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Paper No. 8
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re PeopleWeb Communications, Inc.

Serial No. 75/607,997

Christopher S. Marchese of Fish & Richardson for applicant.

Elissa Garber Kon, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Hanak, Hairston and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

PeopleWeb Communications, Inc. has filed a trademark
application to register the mark QUOTESERVER for "computer
services, namely, providing search engines for obtaining
data on a global computer network or local computer
network."¹

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

¹ Serial No. 75/607,997, in International Class 42, filed December 18,
1998, based on use of the mark in commerce, alleging first use and use
in commerce as of February 28, 1997.

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 word 'quote server' is the common word used to refer to the services of searching and retrieving, or otherwise providing, information online concerning stock and financial quotes and, in some cases, the actual server on which this information is stored"; and that, while applicant's services are broadly identified, its recitation encompasses the service of providing online stock quotes and financial information. The Examining Attorney points to applicant's specimens, printouts of pages from its Web site, which use QUOTESERVER to identify the section of its Web site that provides stock quotes. In support of her position, the Examining Attorney has submitted excerpts of articles from the LEXIS/NEXIS database,² several examples of which follow:

Plaintiff suggests that the architecture of the two programs, as well as the structure of each program's "quote server," the feature that retrieves real time stock quotes and makes them available to the end user, are similar. Defendants deny any architectural similarities and insist that its program does not even have a quote server, but rather utilizes a "Market Data

² The several excerpts that are from newswire services have been given little weight. A proprietary newswire article is circulated primarily to newspapers and news journals whose editors select from the releases those stories of sufficient interest to publish. Therefore, the article's appearance in the NEXIS database does not prove that the news release appeared as a story in any newspaper or magazine. See *In re Men's International Professional Tennis Council*, 1 USPQ2d 1917 (TTAB 1986); and *In re Urbano*, 51 USPQ2d 1776, 1778 fn. 3 (TTAB 1999) and cases cited therein.

Multiplier to retrieve quotes. [*New York Law Journal*, December 19, 1999.]

Preferred stock quotes may be viewed on most quote servers by adding pr, p, or .pr after the main stock symbol. [*The Press-Enterprise*, November 14, 1999.]

ProPack also has the ability to check an IP address range for active ports (called a "port scan"); retrieve SNMP data; analyze Windows networks; measure end-to-end throughput; and retrieve a quote of the day from a quote server. [*Network World*, July 5, 1999.]

Each site is equipped with an ultra-high bandwidth, fiber-optic phone line that connects to the Internet and multiple quote servers, DigiTrade officials said. [*Securities Industry News*, June 15, 1998.]

The transcripts are integrated with a free quote server that lets users search for specific information on companies by stock ticker symbol. [*Traffic World*, March 17, 1997.]

Exchange-listed corporate bonds are no problem. You can plug their ticker symbols into a few quote servers, namely PC Quote and Quote.com. Both serve up free delayed quotes. [*Investor's Business Daily*, March 13, 1997.]

The Examining Attorney also included a print-out of CheckFree Investment Services' Web site, appearing February 3, 2000, which included the following statement, among others, about its "quoteserver": "... we strongly discourage anyone from using this quoteserver where a professional quote service is more appropriate."

Applicant contends that "[a]t most, the requested mark might suggest that Appellant's services tangentially relate to computers through the use of the word 'server[,]'

[h]owever, it is only through the insight and imagination of the potential consumer of Appellant's services that the consumer would associate the proposed mark as a whole with Appellant's services." Applicant argues that, even if the individual terms "quote" and "server" may be descriptive, the combination of the terms into the term QUOTESERVER is not merely descriptive. In its brief, applicant states the following:

The mark here does not even describe software or a search engine. Rather, the proposed mark relates to a service based on search engine software. In sum, the mark QUOTESERVER does not describe the actual server equipment that enables the specific service.

...
The average consumer of Internet products and services, confronted for the first time by the proposed mark, would not immediately associate "server" with a search engine for obtaining data on [a] global or local network. Instead, the average consumer would understand the word "server" as describing a physical computer. As defined in the dictionary, the word "server" describes "a computer that makes services, as access to data files, programs, and peripheral devices, available to workstations on a network. Random House Webster's College Dictionary (2nd ed.).

Applicant included with its brief copies of three third-party registrations, for the marks RATESERVER for software, MODELSERVER for software, and INFOSERVER for a trade publication.³

³ Despite the Examining Attorney's objection, we consider these registrations to be properly of record because these are copies of registrations referenced by applicant in an earlier response. The Examining Attorney did not inform applicant that the mere listing of registered marks did not make them properly of record until her final

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

refusal, so this was applicant's first opportunity to correct that error. However, these registrations are of limited value. As often noted by the Board, each case must be decided on its own merits. We are not privy to the records in the files of the cited registrations and, moreover, the determination of registrability of particular marks by the Trademark Examining Groups cannot control the result in another case involving a different mark for different goods and/or services. *In re Nett Designs Inc.*, ___F.3d___, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)[“Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court.”].

We conclude that the evidence establishes that QUOTESERVER is merely descriptive in connection with applicant's computer services of providing search engines for obtaining data on a global computer network or local computer network. Notwithstanding applicant's dictionary definition of a "server" as computer hardware, it is clear from the LEXIS/NEXIS evidence in the record that a quote server, whether the term refers to software or software and hardware, performs the function of obtaining information in response to a request from a user. The evidence indicates that users are most accustomed to viewing a quote server as obtaining stock and other financial information, as indicated by applicant's own specimens. However, this specific service is certainly contemplated within the scope of applicant's recitation of services.

In the present case, it is our view that, when applied to applicant's services, the term QUOTESERVER immediately describes, without conjecture or speculation, a significant feature or function of applicant's services, namely, that applicant's search engine uses a quote server function or program to make data available to users. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the

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term QUOTESERVER as it pertains to applicant's services. We are not persuaded otherwise by applicant's arguments to the contrary.

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