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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Quality Mapping Solutions, L.L.C.*

Serial No. 75/346,851

Andrew R. Basile, of Young & Basile, P.C. for *Quality Mapping Solutions, L.L.C.*

Stephanie M. Davis, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before *Quinn, Hohein* and *Holtzman*, Administrative Trademark Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

Quality Mapping Solutions, L.L.C. has filed an application to register the mark "QUALITY MAPPING SOLUTIONS" as a trademark for "computer software, namely software used to manage quality systems for the purpose of certification of private, business and governmental entities according to

national and international quality standards" in International Class 9.¹

Registration has been finally refused under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127, on the ground that "the proposed mark is used solely as a trade name, and not as a trademark," for applicant's goods.²

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Applicant, citing *In re Univar Corp.*, 20 USPQ2d 1865 (TTAB 1991), correctly notes that a name may, in appropriate circumstances, function as both a trade name and as a trademark. Citing *In re Letica Corp.*, 228 USPQ 276 (TTAB 1985), applicant also properly points out that the determination of whether a

¹ Ser. No. 75/346,851, filed on August 26, 1997, based on an allegation of a bona fide intention to use such mark in commerce. The word "QUALITY" is disclaimed. Following issuance of a notice of allowance on May 18, 1999 and within the period of time permitted by an extension of time, applicant submitted a statement of use on April 7, 2000 which, among other things, sets forth March 16, 2000 as the date of first use anywhere and in commerce of its mark.

² Although the mark is also sought to be registered as a service mark for "computer software maintenance" services in International Class 42, the Examining Attorney indicates in her brief that the refusal to register applies only to the goods in International Class 9 because:

The substitute specimen, a photocopy of the applicant's web page, entitled "Quality Link ... Quality Mapping Solutions® - Company Overview" was acceptable to show use of the mark for the services "computer software maintenance," in International Class 42. The web page identified an icon where users can click on to download "updates and patches" for software maintenance.

name performs a trade name function, a trademark function, or both, depends primarily on the manner of use thereof as evidenced by the specimen(s) of record submitted with the application.

In the present case, applicant contends that its mark "appears on the actual product packaging and is used to indicate the source of the goods as well as the [name of applicant's] business." Applicant additionally argues that a copy of a page from its website "sets forth Applicant's mark as a trademark and not merely as a trade name." Specifically, applicant asserts that:

The mark appears in several places throughout the website, and appears standing alone without any company address, phone number, or corporate identification (i.e., LC or Inc.). Applicant's specimen shows Applicant's mark functioning as a trademark, identifying the source of a variety of computer software, allowing customers to download software, order software, and receive technical support, updates and patches.

We agree with the Examining Attorney, however, that the specimens of record evidence only trade name use of the name "QUALITY MAPPING SOLUTIONS." As the Examining Attorney accurately observes, the specimens of record for the goods in International Class 9 consist of a software jacket entitled "QUALITY LINK™ SOFTWARE version 4" and a copy of a webpage

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entitled "QUALITY LINK™ ... Quality Mapping Solutions® - Company Overview." The software jacket, which constitutes packaging for applicant's goods, displays the name "QUALITY MAPPING SOLUTIONS" on the inside of the jacket as follows:

Quality Mapping Solutions / 15381 Hallmark Ct. / Macomb, MI 48042-4016
FAX: 1-810-786-0088 / WEBSITE: <http://www.qmsonline.com>

On the back thereof, such name is displayed as follows:

Quality Mapping Solutions
15381 Hallmark Ct.
Macomb, MI 48042-4016

The webpage, immediately to the left of the language "Quality Mapping Solutions® - Company Overview," sets forth the items:

Downloads
[FREE Trial Version](#)
[Presentation](#)
[Reports](#)
[Updates & Patches](#)

and, at the bottom of the column displaying such items, the language "Quality Mapping Solutions®" is presented immediately beneath the copyright notice "Copyright © 2000." The webpage, in addition to displaying a photograph of applicant's facility which features a stand-alone sign bearing the name "Quality Mapping Solutions," also states in relevant part that:

Quality Mapping Solutions® is a software development company established for the purpose of creating products used to facilitate the quality improvement process within any company.

