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Paper No. 9
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Penton Media, Inc.

Serial No. 75/649,162

Kenneth L. Mitchell of Woodling, Krost & Rust for Penton Media, Inc.

Dominick John Salemi, Trademark Examining Attorney, Law Office 107 (Thomas Lamone, Managing Attorney).

Before Seeherman, Bottorff and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 22, 1999, Penton Media, Inc. (applicant) filed a trademark application to register the mark INTERNET DEVICE MAGAZINE (typed drawing) for goods ultimately identified as "magazines directed to equipment and devices used in the global computer information network" in International Class 16.¹

¹ Serial No. 75/649,162. The application alleges a bona fide intention to use the mark in commerce.

The Examining Attorney refused to register the mark on the ground that the mark, when applied to the goods, is merely descriptive under Section 2(e)(1) of the Trademark Act. 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 an oral hearing was not requested.

We affirm the Examining Attorney's refusal to register.

The Examining Attorney's position is that applicant's goods are "magazines directed to equipment and devices used in a global computer information network, i.e., the internet." Final Office Action, p. 1. Inasmuch as the title of the magazine would be descriptive of the content or subject matter of the magazine, the Examining Attorney determined that it was merely descriptive when it would be applied to applicant's magazines directed to equipment and devices used on the Internet. The Examining Attorney supported his refusal with printouts from LEXIS/NEXIS showing that the term "internet device" was used to describe devices that connect users to the internet.

In response to the Examining Attorney's refusal, applicant argues that, from the articles that the Examining Attorney submitted to support his refusal, "no one can

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discern what is meant by the term INTERNET DEVICE."

Applicant's Appeal Brief, p. 2. In addition, applicant asserts that the "term INTERNET is still new and does not have a widely known meaning and is not descriptive." Id.

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 the credit card merchandising field); In re Nippon Kokan Kabushiki Kaisha, 171 USPQ 63 (TTAB 1971) ("JAPAN STEEL NOTES" merely descriptive of a 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, there is significant evidence that the term INTERNET DEVICE refers to devices that connect users to the Internet.

The embedded database is for applications which support mobile workers and Internet devices, such as personal digital assistants, set-top boxes, and possibly devices such as automobile navigation systems. *Open Manufacturing*, Winter 2000, p. 18.

[I]t's the only PC maker to have stand-alone retail outlets - should be an advantage when it comes to selling the new Internet devices and accompanying services. *Money*, April 2000, p. 62.

Compaq refers to its latest product, the iPAQ, as an Internet device, implying that its primary purpose is to access the Web. Such a product is typically meant for consumers. *PC Magazine*, March 21, 2000, p. 46.

This spring, the company will unveil a new line of compact, stylish PCs and other Internet devices. *PC Magazine*, March 21, 2000, p. 79.

The next generation of wireless Internet devices will be more robust and useful. *Atlanta Journal and Constitution*, March 15, 2000, p. 7D.

... best hope for Microsoft is to evolve and adapt - as technology moves away from the Windows platform of the personal computer toward new Internet devices and services. *Washington Post*, March 15, 2000, p. A27.

This evidence demonstrates that there are devices that connect users to the Internet that are referred to as

Internet devices. The term "internet device" is used to describe a variety of devices that access the Internet, including personal digital assistants, wireless Internet devices, and set-top boxes. Therefore, we cannot accept applicant's arguments that the no one can discern what the term "Internet device" means based on the articles. The articles clearly indicate that the term "Internet device" refers to various devices used to connect users with the Internet. The terms Internet and device, both individually and as a unitary term, appear to have readily understood meanings that would be apparent to prospective purchasers of applicant's magazine.

In addition, applicant's identification of goods is for magazines directed to devices used on the Internet. The term "global computer information network" is simply a reference to the Internet. See On-line Careline Inc. v. America Online Inc., 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000) (Providing telecommunications connections to a global computer network related to the use of the Internet); In re Styleclick.com Inc., 57 USPQ2d 1445, 1447 (TTAB 2000) (Services concerning shopping via a global computer network involve the Internet). The identification of goods itself makes it clear that the content of applicant's magazines will be directed to devices used on

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the Internet. Thus, a magazine entitled INTERNET DEVICE MAGAZINE directed to Internet devices and equipment is merely descriptive of the magazine. Under long-established case law, we must determine whether a term is descriptive in relation to the goods or services for which applicant seeks registration. Because the subject matter of applicant's magazine would be equipment and devices used in the global computer information network, nothing would be left to the imagination of the prospective purchasers if INTERNET DEVICE MAGAZINE were used for these publications. The title, INTERNET DEVICE MAGAZINE, immediately tells consumers what the subject matter of the magazine is. Therefore, the term would be merely descriptive of the goods.

Decision: The Examining Attorney's refusal to register the mark INTERNET DEVICE MAGAZINE on the ground that the term would be merely descriptive of applicant's magazines is affirmed.