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Paper No. 20
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TimeSharing Today, LLC

Serial No. 76/348,794

Raphael G. Jacobs of Jacobs and Bell for TimeSharing Today, LLC.

Theodore McBride, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Seeherman, Rogers and Drost,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

TimeSharing Today, LLC seeks to register TIMESHAREXPO on the Principal Register as a mark for "advertising vacation timeshares on the Internet for others by means of an informational website," in International Class 35.¹

Registration has been refused under Section 2(e)(1) of the

¹ Serial No. 76/348,794, filed December 14, 2001, based upon an allegation of first use and first use in commerce as of November 15, 2001.

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Trademark Act, 15 U.S.C. §1052(e)(1). The examining attorney's position is that, when used in connection with applicant's services, TIMESHAREXPO will be merely descriptive of them.

When the examining attorney made the refusal final, applicant appealed and filed a request for reconsideration, which the examining attorney denied. The appeal then resumed and has been fully briefed. Oral argument was not requested.

The Office bears the burden of setting forth a prima facie case in support of a descriptiveness refusal. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (When the examining attorney sets forth a prima facie case, the applicant cannot simply criticize the absence of additional evidence supporting the refusal, but must come forward with evidence supporting its argument for registration.). To meet the Office's burden, the examining attorney has made of record dictionary definitions of "expo" and "exposition." The former is defined as an "informal" presentation of the latter. The examining attorney has also made of record numerous third-party registrations for composite marks that include the term "expo" for various goods or services, as more fully discussed, *infra*; and such registrations include a

disclaimer of rights in the term "expo," or if a registration does not include a disclaimer, it is registered on the Supplemental Register. In fact, many of these marks are registered on the Supplemental Register and still include a disclaimer of "expo."

One item of evidence offered by applicant is a page from a particular dictionary, which applicant says is noteworthy because it "lists more than 20 words in which the first four letters are 'expo'" and which applicant notes includes a definition of "exposition" as "a large public exposition or show, often international in scope" (emphasis by applicant). Applicant also submitted a screen print from a computer search of the USPTO's Trademark Electronic Search System [TESS] that shows that 1339 "records" were found when applicant searched for "expo." However, applicant did not submit either a list of these records or any of the individual records, and the examining attorney correctly discounted the TESS screen print as lacking probative value.

The examining attorney has argued that the mark will be perceived as a combination of TIMESHARE and EXPO. That the mark will be so perceived is, according to the examining attorney, reinforced by applicant's presentation of its mark as "TimeshareXpo" on its web site, screen

prints of which were submitted as specimens of use.² In addition, the examining attorney argues that users of the Internet are conditioned to see words run together, because that is the way they are presented in web addresses, yet such individuals are still able to discern the individual terms composing the web address.

Applicant argues that the mark is one word, though it has not presented any argument about how the mark will be perceived, i.e., it has not suggested any alternative to it being perceived as "Timeshare Expo."³ Further, applicant argues that, even if the mark is perceived as "Timeshare Expo," it is not descriptive because an "expo" or "exposition" is a large, public event, not a web-based presentation.

The question 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

² When filed, the application sought registration of the mark in special form as "TimeshareXpo." It was later amended to typed form. Though the examining attorney stated in an office action that he accepted the amendment, Office records were not changed. We have corrected them.

³ Although applicant has argued that the mark is one word, it offered a disclaimer of "expo" prior to appeal. The examining attorney rejected the disclaimer. The disclaimer, which had been entered in the Office's computerized records, has been deleted.

those 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) and In re Recovery, 196 USPQ 830, 831 (TTAB 1977).

A mark is considered merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 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, 217-218 (CCPA 1978); see also In re Gyulay, *supra*. It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985).

We find TIMESHAREXPO will be perceived either as a "collapsed" presentation or merging of TIMESHARE EXPO, wherein the final "e" in "timeshare" and the initial "e" in "expo" become one, or as TIMESHARE XPO, whereby "expo" is simply presented in a misspelled format that nonetheless will retain the same pronunciation and meaning. Either

way, the connotation of the composite remains the same and neither a merging of letters nor a slight misspelling of a part of a composite will result in a registrable mark when the terms themselves would not be registrable. *See, e.g., In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (Refusal to register FIRSTIER and design for banking services in absence of disclaimer of "First Tier," which was found to be descriptive of a class of banks), and *In re Hercules Fasteners, Inc.*, 203 F.2d 753, 97 USPQ 355 (CCPA 1953) (FASTIE held equivalent of descriptive term "fast tie"); *see also, In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505 (CCPA 1980) (QUIK-PRINT found to be a recognizable misspelling of "Quick Print" and descriptive of fast and prompt printing and duplicating services).

Since there can be no question that TIMESHARE is descriptive when used in connection with "advertising vacation timeshares on the Internet for others by means of an informational website," we must now consider whether EXPO is descriptive or, as applicant urges, not, because applicant's services involve a website rather than a large, public event. On this point, we take note of some of the third-party registrations the examining attorney has made of record. A number of these are for marks that include

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the term "expo" and a disclaimer of that term, for online or website informational services: INTERNET INDUSTRY EXPO and INTERNET INDUSTRY WORLD EXPO, which are registered for, inter alia, "provision of online services, namely, providing online publications, namely, newsletters, relating to computers, computer software, online services, high technology, communications, information technology and information services; providing a website of information in the fields of computers, computer software, online services, high technology, communications, information technology and information services"; MOBILE COMMERCE CONFERENCE AND EXPO, registered for, inter alia, "providing information about the high technology and information technology industry via the Internet"; E HEARTH & HOME EXPO, registered for "computer services - namely, providing on-line data and information in the field of hearth and home products"; COMMUNICATIONS ASP CONFERENCE & EXPO, registered for, inter alia, "organizing and conducting educational conferences and seminars in the field of telephony services delivery via a global computer network and other electronic means"; and NEWSLINE EXPO, registered for "dissemination of advertising for others, namely, displaying law enforcement products of others via an on-line electronic communications network; advertising

services, namely, promoting the services of law enforcement through the displaying of law enforcement products of others and distribution of law enforcement product information of others via an on-line electronic communications network." We view these registrations as indicating that applicants seeking to register marks including the term "expo" have acknowledged the term as being descriptive when used in marks for online information sites or sites that collect or feature products or services of others, because the term clearly describes for prospective visitors to the sites that they will find a wide range of information and products, just as they might at a public exposition.

In closing, we note that applicant has argued that descriptive terms, when combined, may result in a composite that is not descriptive and registrable. Applicant has not, however, articulated any theory why the combination of TIMESHARE and EXPO [or XPO] results in a registrable mark. We see no incongruity, ambiguity or other form of distinctiveness that results from the combination.

Decision: The refusal of registration under Section 2(e)(1) of the Lanham Act is affirmed.