The company's premier product - QUALITY LINK™ Software - was introduced in 1996

With respect to the software jacket specimen, we concur with the Examining Attorney that the uses of the name "Quality Mapping Solutions" are solely "informational" in that, due to "the position and font" utilized in the display thereof and the context in which such name appears:³

The information conveyed to the purchasing public is [in one instance] the applicant's business name, address, fax number and website information [and, in the other case, it is the applicant's business name and address]. This type of information does not serve as a trademark indicator for goods in trade but rather identifies a business.

³ The Examining Attorney also maintains that:

[T]he applicant's proposed mark appears inside the software jacket cover and on the back in the upper left hand corner. The purchasing consumer does not come in contact with the applicant's intended trademark, QUALITY MAPPING SOLUTIONS, until after the consumer purchases the software and opens the software jacket to retrieve the cd-rom. The intended trademark does not appear anywhere on the front or spine of the software jacket. Therefore, the purchasing consumer would not perceive the mark, QUALITY MAPPING SOLUTIONS[,] as a trademark for the applicant's software and thus would not call for the goods by such a trade or business name
....

However, we note that aside from the fact that the name "Quality Mapping Solutions" is in full view on the back of the software jacket, TMEP §904.04(d) specifically provides, among other things, that:

An acceptable specimen might be a photograph of a display screen projecting the identifying trademark of a computer program It is not necessary that purchasers see the mark prior to purchasing the goods, so long as the mark is applied to the goods or their containers, or to a display associated with the goods, and the goods are sold or transported in commerce. In re Brown Jordan Co., 219 USPQ 375 (TTAB 1983) (stamping the mark after purchase of the goods, on a tag attached to the goods that are later transported in commerce, held sufficient).

See, e.g., In re Diamond Hill Farms, 32 USPQ2d 1383, 1384 (TTAB 1994) ["[b]ecause of the way DIAMOND HILL FARMS is depicted on the specimen ..., the commercial impression is that it is informational, i.e., the name of the producer of the goods, and is part of the other informational material, such as applicant's location"]. Likewise, with respect to the webpage specimen, while such specimen refers to an available download of a "FREE Trial Version" of applicant's software,⁴ in none of the instances in which the name "Quality Mapping Solutions" appears does such name function as anything other than as a business or trade name for applicant.

Applicant's reliance on In re Univar Corp., supra, for the proposition that, as variously used on its webpage specimen, the name "Quality Mapping Solutions" functions as a trademark for its software simply because it "appears standing alone without any company address, phone number, or corporate identification (i.e., LC or Inc.)" is misplaced. As the Examining Attorney correctly points out:

⁴ Citing TMEP §904.04(d), the Examining Attorney notes that:

For downloadable computer software, the applicant may submit a specimen that shows use of the mark on an Internet website. However, such a specimen is acceptable only if the specimen itself indicates that the user can download the software from the website (e.g., if the specimen shows a download button). If the website simply advertises the software without providing a way to download it, the specimen is unacceptable.

In *Univar*, the ... Board held that the ... mark [of the applicant therein] could serve as a trade name as well as a trademark because the mark UNIVAR appeared "in a significantly bolder, larger and distinctively different style of type, without the designation 'Corporation,' and is often displayed in a contrasting color [20 USPQ2d at] 1869. Here, the applicant's mark does not appear in bolder font or ... in a distinctive style or color. The mark is simply displayed in typed font without the corporate designation, L.L.C. In essence, the mark is the applicant's company name. See *In re Unclaimed Salvage & Freight Company, Inc.*, 192 USPQ 165 (TTAB 1976) citing *Minnesota Mining & Manufacturing Company v. Minnesota Linseed Oil Paint Company*, 108 USPQ 314 (CCPA 1956).

Accordingly, the webpage specimen, like the software jacket specimen, is unacceptable as it fails to show use of the name "QUALITY MAPPING SOLUTIONS" functioning as a trademark for applicant's goods.

Decision: The refusal under Sections 1, 2 and 45 is affirmed.