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Paper No. 10
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Interim Planning Committee, Inc.

Serial No. 75/467,650

Donald R. Piper, Jr. of Dann Dorfman Herrell and Skillman
for Interim Planning Committee, Inc.

Esther A. Belenker, Trademark Examining Attorney, Law Office
111 (Craig D. Taylor, Managing Attorney).

Before Hanak, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

An application has been filed by Interim Planning
Committee, Inc. to register the mark CULT.INFO for services
which were subsequently identified as "educational services,
namely, providing seminars, conferences, workshops,
lectures, and educational programs in the field of cults,"
in International Class 41.¹

¹ Serial No. 75/467,650, filed April 14, 1998, based upon
applicant's *bona fide* intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, when used in connection with its services, is merely descriptive thereof. When the refusal was made final, applicants appealed. Applicant and the Trademark Examining Attorney have filed briefs.

In support of her position that CULT.INFO is merely descriptive of applicant's services, the Trademark Examining Attorney relies primarily upon dictionary definitions of "cult"² and "info."³

Applicants, in urging reversal of the refusal to register, contend that the mark is not merely descriptive of its services because "' .INFO' is not presently a top level

² **cult** (kùlt) *noun*

1. **a.** A religion or religious sect generally considered to be extremist or false, with its followers often living in an unconventional manner under the guidance of an authoritarian, charismatic leader. **b.** The followers of such a religion or sect.
2. A system or community of religious worship and ritual.
3. The formal means of expressing religious reverence; religious ceremony and ritual.
4. A usually nonscientific method or regimen claimed by its originator to have exclusive or exceptional power in curing a particular disease.
5. **a.** Obsessive, especially faddish, devotion to or veneration for a person, principle, or thing. **b.** The object of such devotion.
6. An exclusive group of persons sharing an esoteric, usually artistic or intellectual interest.

noun, attributive

Often used to modify another noun: *a cult figure; cult films.*

³ **in-fo** (în¹fo) *noun*

Informal.

Information.

domain name. ... CULT.INFO is a coined, imaginary domain name which creates incongruity and requires circuitous reasoning in the mind of the reader." Furthermore, applicants argue that CULT.INFO is not a term competitors would need in describing similar services.

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. See In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986). In order to find a mark merely descriptive, it is not necessary that the mark describe each feature of the goods or services, only that it describes 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 and the impact that it is likely to make on the average purchaser of such goods or services. In re Recovery, 196 USPQ 830 (TTAB 1977).

In addition to the plain meaning of the recitation of services, applicant clarifies its purpose as follows:

Applicant intends to provide services under the "CULT.INFO" service mark to educate and warn the public about the danger of cults. Applicant intends to educate the public as to the tactics cults use to lure and control followers, ways to identify cults, and how to resist the persuasion cults exert to entice people to join. Applicant's service is especially directed to those who are particularly susceptible to influence by cults, such as younger members of society. (applicant's appeal brief, p. 2).

Accordingly, under Section 2(e)(1) of the Lanham Act, the word "cult" is merely descriptive of applicant's services. Furthermore, the essence of applicant's services is to educate - i.e., to provide *information* - about cults to those most "susceptible to influence by cults." The dictionary entry placed into the record by the Trademark Examining Attorney supports our experience that "info" will be readily perceived as an informal, shortened form of the word "information." Hence, as argued by the Trademark Examining Attorney in her several Office actions, these two words together meet the test for being merely descriptive of services designed to provide information about cults, or "cult info."

Applicant argues competitors would have no need to use this designation. However, given the degree to which these two words readily bring to mind information on cults, we suspect other groups who share applicant's mission would

find it quite natural to use "Cult Info" on the Internet (e.g., as meta-tags, on tabs and hot links and bracketed in site maps), and on-line and elsewhere would be touting services like a cult information telephone line.

In briefing this case for appeal, the applicant and the Trademark Examining Attorney have focused less on the individual words CULT and INFO, and more on the exact formulation, CULT.INFO. This presentation looks like a domain name on the Internet, and so suggests that the owner of the mark provides services over the Internet. Nonetheless, this combined form still contains the key words that we have determined to be merely descriptive, and presents them in the exact same order. The mere addition of the period, or "dot," does not take away from the descriptiveness of this two-word combination. Hence, despite the fact that CULT and INFO are now separated (or joined) by a punctuation mark, we still find "CULT.INFO" to be merely descriptive.

Finally, much of applicant's argumentation centers on the fact that this is not currently a top-level domain (TLD) available on the Internet. Applicant argues as follows:

The fact remains that ".INFO" is not presently a TLD, nor are there any known plans for it to become a TLD. Thus applicant maintains that "CULT.INFO" is a coined imaginary domain name which creates

incongruity and requires circuitious reasoning in the mind of the reader. As such, the term "CULT.INFO" is suggestive rather than merely descriptive. (applicant's reply brief, p. 4).

Applicant argues that because the ".INFO" TLD is not yet actually available to those setting up web sites on the Internet, the examination guidance provided by the United States Patent & Trademark Office does not apply to the examination of applicant's instant mark.

However, we should understand the underlying rationale for the policies of the United States Patent & Trademark Office in examining the registrability of domain names *qua* service marks. Matter like web protocols (e.g., http:// and www), generic TLD's (.com, org, .gov, and the like) and country TLD's (.jp, .uk) cannot provide any source-indicating significance. This is not unlike the addition of something like "Inc." or "Co." to a company's trademark, service mark or trade name, or even "1-(800) " at the beginning of a vanity telephone number.

Under current trademark examination guidance, if merely descriptive matter is combined with an existing top level domain name like ".ORG," the Trademark Examining Attorney is instructed to refuse registration of this combination as still being merely descriptive. Accordingly, to the extent that potential consumers view the mark CULT.INFO as a domain

name, CULT will be seen as the second level domain and the matter following the "dot," INFO, will be seen as the TLD. In a trademark sense, it serves this function whether or not there is a computer server available on the web having this particular URL. In other words, under trademark law, because this looks like a descriptive word followed by a TLD (unavailable, as it may currently be), it will be treated in the United States Patent & Trademark Office just like a descriptive designation followed by an actual TLD (e.g., CULT-INFO.ORG).

Nonetheless, during the course of prosecution, in support of her refusal to register, the Trademark Examining Attorney noted the possibility that INFO might indeed become a new global top level domain (gTLD) name. Applicant argues that her speculation on this point is inappropriate in reaching our decision herein.

We find that although the current record does not support the proposition put forward by the Trademark Examining Attorney in August 2000 that "it is well-known that the term '.INFO' will be an additional TLD in the near future," neither does the record appear to support the position of applicant that "nor are there any known plans for [.INFO] to become a TLD." Irrespective of when, or even if, the Internet Corporation for Assigned Names and Numbers

(ICANN) completes negotiations with a registry operators for a new, unrestricted gTLD known as "dot INFO," we find this matter to be just as violative of Section 2(e)(1) of the Lanham Act prior to such an occurrence as it would be at any time after such a new gTLD is approved by ICANN.

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