

5/29/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 9  
AD

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**Trademark Trial and Appeal Board**

---

In re CurtCo Freedom Group, L.L.C.

---

Serial No. 75/625,495

---

Tirzah Abé Lowe of Knobbe, Martens, Olson & Bear, LLP for  
CurtCo Freedom Group, L.L.C.

Gwen P. Stokols, Trademark Examining Attorney, Law Office  
107 (Thomas Lamone, Managing Attorney).

---

Before Hanak, Wendel and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

CurtCo Freedom Group, L.L.C. (applicant) filed a  
trademark application to register the mark SMALL BUSINESS  
COMPUTING & COMMUNICATIONS (typed drawing) for "general  
interest magazines regarding technology needs for business  
operators" in International Class 16.<sup>1</sup>

---

<sup>1</sup> Serial No. 75/625,495, filed January 22, 1999. Applicant  
alleges a date of first use and a date of first use in commerce  
of February 24, 1998.

The Examining Attorney refused to register the mark on the ground that the mark, when applied to the goods, is merely descriptive. 15 U.S.C. § 1052(e)(1).

After the Examining Attorney made the refusal final, applicant filed a notice of appeal. Both applicant and the Examining Attorney have filed briefs, but applicant did not request an oral hearing.

We affirm the Examining Attorney's refusal to register.

The Examining Attorney's position is that the mark is not registrable because it is merely descriptive of the subject matter of applicant's magazines. The prior Examining Attorney<sup>2</sup> submitted evidence from an Internet search to show that the terms "small business" and "computing and communications" are commonly used, descriptive terms. With this evidence, she determined that "the juxtaposition of the terms in the present case will be readily understood by purchasers to mean computing and communications for small businesses." First Office Action, p. 2.

In response to this refusal, applicant submitted definitions of the words "small," "business," "computing,"

---

<sup>2</sup> The current Examining Attorney was not the original Examining Attorney in this case.

and "communications" to argue that the terms "could have a multitude of meanings depending on the specific definition of each word selected." Applicant's Response dated March 7, 2000, p. 3. After the Examining Attorney made the refusal final, applicant appealed and argued that the term "small business computing & communications" is not commonly used in the industry and the fact that the magazine reviews computer hardware and software and has a column entitled "Communications" does not mean that the mark is merely descriptive. Applicant concludes by arguing that consumers must make a mental pause to deduce that the mark suggests the subject matter of the goods.

In her Appeal Brief, the Examining Attorney refers to applicant's specimen for support. First, she quotes the Editor's Note to show that the magazine is marketed to small business owners and operators. "We are solely concentrating on helping you, the owner of a small business, use technology to run your company." Next, she looked at the magazine's "Table of Contents." She observed that the contents of the magazine included "reviews, advice and information about various software and computer hardware" and one of the sections of the magazine was labeled "Communications." Examining Attorney's Brief, p.

5. With this evidence, she concluded that the mark in its entirety was merely descriptive.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). A term may be held descriptive even if it only describes one of the qualities or properties of the goods or services. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 588 F.2d at 814, 200 USPQ at 218.

It is well settled that the title of a magazine is descriptive if it describes the contents of the magazine. See, e.g., In re Gracious Lady Services, Inc., 175 USPQ 380 (TTAB 1972) ("CREDIT CARD MARKETING" merely descriptive of periodic pamphlet devoted to subjects of interest to those engaged in credit card merchandising field); In re Nippon Kokan Kabushiki Kaisha, 171 USPQ 63 (TTAB 1971) ("JAPAN STEEL NOTES" merely descriptive of magazine pertaining to the Japanese steel industry); In re Medical Digest, Inc., 148 USPQ 148 (TTAB 1965) ("OB/GYN DIGEST" is merely

descriptive of magazines in the field of obstetrics and gynecology).

In this case, the evidence of record supports the Examining Attorney's conclusion that the applicant's mark is merely descriptive of its goods. First, the Examining Attorney pointed out that the Editor's Note (p. 12) clearly indicates the magazine is "concentrating solely in helping you, the owner of a small business, use technology to run your company." Second, the subscription card for applicant's magazine included with the magazine contains the phrase "Today's computing solutions for small businesses." Applicant's ad for its own magazine (p. 29) further emphasizes the descriptiveness of the terms "small business" and "computing."

Computing technology is providing small businesses with an engine for growth!

Did you know that...

Over 80% of all small business are using computers?

Small business is responsible for one quarter of all system shipments (PCs/notebooks/servers)?

One million small businesses will adopt networking solutions this year?

