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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CU Dealer Direct, LLC

Serial No. 78188160

Kenneth E. Horton of Kirton & McConkie for CU Dealer Direct, LLC.

Kelly Boulton, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

Before Walters, Holtzman and Zervas, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

An application was filed by CU Dealer Direct LLC to register the mark CU DEALER DIRECT (in standard character form) on the Principal Register¹ for, "Financial information

¹ Attorney Kenneth Horton filed the application on applicant's behalf. On July 23, 2004, a second attorney filed a request for reconsideration of the examining attorney's final refusal that included an amendment to seek registration on the Supplemental Register. On March 28, 2005, Mr. Horton filed a notification that no consideration should be given to the paper filed by the second attorney. In an order mailed on June 6, 2005, the Board stated that the application would not be remanded to the examining attorney to consider the request for reconsideration in

provided by electronic means; Financing services; Loan services" in International Class 42.²

The examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

§ 1052(e)(1), on the ground that applicant's mark, if applied to applicant's services, would be merely descriptive of them.

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs. Applicant did not request an oral hearing.

The examining attorney maintains that the mark is comprised of its components CU and DEALER DIRECT; and that CU means "credit union," citing an entry for "CU" taken from www.acronymfinder.com and made of record with the first Office action. DEALER DIRECT, according to the examining attorney, "refers to financing services available to consumers directly through dealerships, especially automotive dealerships," and the information provided by applicant with its November 24, 2003 response states that

view of Mr. Horton's notification. Thus, the application remains as one seeking registration of the mark on the Principal Register.

² Application Serial No. 78188160, filed November 22, 2002, alleging first use anywhere and first use in commerce on August 28, 2001.

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"there is a partnership of 'credit unions and exclusive dealers,' that consumers should visit one of their affiliated 'dealers' and, when the consumer is ready to buy, the consumer can 'do the loan paperwork there.'"

Brief at p. 3. She relies on the following material obtained from the Internet:

www.northernhillsfcu.org

Northern Hills Federal Credit Union
Dealer Direct Financing

Fast and convenient ... you can obtain your credit union loan right at your favorite dealership and get the same great credit union rates.

Look for your favorite dealer in the following list for new or used vehicles, recreational vehicles, boats, motor homes, motorcycles, and other recreational vehicles.

www.pctcu.net

Pinellas County Teachers Credit Union
FaTrack Dealer-Direct Financing

What's even smarter than getting your auto loan at your credit union? Getting your credit union loan right at the car dealership of your choice.

www.teachers-cu.org

Dealer Direct Financing

Does your automobile dealer offer Credit Union financing? Dozens of them do! They're our Here & Now Dealer Direct dealers throughout Tennessee. ... These dealers have the forms and the training to give you a Credit Union loan right there on the spot.

www.esefcu.org

Erie School Employees Federal Credit Union
100% Financing on Most Loans
INTRODUCING DEALER DIRECT FINANCING

To simplify your borrowing process and keep you from running from the auto dealership to our office to sign your loan papers, we have signed

up with a number of local dealerships to provide you with a more convenient form of borrowing. ... If you choose to purchase the vehicle from an approved Dealer Direct Dealership, you can apply and sign all the paperwork right at the Dealership without ever needed [sic] to visit our office. (Capitalization in original.)

www.grfedcu.org

Grand Rapids Federal Employees Credit Union
Convenient Dealer Direct Financing

The following auto dealers have been approved by Grand Rapids Fede[illegible] Employees Credit Union to participate in our Indirect Dealership Prog[illegible].

She also relies on the following material taken from the Nexis database, which was attached to the final Office action:³

American Banker-Bond Buyer
Credit Union Journal
October 6, 2003

With direct lending, the member may never come to the credit union. With dealer direct, the credit union sends its member to a dealer lot and has no control over the service or price the member receives.

Dolan's Virginia Business
Observer (Norfolk, VA)
October 21, 2002

Jeff Noblin was appointed dealer direct manager of Chartway Federal Credit Union in Virginia Beach.

American Banker-Bond
Buyer Credit Union Journal
January 22, 2001

³ A total of thirty-four articles were located in the examining attorney's Nexis search. The examining attorney provided excerpts from eight articles. The three mentioned below are the most relevant to the issues in this appeal.

Tennessee Teachers Credit Union, Nashville, named Angela Anselment dealer direct manager.

In view of this evidence, the examining attorney concludes that applicant's mark is merely descriptive of applicant's services because "the applicant's services include credit union services that are available to consumers directly through dealerships." Brief at p. 3.

Applicant maintains that the refusal is improper for several reasons and that the mark is suggestive. First, it maintains that there are three terms in the mark and hence the mark is a composite mark; and that the examining attorney has not shown that the phrase as a whole is descriptive. Second, it maintains that the examining attorney "has not substantiated that each component of the composite mark retains its descriptiveness in relation to the goods and services." In other words, "these terms have many definitions, especially CU and DEALER." Brief at p. 5. For example, applicant maintains that CU in the mark could be pronounced "cue" or "see you," and that many businesses use CU and are not associated at all with credit unions, e.g., the University of Colorado. Additionally, DEALER is applicable to "anyone who buys and sells[, and] [g]iven the numerous possibilities of anyone who buys and sells in the plethora of existing markets," the term DEALER

does is not merely descriptive for "only financial information provided by electronic means, financing services and loan services." *Id.* Third, the combination of the terms creates a unique or incongruous meaning, e.g., "'see you' at the dealer directly, i.e., quickly," or "'que' (or wait) at the dealer directly, i.e., go and wait at the dealer."⁴ Fourth, the mark has a double entendre in view of the "numerous commercial impressions possible," including the "interpretations" with "see you" and "que."

