The Computer Glossary (8th ed. 1998) lists the term "link" as variously meaning:

(1) In communications, a line, channel or circuit over which data is transmitted.

(2) In data management, a pointer embedded within a record that refers to data or the location of data in another record.

(3) In programming, a call to another program or subroutine.

In view thereof, and in light of the following excerpt of record from applicant's advertising literature for its goods,

the Examining Attorney concludes, with respect to applicant's argument that the term "SUPPLY CHAIN LINK" is only suggestive of its goods because such term contains the two readily recognizable phrases "supply chain" and "chain link," that (*italics in original; footnote omitted*):

The term SUPPLY CHAIN is unitary, as used ... on the goods, however, the term CHAIN LINK is not. Applicant[']s promotional brochure reveal[s] that the proposed mark includes the phrase SUPPLY CHAIN, which is displayed in bright yellow That phrase is in turn "linked" to the term LINK by a series of dots which provide a virtual bridge between the phrase SUPPLY CHAIN and the term LINK. Therefore, [and given the same dot linkage between the terms SUPPLY CHAIN and LINK on the specimens of record,] applicant's argument that consumers would read CHAIN LINK must fail. Furthermore, applicant's argument that consumers would see CHAIN LINK as a unitary phrase is not supported by any evidence. A "CHAIN LINK" has no meaning in relation to applicant's goods. What is fully supported by the ... record is that the applicant is engaged in providing "electronic links." Applicant's brochures reveal that "electronic links give your supplier up to the second information on your resupply requirements." In addition, as applied to computer [software] goods, the term LINK has a clear and distinct meaning ... as "a line, channel or circuit over which data is transmitted" or "a call to another program or subroutine." For the foregoing reasons, ... the commercial impression of applicant[']s proposed mark ... is *SUPPLY CHAIN LINK* (emphasis added).

The Examining Attorney, therefore, finds that the term "SUPPLY CHAIN LINK" "merely describes the function of the applicant's computer software.

In the present case, it is our view that, when used on or in connection with applicant's "computer programs for use in automating tool dispensers, monitoring and reporting on transactions conducted at tool dispensers, and for linking individual tool dispensers to internal and external information centers," the term "SUPPLY CHAIN LINK" immediately describes, without conjecture or speculation, a significant purpose or function of such goods, namely, that they provide the supply chain link necessary for automating, monitoring and reporting on tool dispenser transactions. While, as the "NEXIS" excerpts and the dictionary definitions confirm, the term "SUPPLY CHAIN" is a term of art in the business field which is used to describe both a single enterprise level of production as well as multiple layers of suppliers and customers, it is plain that the interconnected tracking, dispensing and re-supply functions provided by applicant's computer programs for its automated tool dispensers operate as part of supply chains for various processes which feature communications links to generate production reports and automatically update inventories as to tool requirements.

Clearly, in light of the fact that the phrase "supply chain software" has been shown to be a generic term for a category of computer programs which would include those of the type offered by applicant, we agree with the Examining Attorney that purchasers and users of applicant's goods would readily regard the term "SUPPLY CHAIN LINK" as a combination of the descriptive terms "SUPPLY CHAIN" and "LINK" rather than an amalgam of the words "SUPPLY" and "CHAIN LINK." This is borne out by applicant's specimens of use and advertising literature, and it is also particularly so since the term "chain link," which designates a kind of fencing, has no meaning or significance in relation to applicant's goods. Thus, to the knowledgeable and sophisticated customers for applicant's goods, who would include industrial plant managers and production logisticians, there is simply nothing in the term "SUPPLY CHAIN LINK" which, in the context of software designed to link such elements of a manufacturer's supply chain as automated tool dispensers so as to monitor production operations and provide reports, would be incongruous, ambiguous or even suggestive of other plausible meanings.

Accordingly, because the term "SUPPLY CHAIN LINK" conveys forthwith a significant function or purpose of applicant's "computer programs for use in automating tool dispensers, monitoring and reporting on transactions conducted

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at tool dispensers, and for linking individual tool dispensers to internal and external information centers," such term is merely descriptive of applicant's goods within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.

R. F. Cissel

G. D. Hohein

T. E. Holtzman
Administrative Trademark

Judges,
Board

Trademark Trial and Appeal