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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re RateIntegration, Inc.

Serial No. 76/014,524

Mark B. Harrison of Venable, Baetjer, Howard & Civiletti,
LLP for RateIntegration, Inc.

LaVerne T. Thompson, Trademark Examining Attorney, Law
Office 116 (Meryl Hershkowitz, Managing Attorney).

Before Simms, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

RateIntegration, Inc. (a Delaware corporation) filed
on March 31, 2000 an application to register on the
Principal Register the mark RATEINTEGRATION for goods
ultimately amended to read "computer software programs for
use in setting pricing for use on global computer networks,
web hosting, web site content, electronic commerce,
telephony and other per use digital services" in
International Class 9. The application is based on

applicant's assertion of a bona fide intention to use the mark in commerce on the identified goods.

The Examining Attorney 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, when used on the goods identified in the application, is merely descriptive thereof.

When the refusal was made final, applicant appealed to this Board. Both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The Examining Attorney essentially contends that the term "RATEINTEGRATION" is a combination of the words "rate" and "integration," which immediately describes a significant feature of applicant's computer software programs for use in setting prices for various per use digital services (e.g., telephony, web hosting, web site content, etc.). Specifically, the Examining Attorney contends that applicant's software "allows users in the wireless, network applications, and other digital service provider industries to set their price rates for web hosting, web site content, electronic commerce, telephony, and other per use digital services," and further "allows users to integrate their pricing rates into the users' system...." (Brief, p. 5.) The Examining Attorney

contends that "rate integration" is commonly used in the telecommunications industries (especially in relation to Section 254(g) of the Telecommunications Act of 1996) to refer to the integration of price setting, the same type of program offered by applicant.

The Examining Attorney points to applicant's own uses of the terms "rate" and "integration" in pages from applicant's web site (submitted by applicant on April 3, 2001); and in further support of the refusal to register, she submitted (i) dictionary definitions of the terms "rate" and "integration"¹; (ii) photocopies of several excerpted stories retrieved from the Nexis database relating to "rate integration"; and (iii) a photocopy of one story in full retrieved from the Nexis database.

¹ The Examining Attorney's request that the Board take judicial notice of the dictionary definition of "integration" submitted with her brief is granted. See *The University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). See also, TBMP §712.01. However, applicant's request in its reply brief that if this "new evidence" submitted by the Examining Attorney was considered, then applicant's evidence submitted with its request for reconsideration should also be considered, is denied. Applicant's request for reconsideration was held untimely by the Board in an order dated February 14, 2002, and the Board explained that the evidence submitted therewith would not be considered. In addition, applicant resubmitted the material attached to its request for reconsideration with its appeal brief, and the Examining Attorney properly objected thereto. To be clear, applicant's evidence untimely submitted with its request for reconsideration, and resubmitted with applicant's appeal brief, has not been considered.

Applicant urges reversal, contending that the Examining Attorney has not met the burden of establishing a prima facie case of mere descriptiveness for the involved goods in that the stories retrieved from the Nexis database do not support the conclusion that the term "RATEINTEGRATION" immediately describes the computer software offered by applicant because applicant does not set long distance rates for telephone services and it does not offer systems integration software; that applicant does offer software that "may be used by Internet Service Providers to assist in setting profitable pricing for [their] services on a real time and per use basis considering a number of variables" (brief, p. 4); that the "rate integration" of wireless telecommunications provided for in the Telecommunications Act of 1996 is inapplicable because applicant is not a telecommunications provider and it does not set long distance phone service rates; and that doubt is resolved in applicant's favor.

The well-established test for determining whether a term or phrase is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is

used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The determination of mere descriptiveness must be made not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or is intended to be used in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

The question is not whether someone presented with only the term or phrase could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

We look first to the pages from applicant's web site submitted by applicant on April 3, 2001. The web site includes the following statements:

RateIntegration was founded for the very purpose of creating a stand-alone real-time rating and data translation engine. ...

We believe that rating is the critical component needed to evolve pricing for voice services and to realize a return on investment in new IP-based technologies. ... RII's focused integration effort replaces the lengthy and arduous development lifecycle. ... Our founders believe that by taking a rating-centric view, providers are best enabled to bring new products and services to market quickly. RII built PriceMaker based on the market demand for innovative pricing and new IP-based services in order to overcome the inadequacies of today's rating infrastructure. We provide wireless, network, application and other service providers the ability to:

- ? Rate any transaction,
- ? From any source,
- ? Along any usage-attribute,
- ? Using any pricing rule, and
- ? Export the transaction to any set of support systems that requires rated data.