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act 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. *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 considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*,

⁴ Applicant maintains that "[y]et other interpretations would be arise to the public when CU is used to refer to the University of Colorado educational system," but does not identify them.

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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 on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002); see also *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985). As the Board has explained:

... the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the goods or

services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537 (TTAB 1998).

In considering the merits of the Section 2(e)(1) refusal, we turn first to the term CU. The record establishes that CU is defined as "credit union," CU appears as part of abbreviations of third party credit union names (e.g., LGEFCU), and there are clear references to CU as "credit union," (e.g. I ♥ MY CU on www.grfecu.com) on the printouts from credit union web sites. Also, all of the printouts from web pages in the record referring or relating to financing services or loan services are from credit union web sites. We therefore find that CU is a recognized abbreviation of "credit union" in the context of applicant's services. Additionally, in the context of applicant's services, we reject applicant's contention that the consuming public will perceive CU as "que" or "see you" or, in fact, anything other than an abbreviation for "credit union." The consumer perceptions applicant ascribes to CU are frankly implausible in the context of financing or lending, especially in the context of financing or lending by a credit union. Thus, we also

reject applicant's argument that there is a double entendre in the mark involving the CU portion of the mark.

Next, we consider the terms DEALER DIRECT. The examining attorney maintains that DEALER DIRECT signifies services "available to consumers directly through dealerships." We agree. The evidence establishes that "dealer direct" is a term that has meaning in vehicle financing through credit unions, at dealerships. See, e.g., www.teachers-cu.org ("Dealer Direct Financing ... They provide the convenience of a one-stop shop. These dealers have the forms and the training to give you a Credit Union loan right there on the spot. It's like having a branch in the dealership.") "Dealer direct" is even used as part of a job title in a credit union. See excerpt from article in Dolan's Virginia Business Observer (Norfolk, VA) ("Jeff Noblin was appointed dealer direct manager of Chartway Federal Credit Union ...") Thus, the examining attorney has established prima facie that "CU" and "dealer direct" are merely descriptive of a feature of applicant's services, i.e., that applicant's services are offered through credit unions, directly from the vehicle dealer.

A term which is created by combining two or more unregistrable words may achieve registration if, in combination, a new and different commercial impression is

achieved and/or the term so created imparts a bizarre or incongruous meaning as used in connection with the goods or services. See *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004); *In re National Shooting Sports Foundation*, 219 USPQ 1018 (TTAB 1983). We therefore consider whether the combination of the terms CU and DEALER DIRECT creates a commercial impression that renders the mark registrable. Applicant does not identify a commercial impression that renders the mark registrable or a plausible bizarre or incongruous meaning, in the context of applicant's services, and we do not see one.

We therefore find that applicant's mark, when used in connection with applicant's services, is merely the sum of two merely descriptive components and is equally merely descriptive in connection with applicant's identified services. Contrary to applicant's contention, the exercise of imagination or thought is not required for prospective users of applicant's services to perceive readily the merely descriptive significance of CU DEALER DIRECT as it pertains to applicant's services. The term CU DEALER DIRECT immediately describes, without conjecture or speculation, a feature or characteristic of applicant's services, namely, that financing or loans through credit unions may be obtained directly from dealers.

Applicant, citing *Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054 (TTAB 1989), argues that the mark at issue must be looked at as a whole to determine descriptiveness rather than dissecting it into its individual elements. Brief at p. 4. Applicant's citation to *Concurrent Technologies* is disingenuous - the Board in that case considered the mark CONCURRENT TECHNOLOGIES CORPORATION and specifically found that "the record is completely devoid of evidence of any descriptive use of or any meaning for 'concurrent technologies' in the trade." *Id.* at 1057. In rendering its decision, the Board considered the elements of the mark separately. When a mark is a combination of merely descriptive elements, the components of the mark certainly must be considered - however the judgment as to mere descriptiveness of the mark must be made considering the mark as a whole.

Applicant has also argued that "the proposed mark requires a multi-stage reasoning process before a consumer is able to comprehend the mark CU DEALER DIRECT and its relation to the underlying services," noting the "methodical manner in which the Examining Attorney rejected the mark." Brief at p. 9. We are also unpersuaded by this argument. As explained above, the mark is a combination of two merely descriptive terms - of course the two merely

descriptive terms must be analyzed separately, as the examining attorney has done. The point is that the combination of the two merely descriptive terms does not create a new and different commercial impression or a bizarre or incongruous meaning as used in connection with applicant's services, but rather remains as a combination of two merely descriptive terms.

Applicant has also argued that when there are doubts regarding the descriptive nature of a mark, any such doubts are to be resolved in the favor of applicant. We have no doubts as to the merely descriptive nature of the mark.

In view of the foregoing, we conclude that, when used in connection with applicant's services, the term CU DEALER DIRECT immediately describes, without conjecture or speculation, a significant feature or characteristic of applicant's services, namely, that dealer direct loans are offered by credit unions, or, more specifically, that loans from credit unions are directly offered through dealers.

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