

9/25/01

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

Paper No. 15
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ticket.com

Serial No. 75/565,598

Michelle D. Kahn and Michelle Howard MacKenzie of Sheppard Mullin Richter & Hampton, LLP for Ticket.com .

Scott Baldwin, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Hanak, Quinn and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Ticket.com seeks to register on the Principal Register



for "online information services, namely, the provision of information relating to travel via global computer network," in International Class 39; "online information services, namely, the provision of information relating to shows and other entertainment events via global computer network," in International Class 41; and "online travel

agency services, namely making reservations and bookings for temporary lodging via global computer network," in International Class 42.¹

The Trademark Examining Attorney has refused registration under Section 6(a) of the Trademark Act in view of applicant's failure to comply with the requirement to disclaim TICKETS.COM apart from the composite mark (including the design) as shown above. Although applicant has agreed to disclaim .COM, it is the Trademark Examining Attorney's position that the TICKETS portion of this composite mark must also be disclaimed as it is merely descriptive of the identified services within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1).²

¹ Application Serial No. 75/565,598, filed on October 6, 1998, based upon applicant's allegation of use in commerce since August 1, 1997.

² As filed, applicant's original recitation of services was "on-line ticketing services, namely, travel agency services, ticket agency services and the provision of information relating to events, travel or tickets via a global computer network, in International Class 42." In response to the Trademark Examining Attorney's requirement to amend its recitation of services, applicant amended its recital to "online travel agency and travel information services, namely, making reservations and bookings for transportation and the provision of information related to travel, all via global computer network," in International Class 39; "online ticketing and information services, namely, arranging for tickets for shows and other entertainment events and the provision of information relating to shows and other entertainment events, all via global computer network," in International Class 41; and "online travel agency services, namely, making reservations and bookings for temporary lodging

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

It is the Trademark Examining Attorney's position that the word TICKETS is merely descriptive of a feature or characteristic of applicant's on-line services. A copy of applicant's home page (<http://www.tickets.com/>) is included as a specimen of record, and the words "ticket," "tickets" and "ticketing" occur in the ordinary sense of those words more than a dozen times on applicant's home page alone.

Applicant, on the other hand, in urging reversal of the refusal to register, argues that inasmuch as its amended recital of services excludes all the specific references to actual ticketing services, the word "Tickets" is not merely descriptive of its various "online information services." In response to this argument, the Trademark Examining Attorney states the following:

via global computer network," in International Class 42. Although the Trademark Examining Attorney appeared to accept this amended recitation at the time of the final refusal, with the request for reconsideration on the disclaimer, applicant submitted the current recitation, which the Trademark Examining Attorney has also found to be acceptable. With the request for reconsideration, applicant also voluntarily disclaimed the term ".com" alone.

[Applicant's current recitation of services is clearly broad enough to include the "provision of ticketing information ... [in classes 39 and 41]." (emphasis in original).

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a significant 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. of the goods or services. 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).

We begin with the shared proposition that for these online services, ".com" has no source-indicating

significance, inasmuch as it is merely an indication of a portion of an address on the Web.

We also find from this record that the evidence is overwhelming that the word "tickets" is merely descriptive of applicant's services, even after all the earlier "ticket" and "ticketing" language has been scrubbed from the recitation of services. We agree with the Trademark Examining Attorney that consumers are likely to understand, from the term TICKETS.COM, that at the very least, applicant offers through its Web site information about various kinds of tickets. Moreover, the specimens of record demonstrate that applicant indeed provides actual tickets as well as ticketing news through its Web site. Hence, we conclude from this record that tickets and ticket information are a significant characteristic of applicant's services. While applicant has amended its recitation of services to delete reference to the words ticket and ticketing, applicant had earlier conceded that this is an aspect of its services:

As applied to actual ticketing services, the term "TICKETS.COM" arguably may be construed as descriptive. Accordingly, if deletion of Applicant's ticketing services from the recitation of services would cure the perceived descriptiveness of that term, Applicant would be willing to so amend its application ...

(Applicant's response of January 3, 2000, p. 4, fn 2).

The fact that applicant's Web site provides ticketing information and makes tickets available online is certainly not negated merely because the current recitation of services no longer specifies this aspect of applicant's information services. Moreover, it is clear that at the very least, the offering of ticketing news is encompassed within applicant's services, even as currently identified.

Accordingly, it is our view that, when applied to applicant's services, the term TICKETS.COM immediately describes, without conjecture or speculation, a significant feature or characteristic of applicant's services, namely, that it offers information about the availability of "tickets" for sporting and other entertainment events. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective customers of applicant's services to readily perceive the merely descriptive significance of the term TICKETS.COM as it pertains to applicant's services. See In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001) [Applicant's "1.888.MATRESS" mark is merely descriptive of applicant's service offering mattresses by telephone because it immediately conveys the impression that a service relating

to mattresses is available by calling the telephone number.]

Finally, late in the appeal process, applicant submitted thirteen specifically-identified, third-party registrations it argues are relevant to the merits of this case.³ As noted by the Trademark Examining Attorney, third-party registrations are not conclusive on the question of descriptiveness. We must decide each case on its own merits. Even if some prior registrations had some characteristics similar to the present application, the Office's allowance of such prior registrations does not bind the Board or our reviewing Court. In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); and In re Owens-Corning Fiberglas Corp., 774 F.2d 1116, 1127, 227 USPQ 417, 424 (Fed. Cir. 1985).

Furthermore, as to the recent issuance of a registration for the mark, TICKETSNOW.COM, to a third-party registrant, we also agree with the Trademark Examining Attorney (emphasis in original):

The term "NOW" in the unitary mark
"TICKETSNOW.COM" is clearly not merely

³ In a companion case (Application Serial No. 75/565,580), applicant also asked for a suspension of the appeal based on these newly-issued registrations. In that case, the Trademark Examining Attorney considered these registrations and was not persuaded by them. Accordingly, we are proceeding to final decision in the instant appeal without imposing further delay.

descriptive. As such, the unitary mark "TICKETSNOW.COM" is not merely descriptive.

Further, the marks "BRAKE.COM," "1-800-FLOWERS.COM" and "1-800 GET LOAN," for example, were all registered pursuant to Section 2(f) of the Trademark Act. Registrants in each case have essentially conceded that the matter to which it pertains was not inherently distinctive (and thus not registrable absent a showing of acquired distinctiveness). As to the remaining registrations, as noted by Trademark Examining Attorney, the other registered marks referenced by applicant are not merely descriptive in general or were considered to be part of a larger, unitary expression.

Decision: The requirement for a disclaimer of the term TICKETS.COM is affirmed. Nevertheless, in accordance with Trademark Rule 2.142(g), this decision will be set aside and applicant's mark will be published for opposition if applicant, no later than thirty days from the mailing date hereof, amends its present disclaimer to one which appropriately disclaims the term TICKETS.COM.⁴

⁴ See *In re Interco Inc.*, 29 USPQ2d 2037, 2039 (TTAB 1993). For the proper format for a disclaimer, attention is directed to TMEP §§1213.09(a)(i) and 1213.09(b).