

**THIS DISPOSITION
IS NOT CITABLE AS
PRECEDENT OF
THE TTAB**

Mailed: March 30, 2004

Paper No. 13

CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re REALMETROS.COM, INC.

Serial No. 76350454

Floyd B. Chapman, Christopher Kelly and Dineen P. Wasylik of
Wiley Rein & Fielding for REALMETROS.COM, INC.

Brian D. Brown, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hanak, Quinn and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

REALMETROS.COM, INC. has filed an application to
register on the Principal Register the mark METROGUIDE for,
as amended, "travel services, namely, providing information
and services via a global computer network for the
arrangement of travel, lodging, hotels, shopping, dining,

events, car rental, and real estate for groups and individuals,"¹ in International Class 39.

The Trademark Examining Attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its services.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that the mark consists of the combination of two descriptive terms that, as combined, do not create a unique nondescriptive mark. He states that "METRO is an adjective and a shorthand reference for metropolitan [that] when used as a noun ... routinely refers to a 'metropolitan area'"; and that "GUIDE refers to something that offers basic information or instruction."² (Brief, p. 3.) Referring to applicant's specimens of record, a printout of pages from its Internet web site, the Examining Attorney notes that the excerpt offers information about "Metropolitan Fort Lauderdale"; and includes links to additional information on the web site entitled:

¹ Serial No. 76350454, filed December 20, 2001, based on use of the mark in commerce, alleging first use and use in commerce as of December 1995.

² The Examining Attorney made of record dictionary definitions of "metro" as "*Informal Adjective; Metropolitan; Noun; A metropolitan area*"; and of "guide" as "*Noun; 3a- Something, such as a pamphlet, that offers basic information or instruction ... b- A guidebook.*" *The American Heritage Dictionary of the English Language*, 3rd ed. 1992.

"MetroGuide," "EventGuide," "RetailGuide," "DiningGuide," "NightGuide," and "HotelGuide." The Examining Attorney submitted excerpts from articles retrieved from the LEXIS/NEXIS database to establish that the term "metro guide" is frequently used by those in the travel industry to refer to travel information sources for metropolitan areas.

Following are examples of several excerpts:

Yahoo! began compiling **metro guides** in June 1996, starting with San Francisco. [*Palm Beach Post*, August 11, 1997.]

Two new brochures, Moscow Metro Restaurant Guide and Moscow Hotel Restaurant Guide, are available to travelers. The **metro guide** lists about 35 free enterprise restaurants... [*The New York Times*, September 8, 1991.]

A new Davis County tourism guide aims to boost visits to the county by highlighting local attractions. ... "We'll have a **metro guide** about the demographics of Davis County. It will be a tourism guide for folks to stay and do things in Davis County and surrounding areas," said Carr. "It will include hotels, local restaurants..." [*Standard-Examiner*, September 19, 2002.]

Besides gaining the cash and stock from AOL, the two leagues will use AOL's Digital Cities **metro guides** to help sell tickets to games and gain access to one of the country's most loyal consumer bases." [*The Washington Times*, June 6, 2000.]

Applicant describes its services as follows (Brief, p.

3.):

Applicant offers travel services via the Internet and provides not only current information about specified destinations, but also a platform that allows users to make travel arrangements, including flight, hotel, car rental and dining reservations.

Applicant contends that the Examining Attorney "fails to grasp the nature of applicant's services"; and that the references submitted by the Examining Attorney "show the term used in connection with printed publications for various purposes unrelated to applicant's services" (Brief, p. 5). Applicant states "[t]he Examining Attorney's evidence shows, at most, that the individual words 'metro' and 'guide' as well as the phrase 'metro guide' may be descriptive in certain instances ... for example, as applied to a *specific metropolitan area*" (*italics in original*); but that "as applied to on-line travel services to virtually any destination, METROGUIDE has no immediate descriptive meaning" (Brief, p. 6). Applicant argues that "METRO may also refer to a subway" and that "GUIDE has many different meanings depending on the context in which it [is] used." (Reply Brief, p. 2.) Applicant requests that any doubt be resolved in its favor.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely

descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

It is clear from the evidence of record, including the specimens of record and the explanation by applicant of its services, that, in the context of travel services, "metro" means "metropolitan"; "guide" refers to a source of information³; and the phrase "metro guide" is used, and likely to be understood, to indicate a source of travel information about metropolitan areas. Applicant offers a wide range of travel services via the Internet and the excerpts from its web site demonstrate that at least a portion of its services include travel information about,

³ While it is true, as applicant alleges, that "metro" can refer to a subway and "guide" can refer to a person who leads people, we must consider the likely meanings of these terms in relation to the services identified in the application.

and bookings for, metropolitan areas.⁴ Thus, we have no doubt that METROGUIDE describes this significant aspect of applicant's services.

In conclusion, when applied to applicant's services, the term METROGUIDE immediately describes, without conjecture or speculation, a significant feature or function of applicant's services, namely that applicant's service offers travel information pertaining to metropolitan areas. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the term METROGUIDE as it pertains to applicant's travel information and booking services.

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

⁴ Applicant's excerpted web page contains a reference to information and services for "Metropolitan Ft. Lauderdale, including all of Broward County, Florida."