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**THIS DISPOSITION
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Paper No. 9
RLS/CV

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Penton Media, Inc.

Serial No. 75/697,691

Charles R. Rust of Woodling, Krost & Rust for Penton Media, Inc.

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

Before Simms, Bucher and Drost, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Penton Media, Inc. (applicant), a Delaware corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark GOVERNMENT BUSINESS for magazines in the field of government transactions, functions, purchasing and

technologies.¹ The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), on the basis that applicant's mark is merely descriptive of the subject matter of applicant's publications. Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

We affirm.

The Examining Attorney argues that the term GOVERNMENT BUSINESS, considered in relation to applicant's magazines in the field of government transactions, functions, purchasing and technologies, immediately describes the subject matter of those publications. The Examining Attorney relies upon dictionary definitions, quoted in his brief, of "government" meaning "the executive branch of the U.S. federal government," and the word "business" meaning "commercial activity" or "transactions... especially economic." It is the Examining Attorney's position that applicant's mark means essentially government transactions or government commercial or economic transactions. The Examining Attorney argues that the combination does not give applicant's mark an incongruous quality leading to registration.

¹ Application Serial No. 75/697,691, filed May 3, 1999, based upon applicant's allegation of a bona fide intention to use the

While the Examining Attorney has quoted several dictionary definitions in his brief, this record is devoid of evidence showing descriptive use of the asserted mark. We do note, however, that in his final refusal the Examining Attorney indicated that he attached Lexis/Nexis stories showing the term "government business" is "becoming used and understood in public discourse." However, no articles can be found attached to this Office action or elsewhere in the application file. Also, applicant's attorney in his appeal brief noted that he did not receive copies of these articles. The Examining Attorney has failed to mention these articles at all in his appeal brief.

It is applicant's position that the mark GOVERNMENT BUSINESS is suggestive because imagination and thought is required in order to associate the mark with the subject matter of applicant's magazines. Applicant contends that "business" is not synonymous with "transactions" (a term set forth in applicant's description of goods).

We take judicial notice of the following dictionary definitions. *See University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). Webster's

mark in commerce.

Third New International Dictionary (Unabridged) (1993)

defines the word "business" as:

1 b (1): a usu. commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgment and power of decision...

The same reference defines "government" as, among other things:

7 a: The organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usu. classified according to the distribution of power within it... **b:** the complex of political institutions, laws, and customs through which the functions of governing is carried out in a specific political unit...

The question of whether a term is merely descriptive is determined, not in the abstract, but in relation to the goods for which registration is sought, the context in which the term is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser or user of the goods or services. See *In re Bright-Crest Ltd.*, 204 USPQ 591, 593 (TTAB 1979). A proposed mark is considered merely descriptive of the goods or services 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. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

In this case, applicant's magazines have as their subject matter government transactions, government functions and government purchasing. In other words, applicant's publications may be said to be about "government business." We believe that the relevant public who buys or reads applicant's publications is likely to view applicant's asserted mark as merely descriptive of the subject matter of the publication. This may be especially true of those persons or companies which conduct business with the government. Accordingly, while this record has little support other than dictionary definitions, we believe that the term applicant has selected for its mark immediately conveys information about the subject matter of applicant's publications. Thus, the mark is merely descriptive of applicant's magazines. *See Technical Publishing Co. v. Lebhar-Friedman Inc.*, 729 F.2d 1136, 222 USPQ 839 (7th Cir. 1984) (SOFTWARE NEWS held generic for magazines); *CES Publishing Co. v. St. Regis Publications, Inc.*, 531 F.2d 11, 188 USPQ 612 (2nd Cir. 1975) (CONSUMER ELECTRONICS held generic for a publication); *In re National Recreation Association, Inc.*, 181 F.2d 221, 85 USPQ 281 (CCPA 1950) (THE PLAYGROUND held descriptive of a

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magazine); *Walker-Davis Publications v. Penton IPC, Inc.*, 509 F.Supp. 430, 211 USPQ 265 (E.D. Pa. 1981)(ENERGY MANAGEMENT held generic for publications); *Sterling House Inc. v. Dell Publishing Co., Inc.*, 177 USPQ 299 (S.D.N.Y. 1972) (DAYTIME TV held descriptive of a magazine); and *In re Harcourt Brace Jovanovich, Inc.*, 222 USPQ 820 (TTAB 1984)(LAW & BUSINESS held unregistrable on the Supplemental Register for arranging and conducting seminars).

Decision: The refusal of registration is affirmed.