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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re JBA Consulting, Inc.

Serial No. 78079350

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PLLC for JBA Consulting, Inc.

Fred Mandir, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hairston, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

JBA Consulting, Inc. has filed an application to
register the mark REAL TIME AUDIT for "computer software in
the nature of end user applications for managing accounts
payable, supplier relationship management, procurement
management, disbursement auditing, duplicate payment

prevention, data warehousing and fraudulent payment prevention."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that when used in connection with the identified goods, the mark is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney's position is as follows:

Applicant's proposed mark "REAL TIME AUDIT" directly describes the goods by identifying the real time audit capability of the applicant's computer software. Since "real time" is a computer science term that means "the time required for a computer to solve a problem," the term "real time audit" refers to a computer accomplished audit that takes place without any delay or lag time.
(Brief, p. 4).

The Examining Attorney relies on dictionary definitions wherein "**real time**" is defined in computer science as "*[t]he time required for a computer to solve a problem, measured from the time data are fed in to the time a solution is received,*" and "**audit**" is defined as "[a]n

¹ Serial No. 78079350 filed as an intent-to-use application on August 15, 2001.

*examination of records or financial accounts to check their accuracy."*²

In addition, the Examining Attorney submitted the following excerpts of articles retrieved from the NEXIS database which show use of the terms "real time" and "audit."

A **real-time** microcomputer-based **audit** was used to help select an activated sludge plant for a demonstration of benefits achievable through uses of ... (Enviroline, November 20, 1984); and

By January 1987 COMEX will automate trade timing and **audit** procedures with **Real-time** Trade Recordation (RTR) to catch illegal traders. (Banking Technology; September 1986).

Further, the Examining Attorney made of record material downloaded from several websites. At one of the websites (www.datamirror.com) reference is made to the "DataMirror Live Audit" software which allows companies to "capture and monitor *real-time audit* trails." At another website (www.vantra.com) reference is made to "Distributed Inventory Management Software" with "*real-time audit* capability."

Applicant, in urging reversal of the refusal to register, argues that the mark is not merely descriptive of

² The American Heritage Dictionary of the English Language, Third Edition 1992.

the identified goods. According to applicant, the Examining Attorney has mischaracterized applicant's goods; that is, applicant's goods are not auditing software and they do not perform auditing functions. Further, applicant argues that the mark REAL TIME AUDIT as applied to the identified goods could suggest that the computer software audits accounts payable at the same time it also completes some other external process.

Finally, applicant criticizes the NEXIS and Internet evidence submitted by the Examining Attorney, arguing that such evidence does not show use of the phrase "real time audit" in connection with goods that are the same as or similar to those in the involved application.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be merely descriptive; it is enough that the term describes one significant attribute, function or property of the

goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). 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 or is intended to be used on or in connection with those goods or services, and the possible significance that the term would have to the average purchasers; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1997). Finally, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greeting Corporation*, 226 USPQ 365, 366 (TTAB 1985).

Applying these principles to the present case, we find that the mark applicant seeks to register, REAL TIME AUDIT, is merely descriptive of the goods identified in the application, "computer software in the nature of end user applications for managing accounts payable, supplier relationship management, procurement management, disbursement auditing, duplicate payment prevention, data warehousing and fraudulent payment prevention."

Ser No. 78079350

We find that each of the terms REAL TIME and AUDIT is merely descriptive of the goods, and the composite term REAL TIME AUDIT likewise is merely descriptive.

With respect to the term AUDIT, the dictionary excerpt submitted by the Examining Attorney shows that "audit" means to examine records or financial accounts to check their accuracy. Applicant's computer software, as identified, involves the examination of records and financial accounts to check their accuracy.

With respect to the term REAL TIME, the dictionary excerpt submitted by the Examining Attorney shows that "real time" is a term of art in the computer science field. It means that data entered into a computer is processed immediately; there is no delay or lag time.

The combined term REAL TIME AUDIT therefore immediately informs prospective purchasers of applicant's computer software that a salient feature thereof is its ability to audit in real time. In other words, applicant's computer software will be capable of examining data relating to accounts payable, suppliers, procurement, disbursement auditing, etc. immediately upon being entered into a computer.

We are not persuaded by applicant's arguments in opposition to the mere descriptiveness refusal. Applicant

Ser No. 78079350

contends that its mark is not merely descriptive because its computer software is not "auditing software in the classical sense of the word 'audit'". We recognize that traditionally an audit is done of information that has been stored. However, there is nothing in the dictionary definition of the word "audit" which limits it to an examination of records or financial accounts that have been stored.

Also, applicant contends that REAL TIME AUDIT may have other meanings. For example, according to applicant, it could mean a "real" or actual audit of time records. Of course, as we have already stated, 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.

Decision: The refusal to register under Section 2(e)(1) is affirmed.