

THIS DISPOSITION IS NOT  
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Mailed:  
March 23, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Home Loan Center, Inc.

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Serial No. 78220970

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Marina T. Larson of Oppedahl & Larson LLP for Home Loan Center, Inc.

Tricia Sonneborn, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

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Before Bucher, Rogers and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Home Loan Center, Inc. (applicant) has filed an application to register HOMELOANCENTER.COM (in standard character form) on the Principal Register for services ultimately identified as "financial services, namely providing information about real estate loan products and

consulting assistance in obtaining real estate loan products" in International Class 36.<sup>1</sup>

The examining attorney has 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 is merely descriptive of its services.

When the refusal was made final, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

We note from the outset that applicant has based its entire argument on the question of whether the proposed mark is generic for the recited services. That issue, however, is not before the Board. Although applicant states that the "sole issue argued in this appeal is whether the Examining Attorney has properly refused registration of the mark as generic, thereby denying Appellant the option of submitting evidence of secondary meaning or converting the application to one for registration on the Supplemental Register," applicant never sought to amend its application to seek registration either under Section 2(f) based on acquired distinctiveness or on

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<sup>1</sup> Application Serial No. 78220970, filed March 3, 2003, alleging a bona fide intent to use the mark in commerce.

the Supplemental Register.<sup>2</sup> The examining attorney did include in an office action a standard advisory statement that "the proposed mark appears to be generic as applied to the services and, therefore, incapable of identifying the applicant's services and distinguishing them from those of others." Office Action p. 2 (August 14, 2003). See TMEP §1209.02 (4<sup>th</sup> ed. 2005). However, this is not a refusal based on genericness under Section 23(c) or a refusal for failure to show acquired distinctiveness under Section 2(f). It is clear from the record, that the only refusal maintained and made final by the examining attorney is the refusal for mere descriptiveness under Section 2(e)(1). Finally, although applicant, in its brief, states that "solely for purposes of this Appeal Appellant assumes for sake of discussion that the term 'homeloancenter' is descriptive of the services provided," (br. p. 2), we will make a determination as to this question based on the evidence of record.

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<sup>2</sup> In any event, applicant would not have been able to amend to the Supplemental Register without first filing an amendment to allege use, inasmuch as the application is based on intent to use. Likewise, applicant would not have been able to amend to seek registration under Section 2(f) absent a concurrent amendment to allege use or a claim that the distinctiveness associated with a mark already registered by applicant would, upon use of the involved mark, transfer to such mark. See TMEP Section 1212.04 (4<sup>th</sup> edition April 2005).

"A mark is merely descriptive if it 'consist[s] merely of words descriptive of the qualities, ingredients or characteristics of' the goods or services related to the mark." In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, Estate of P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 543 (1920). See also In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). 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 a mark 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 Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and 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 Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

The examining attorney argues that "Based on the ordinary dictionary definitions, as well as the fact that HOME LOAN CENTER is a term commonly used by those in the finance industry to identify services identical to those of applicant, the mark HOMELOANCENTER.COM is merely descriptive under Trademark Act Section 2(e)(1), 15 USC 1052(e)(1)." Br. p. 3. Specifically, she argues that "the proposed mark describes a characteristic and feature of applicant's services, namely a commercial website whereby prospective consumers can acquire information about home loan products." Br. p. 5. Further, the examining attorney argues that the top level domain (TLD) .COM has no source identifying significance. In support of her arguments, the examining attorney submitted the following dictionary definitions:

HOME: 1. A place where one lives; a residence.

LOAN: 1. a. Something lent for temporary use.  
b. A sum of money lent at interest.

CENTER: 5. a. A place where a particular activity or service is concentrated: a medical center. The American Heritage Dictionary of the English Language (3d ed. 1992).

The examining attorney also provided excerpts from numerous websites where the phrase HOME LOAN CENTER is used to describe or name the place where "real estate loan products" may be obtained or, in one case, to describe the person who provides home loans. A few examples, with emphasis added, are reproduced below:

Karen Oaks, manager of Spokane-based Washington Trust Bank's **home loan center**, says mortgage rates have sunk even lower in recent weeks and are closer to 6.5 percent for a 30-year loan, and that half-point drop in mortgage rates has made refinancing feasible for many people with loans in the 7 percent range...Joan Hathaway, a vice president at Spokane-based Farmers & Merchants Bank who's in charge of its **home loan center**, says that bank's refinance activity sustained a healthy accelerated clip...Washington Trust cut staffing in its home loan center last year. (www.spokanejournal.com);

Washington Mutual opens **home loan center** in Sugar Land (Houston Business Journal);

We are on the move in seeking highly motivated, energetic, professional **Home Loan Center** Sales Managers to build and manage extremely entrepreneurial and professional retail sales offices...Home Loan Center Sales Managers have the overall responsibility for loan sales at the assigned Residential Loan Center(s)... (www.careerbuilder.com).

