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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Top Network LLC dba Tennis Network

Serial No. 78052625

David Penrose of and for Top Network LLC dba Tennis Network.

Tonja M. Gaskins,¹ Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Walters, Holtzman and Walsh, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Top Network LLC dba Tennis Network has filed an
application to register on the Principal Register the mark
TENNIS NETWORK for the following services in International
Class 42²:

application service provider (asp) featuring
software for use in content management of web
sites in the field of tennis information, goods
and services; application service provider (asp),

¹ The original examining attorney in this case was David M. Taylor.

² Serial No. 78052625, filed March 12, 2001, based on use of the mark in
commerce, alleging first use and use in commerce as of January 10, 1997.

namely, hosting computer software applications of others; computer services, namely, designing, creating, hosting, maintaining, operating and managing web sites for others; hosting of digital content on the internet; displaying the web sites and images of others on a computer server; computer graphics services; data conversion of computer program data or information; computer services, namely, creating indexes of information, sites and other resources available on computer networks; providing search engines for obtaining data on a global computer network; computer consultation, namely, providing technical assistance in the field of designing, creating, hosting, maintaining, operating and managing web sites.

The 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.

In addition to the services in International Class 42 identified in the application as amended, applicant sought to register services classified in International Class 41 as part of this application. The examining attorney also based her final refusal on applicant's failure to submit the appropriate fee for the additional class of services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested.

We begin by addressing the examining attorney's discussion in her brief of the refusal based on the insufficient fee for the addition of International Class 41 to the application. Applicant does not dispute that the fee

for the additional class was not paid; however, applicant's notice of appeal expressly pertains only to the services in International Class 42, which services are properly entered in the application with the appropriate fees. Therefore, the final refusal pertaining to International Class 41 based on the lack of a fee stands and is not part of this appeal. Because there is no fee, services in International Class 41 are not part of the application, *i.e.*, the application is abandoned as to the services in International Class 41. The issue has been given no further consideration.

We turn now to the refusal based on the examining attorney's contention that the mark is merely descriptive in connection with the identified services in International Class 42. The examining attorney contends that TENNIS NETWORK is merely descriptive in connection with the identified services for the following reasons (brief, unnumbered p. 6):

[The mark] immediately conveys the subject matter of the applicant's services and the intended users of the services or, in the alternative, the medium by which the services are provided. ... The applicant's services feature tennis information that is provided via a computer network, or in the alternative, that is intended for use by a network of tennis-related business people. The applicant's services feature software applications that are used to manage web sites in the field of tennis information and the services are intended for use by a network of tennis-related business people or, in the alternative, the services are accessed via a computer network. The applicant's services are used to obtain data, including tennis related data, and are provided via a global

computer network or, in the alternative, are provided to a network of tennis related business people.

In support of her position, the examining attorney submitted several definitions of the term "network," including the following excerpt from *The American Heritage Dictionary of the English Language*, 3rd ed., 1992, which defines "network," in pertinent part, as follows:

Noun:

2.b. an extended group of people with similar interests or concerns who interact and remain in informal contact for mutual assistance or support.

4.b. *Computer Science*. A system of computers interconnected by telephone wires or other means in order to share information. Also called *net*.

Verb:

3. *Computer Science*. To connect (computers) into a network.

Verb intransitive:

To interact or engage in informal communication with others for mutual assistance or support.

The examining attorney also submitted an excerpted page from applicant's website which includes the following statements:

Website Services For Your Tennis Community

Improve Communication With Your Customers/Members

Your Website on Tennis Network can provide your members, customers, and prospects information about your products, services, and events 24-hours a day, 7-days a week. And you can change what is on your website at anytime using WebWriter™, our content management tool.

We can help you put your tennis community online!

Finally, the examining attorney submitted copies of numerous third-party registrations. The registrations

submitted are all on the Supplemental Register, include the word "network" in the mark, and include the word "information" in the identification of goods and/or services. The identifications of goods vary widely and the vast majority of the registrations are of little relevance to the case before us.

In response, applicant does not address the examining attorney's contentions regarding the "TENNIS" portion of its mark and, thus, we assume that applicant does not contest that the term TENNIS, alone, is merely descriptive of a significant aspect of applicant's services, namely, that all of its Internet-related services pertain to the field of tennis.

Applicant contends, essentially, that the examining attorney misunderstands the nature of its services and, as properly understood, the term "network" is not merely descriptive. Applicant states the following (p. 2, response to office action, received March 5, 2002):

In brief, TENNIS NETWORK commercially designates a collection of web sites containing information about tennis and tennis goods and services. The use of the word NETWORK here refers to a collection of related content (data) and in no way defines any system of interconnected computers (hardware). This network of tennis web sites is maintained and grown by TENNIS NETWORK through a broad but related set of services including, but not limited to, application services, computer services, computer consulting and association services.

In its brief (p. 2-3), applicant makes the following additional statements about its services:

Applicant does not create, compose or distribute any form of tennis information. Applicant is targeting owners and operators of tennis related businesses. Target and actual customers have no knowledge of one another.

Applicant does not provide Internet services or any network service ... Applicant does not own any form or (*sic*) network system.

Tennis Network provides a software application that allows [business] customers to create and maintain their website.

Tennis Network creates no content, tennis or otherwise.

Applicant's specimen of record is an advertisement that includes the following language:

Website Services for Your Tennis Community [-]
Tennis Network is the only *exclusively tennis* website hosting company offering you an easy-to-use self-managed website service.

We note that in its response of March 5, 2002, applicant listed three third party registrations. In order to make these registrations properly of record, soft copies of the registrations themselves, or the electronic equivalent thereof, i.e., printouts of the registrations taken from the electronic records of the Patent and Trademark Office's (PTO) own database, should have been submitted. See, *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992). Applicant's mere list, including only the mark and identification of goods without reference to what register

the marks are registered on, whether there are disclaimers of record, or the status of the registrations, is of no probative value.

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).

There is no question that applicant's services are directed to tennis-related businesses and individuals. Applicant provides website hosting and all of the component

services identified in its application exclusively for tennis-related content. It provides search engines that presumably permit its customers and others to easily access the various tennis-related sites it hosts. Applicant's services create a "network" for tennis communities as that term is defined herein, *i.e.*, "an extended group of people with similar interests or concerns who interact and remain in informal contact for mutual assistance or support." (*The American Heritage Dictionary of the English Language, supra.*) Further, applicant itself refers, as noted above, to "the network of tennis websites" that it maintains. We agree with applicant that, as identified, its services do not encompass the "computer science" definition of "network" noted herein. However, that is not determinative.

We conclude that, when applied to applicant's services, the term TENNIS NETWORK immediately describes, without conjecture or speculation, a significant feature or function of applicant's services as stated herein. 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 TENNIS NETWORK as it pertains to applicant's services.

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

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