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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Cyber Services, Inc.

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Serial No. 76/013,815

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James T. Hosmer of Nixon & Vanderhye P.C. for Cyber Services, Inc.

Charles L. Jenkins, Jr., Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

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Before Simms, Quinn and Holtzman, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Cyber Services, Inc. (applicant), a Virginia corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark BALLS.COM for preparing and disseminating electronic billboard advertising regarding sports equipment via the Internet; providing an electronic on-line shoppers guide for information in the field of sports equipment; providing computerized database management relating to sports

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equipment designs, brand names, recommended end uses and product sources, including information regarding manufacturers, distributors and retailers of sports equipment.<sup>1</sup> The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's mark is merely descriptive of its services. Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

Relying on a dictionary definition of the word "ball" ("Any of various rounded, movable objects used in various athletic activities and games"),<sup>2</sup> it is the Examining Attorney's position that "balls" describes a feature of applicant's services. That is, applicant's electronic billboard advertising, electronic on-line shoppers guide and computerized database management relating to sports equipment may entail the advertising and sale of such sports equipment as balls like footballs and baseballs. The addition of the top level domain name ".com" does not change the descriptive significance of the mark, according to the Examining Attorney. This top level domain name is akin to an entity designation (like "Inc."), and does not add any source-identifying significance, the Examining

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<sup>1</sup> Serial No. 76/013,815, filed March 30, 2000, based upon an allegation of a bona fide intention to use the mark in commerce.

<sup>2</sup> The American Heritage Dictionary of the English Language (1992).

Attorney argues. In support of the refusal, the Examining Attorney has made of record numerous and assertedly random excerpts of news articles from the Nexis database showing that balls are considered a piece of sports equipment.

Framing the issue as whether BALLS.COM merely describes Internet-based electronic billboard services relating to sports equipment, applicant's attorney argues that "balls" could refer to such products as baseballs and footballs, or to an attitude or state of mind of sports fans and players. In this regard, applicant's attorney argues that "balls" is a synonym for male courage or masculinity (according to Webster's Third New International Dictionary Unabridged). Applicant's attorney argues that evidence which he has made of record from the Internet, the medium of applicant's services, shows this idiom is repeatedly used in the sports field to mean something other than products such as athletic or sports balls. For example, applicant makes note of a number of expressions which include the word "balls" in this context, such as "Do you have the balls to play this sport?", "If you're on a team and got the balls to get knocked around the field...", and "The webpage for golfers who don't have the balls to make the tour..." Applicant also makes note of the fact that "balls" may be a part of the anatomy (as in the balls of

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one's foot) and that "Balls" may be a surname. Applicant contends that if a mark has various meanings or requires imagination, thought or perception in order to understand the nature of one's services, then the term may be suggestive rather than merely descriptive. Applicant's counsel further states that applicant contemplates using the mark to advertise and sell numerous different sports-related products (as well as sporting events) other than sports balls. Accordingly, because "balls" is not always used to describe sports equipment and because the combination of two or more otherwise descriptive terms does not automatically justify a mere descriptiveness refusal, applicant contends that its mark BALLS.COM is not merely descriptive. Finally, applicant asks us to resolve any doubt on this issue in its favor.

In response, the Examining Attorney maintains that the fact that a term may have different meanings in other contexts is not controlling on the issue of mere descriptiveness in this case. The fact that the term "balls" may have an off-color or vulgar connotation is not particularly relevant, the Examining Attorney contends, because one must consider the mark in relation to the relevant goods or services, and applicant's services do not or will not feature information on male courage,

aggressiveness or masculinity. Finally, the Examining Attorney argues that a mark need not describe all of the characteristics or features of one's services in order to be found merely descriptive.

A term is considered to be merely descriptive of goods or services within the meaning of Section 2(e)(1) if it forthwith conveys information about a significant quality, characteristic, feature, function, purpose or use of the goods or services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). In this regard, it is not necessary that a term describe all of the characteristics or functions of the goods or services in order for it to be considered merely descriptive thereof. Rather, it is sufficient if the term describes a significant attribute or quality about the goods or services. Moreover, whether a term is merely descriptive is determined, not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services and the possible significance that the term may have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB

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1979). Therefore, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

On the other hand, a mark is suggestive if, when the mark is used on or in connection with the goods or services, a multi-stage reasoning process, or imagination, thought or perception is required in order to determine the attributes or characteristics of the goods or services offered under the mark. *In re Abcor Development Corp.*, *supra* at 218, and *In re Mayer-Beaton Corp.*, 223 USPQ 1347, 1349 (TTAB 1984). We have often stated that there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently involving subjective judgment. See *In re Atavio*, 25 USPQ2d 1361 (TTAB 1992) and *In re TMS Corp. of the Americas*, 200 USPQ 57, 58 (TTAB 1978).

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's mark will be perceived as merely descriptive of an aspect of applicant's services. As noted, we must view the asserted mark in connection with the specified goods or services in the application. In

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this case, for electronic billboard advertising over the Internet of, for example, sports equipment such as football helmets, baseball bats, soccer balls and volleyballs, we believe that the mark BALLS.COM will be viewed as a combination of the merely descriptive or generic word "balls" along with the top level domain name ".com". See *In re CyberFinancial.Net, Inc.*, 65 USPQ2d 1789, 1792 (TTAB 2002)("Applicant seeks to register the generic term 'bonds,' which has no source-identifying significance in connection with applicant's services, in combination with the top level domain indicator ".com," which also has no source-identifying significance. And combining the two terms does not create a term capable of identifying and distinguishing applicant's services."); and *In re Martin Container, Inc.*, 65 USPQ2d 1058, 1060-1061 (TTAB 2002)("[T]o the average customer seeking to buy or rent containers, "CONTAINER.COM" would immediately indicate a commercial web site on the Internet which provides containers... [N]either the generic term nor the domain indicator has the capability of functioning as an indication of source, and combining the two does not result in a compound term that has somehow acquired this capability.") See also TMEP §§1209.03(m) and 1215.05. Similarly, if this mark were used in connection with an

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electronic online shoppers guide providing information about sports equipment, we also believe that the mark would be perceived as merely descriptive of a significant feature or aspect of the shoppers guide in that balls for such athletic or sporting games as baseball, football, basketball, soccer and volleyball may be included in the sports equipment being promoted. The fact that applicant has been able to retrieve from the Internet examples of use of the term "balls" in its vulgar connotation meaning male aggressiveness or courage does not persuade us that this is the connotation that consumers or users of applicant's electronic services relating to sports equipment will perceive when they see applicant's mark used in connection with sports equipment. Accordingly, we conclude that applicant's mark is merely descriptive of a feature or aspect of its services.

Decision: The refusal of registration is affirmed.