Further, the full article retrieved from the Nexis database by the Examining Attorney, which refers to applicant, clearly indicates that applicant offers its involved specific computer software to those in the telecommunications industry. We note the following quote from that article:

Headline: For Whom the Bill Tolls
...Forklift upgrades aren't easy, but they are an option. Bell Atlantic is nearing completion of a five-year overhaul of its legacy billing system

that will allow, among other services, converged billing.

In addition, niche companies such as RateIntegration are emerging to extend the life span of legacy systems. RateIntegration allows carriers that use legacy systems to keep their existing systems in place and gain next generation capabilities by replacing only the rating engine.

"Why change the whole system? Why not just change what needs to be fixed?" said Matthew Lucas, president and CEO of Rate-Integration. "Telephony," July 17, 2000.

Applicant's identification of goods is not only broad enough to encompass computer software for use in the telecommunications field, in fact, it specifically includes "telephony" as one of the items its computer software program can be used to set prices for. In addition, as shown above, there is evidence in the record that applicant offers its identified computer software program specifically for the billing systems used in the telecommunications industry.

The meanings of the words "rate" and "integration" have been made of record by the Examining Attorney in the following definitions:

"rate Science. 1. a quantity that is measured in relation to a unit of time... 2. to make such a measurement of a quantity...." Academic Press Dictionary of Science and Technology; and

"integration (from the Latin *integer*, meaning whole or entire) generally means combining parts so that they work together of form a whole. In information technology, there are several common usages: (1) Integration during product development is a process in which separately produced components or subsystems are combined and problems in their interactions are addressed...." whatis.com, a TechTarget.com site, searched July 14, 2001.

The following are examples of the excerpted stories retrieved from the Nexis database showing use of the term "rate integration":

Headline: WTN Notebook
...The order also prevents carriers from charging different rates between states. This rate integration requirement also was outlined by the Act.... "Washington Telecom News," August 12, 1996; and

Headline: Powell Enters Forbearance-Test Fray
...Powell disagreed with the majority FCC decision to continue enforcing rate integration in the wireless industry. Rate integration requires interstate telecommunications companies to provide interstate long-distance services to their customers in each state, including U.S. territories, at rates no higher than those they charge to their customers in other states. "Radio Comm. Report," February 1, 1999.

Applicant acknowledges that the term "rate" is suggestive in that applicant's software is used to set

pricing, and that the term "integration" is suggestive in that "applicant achieves 'pricing and rating' through an 'integration' of data collection, rating, provisioning presentment, and customer management functions." (Brief, p. 5.)

In the context of computer software programs specifically involving setting pricing for use on global computer networks, web hosting, web site content, electronic commerce, telephony and other per use digital services, the words "rate integration" immediately convey information about the purpose and function of applicant's goods.

Both applicant's identification of goods and the evidence of record (particularly applicant's web site information) show that applicant's computer software programs are used to set prices or rates for digital service providers and to integrate them into the customers' systems. There is no question but that applicant's goods are offered to customers in the telecommunications business. The fact that applicant is not a telecommunications provider and does not itself set long distance telephone rates, does not detract from the descriptiveness of the term "RATEINTEGRATION" when considered in relation to applicant's identified goods.

The Examining Attorney has established a prima facie case that the term "RATEINTEGRATION" is merely descriptive of applicant's "computer software programs for use in setting pricing for use on global computer networks, web hosting, web site content, electronic commerce, telephony and other per use digital services." The evidence shows that the relevant purchasers and users would understand the term RATEINTEGRATION to refer to the function and purpose of applicant's computer software, namely, that it is utilized to calculate rates for digital goods consumed, integrating the data collection, rating, etc., therein.

We find that the term RATEINTEGRATION immediately and directly conveys information about a significant feature of applicant's computer software. The deletion of the space between these two words to combine them into one word does not create an incongruous or creative or unique mark. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987).

Rather, applicant's mark, RATEINTEGRATION, when used in connection with applicant's identified goods, immediately describes, without conjecture or speculation, a significant feature of applicant's goods. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers

and prospective customers of applicant's goods to readily perceive the merely descriptive significance of the term RATEINTEGRATION as it pertains to applicant's computer software which is used in setting pricing for myriad per use digital services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE merely descriptive for potpourri); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) [FIRSTIER (stylized) merely descriptive for banking services]; and *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays).

Decision: The refusal to register the mark as merely descriptive under Section 2(e)(1) is affirmed.