Earvin "Magic" Johnson, chairman and CEO of Johnson Development Corporation (JDC), is teaming up with Washington Mutual to open **home loan centers** throughout the nation's underserved communities... (www.johnsondevelopmentcorp.com);

...Flagstar's corporate office is the primary loan processing hub for its enterprise network of **home loan centers** and wholesale lending customers in all 50 states. (www.kofax.com);

One of the largest originators of residential mortgage loans in the country, Flagstar also originates loans through 112 **home loan centers** in 26 states and 11 independent lending offices across the country. (Detroit Free Press, (www.freep.com);

The Consumer Group offers financial products and services to customers through a wide range of channels, including its network of retail banking stores, retail and wholesale **home loan centers**, and correspondent lenders. (www.wamu.com).

In addition, the examining attorney submitted printouts of two applications filed by applicant wherein the term HOMELOANCENTER.COM has been disclaimed.<sup>3</sup>

When we consider the dictionary definitions of the words HOME, LOAN and CENTER and use of the phrase HOME LOAN CENTER in the various excerpts retrieved from the Internet, we find that the phrase HOME LOAN CENTER is at least descriptive of a significant feature or characteristic of the services, namely, that applicant offers information regarding home loan products. With regard to applicant's argument that the examples of use of the phrase HOME LOAN CENTER refer to a "physical location" and not to specific services, this does not affect a finding of descriptiveness

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<sup>3</sup> Applicant's objection to the evidence submitted with the examining attorney's office action denying applicant's request

inasmuch as the name of the place incorporates a significant feature of the services (home loans) being offered. We note that applicant made this argument in the context of genericness, which, as discussed above, is not the issue on appeal. We observe, however, that in the same way HOME LOAN CENTER may refer to a physical "bricks and mortar" location, HOMELOANCENTER.COM refers to a "virtual" or "online" location.

With regard to the addition of .COM to the proposed mark, applicant argues that "The question, however, is not whether .COM by itself has source identifying significance, but whether HOMELOANCENTER.COM can have source identifying significance." Br. p. 5. Applicant's argument addresses whether the proposed mark is unregistrable. We need only determine whether this compound term incorporating the TLD .COM is merely descriptive.

We take judicial notice of the following definitions of the term TLD:<sup>4</sup>

"(Top -Level-Domain) The highest level domain category in the Internet domain naming system. There are two types: the generic top-level domains, such as .com, .org, and .net and the country codes, such as .ca, .uk and .jp." McGraw

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for reconsideration is not well taken; these materials are properly of record. TBMP §1207.04 (2d ed. rev. 2004).

<sup>4</sup> University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983) (Board may take judicial notice of dictionary definitions).

Hill Computer Desktop Encyclopedia 977 (9<sup>th</sup> ed. 2001);

Abbreviation: commercial organization (in Internet addresses). The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. (2000)).

The TLD .COM generally serves no source-indicating function and in this case, at a minimum, merely indicates that applicant's services are offered "via applicant's commercial website." Examining Attorney's Br. p. 9. In re Steelbuilding.com, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005) (.COM "describes a significant feature of applicant's services, namely the Internet commerce connection").

Moreover, we find that collapsing the words to form a compound word including the addition of the TLD .COM, does not create any double entendre, incongruity, or any other basis upon which we can find the composite any more registrable than its separate elements. In re Microsoft Corp., 68 USPQ2d 1195 (TTAB 2003); see also In re Martin Container Inc., 65 USPQ2d 1058 (TTAB 2002).

In this case, we are persuaded that HOMELOANCENTER.COM when used in connection with the recited services would immediately inform the potential users of a significant aspect of those services, i.e., the provision of information regarding real estate loan products. Nothing

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requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective users of applicant's services to perceive readily the merely descriptive significance of the term HOMELOANCENTER.COM as it pertains to applicant's services.

**Decision:** The refusal to register under Section 2(e)(1) of the Trademark Act as to the recited services in International Class 36 is affirmed.