Technology enabled small businesses are the most likely to experience 10% annual growth?

Source: IDC Small Business Research, 1998

Reach small business owners and operators who have embraced computing technology to make their companies grow smarter, faster and more productive.

- 80% of SBC&C readers are owners of a small business
- They consider SBCC an important part of the technology decision making process.
- The average reader spends 40 hours a week with computers - including 24 hours at home or on the road with computers.
- They consider technology to be critical and essential to their businesses.
- They are loyal readers spending over one hour with SBC&C each month.
- They keep their equipment up to date - 73% are currently using the latest Pentium II processors.

From this evidence and the Internet printouts, it would be reasonable to assume that potential customers will understand that that term "small business" refers to the owners and operators of small businesses. The term "small business" is commonly used, and consumers will not have difficulty understanding the meaning of this term even though applicant suggests otherwise (Brief, p. 3).

For example, the word "small" can mean little in size, extent, or quantity. The word is also defined as unimportant or trivial. Further, the word "small" can mean operating with limited resources or funds. Finally, the word is defined as petty, mean, humbled and humiliated.

The term "business" has an especially broad application. "Business" may refer to one's occupation. In addition, the word means trade or commerce. Further, the term can be defined as a

commercial enterprise. Another meaning for the word "business" is volume of trade. Moreover, the term is used to refer to commercial practice or policy. Additionally, "business" is defined as one's rightful concern. Finally, the word means "an affair or matter."

Despite applicant's argument that the term has many meanings, the evidence demonstrates that prospective customers will understand that the subject matter of the magazine is directed to or of interest to the owners or operators of small businesses as applicant itself states in its advertising and Editor's Note.

The same advertisement (p. 29 of applicant's magazine) also emphasizes that the term "computing" would also be understood to refer to the use of computers in small businesses.

- "Computing technology is providing small businesses with an engine of growth"
- "80% of all small business are using computers"
- "Reach small business owners and operators who have embraced computing technology."

In addition, on its subscription postcard, applicant describes its magazine with the slogan "Today's computing solutions for small businesses." A review of the contents of the magazine demonstrates that computers and computer-

related goods and services are a prominent subject of applicant's magazine. Relevant articles include:

- Inoculate Your Network  
When it comes to computer viruses, prevention is the only cure.
- Future Impact  
These five technologies are changing the way we do business. Stay competitive by understanding business-to-business e-commerce, open source software . . . .
- Your site  
Keep your site free of hackers by following these 10 steps.
- The Networked Office
- Everything you always wanted to know ... About databases.
- Buyer's Guide  
In-depth ratings and reviews of 19-inch monitors and network management utility software.

The next question is whether "communications" describes a feature of applicant's magazine. The Examining Attorney has already noted that the magazine features a section entitled "Communications." The subject of that section is "How to upgrade from a key system to a larger, fuller-featured PBX phone system." Other articles in the magazine involve communication issues and products, including:

- Cellular/wireless trends
- The future of faxing

- Local phone companies and the law
- Future Impact  
Mobile and speech technology

In addition to communicating by phone and fax, other articles deal with network communications and mobile travelers. This evidence clearly supports the Examining Attorney's holding that the term "communications" is descriptive of the subject matter of applicant's magazine.

However, despite the fact that the terms "small business," "computing" and "communications" are descriptive of applicant's magazine, it does not mean that when the terms are combined, they are still merely descriptive. We must consider whether the phrase SMALL BUSINESS COMPUTING & COMMUNICATIONS is merely descriptive. Applicant points to the fact that the Examining Attorney did not introduce any evidence that anyone is using the exact phrase descriptively. Of course, this is not the test. The absence of evidence that anyone else is using a term does not prevent a finding that the term is descriptive. In re Helena Rubinstein, Inc., 410 F.2d 438, 441, 161 USPQ 606, 609 (CCPA 1969) ("Applicant's long use of the wording, and the fact that others have not used it up to this time, does not make it any less an apt description for the goods").

Here, there is nothing incongruous about the words "small business computing & communications" for a general interest magazine directed to small business owners and operators dealing with computers and communications technology. The evidence from applicant's magazine and the Internet printouts show that the terms "computing" or "computers" and "communications" are the subject of applicant's magazines and are often used together. Therefore, we conclude that, when all the terms are combined, they create a mark that is merely descriptive of the goods set forth in the application.

Decision: The Examining Attorney's refusal to register the mark SMALL BUSINESS COMPUTING & COMMUNICATIONS on the ground that it is merely descriptive of applicant's general interest magazines regarding technology needs for business operators is affirmed.