

TTAB



12-22-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #73

IN THE UNITED STATES TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Appellant: Richard D. Ferris

Filed: March 18, 2003

Serial No: 75-589448

Mark: TEE-MAIL

APPELLANT'S BRIEF ON APPEAL

This brief is submitted in support of the Appeal of the final refusal to register in the subject application.

Facts

On November 11, 1998 the applicant filed an application to register the mark Tee-mail for " Wholesale and retail distributorships featuring golf equipment, golf and sport clothes; golf books, audio cassettes, video cassettes, compact disks and CD-ROMs which maybe accessed by way of a global computer network". A statement of Use and a specimen consisting of the internet web site www.teemail.com were submitted to the Commissioner for Trademarks on February 18, 2002.

The examining attorney subsequently rejected the specimen submitted. Registration was refused on the grounds that the specimen was not deemed to reflect the services described in the declaration of goods and serviced cited in the subject trademark application and mandated in 37C.F.R. §§2.56 and 2.88(b)(2). The examining attorney stated that the specimen " makes no indication of the fact that the mark is being used in connection with the retail or wholesale services ". The office action of refusal further stated " if portions of the web site do not make reference, or at least inference, to these services, then the applicant should submit such portions of the web site as a substitute specimen ". In another passage the examiner states that the specimen must show "that consumers can order the goods via the website" or "have a link to an order form or a portion of the website containing ordering information". In a series of written responses to the office actions of refusal made on these same grounds, the applicant stated that the specimen website as submitted is a marketing and sales vehicle and in addition met the standard of "inference" set out by the examining attorney. The applicant, your appellant, submitted examples and evidence of the same with each written response. The examining attorney maintained his refusal and the applicant filed an appeal to the Trademark Trial and Appeal Board.

ISSUE(S)

Does the specimen submitted with the statement of use act as a wholesale or retail "distributorship" to market the golf product described in the corpus of the specimen?

Does the specimen, as submitted "infer" that the golf product described in the corpus of the specimen is available to viewers of the specimen.

ARGUMENT

The appellant states the following to this Honorable Board.

The specimen meets the examining attorney's own criteria for "inference" in affecting the validity of the specimen's cited services. The specimen describes a new golf product and its benefits to the public and provides a contact e-mail where the public is encouraged to obtain further "information". The inference is present in the specimen that such "information" would include or lead to particulars of availability, pricing and ordering. The refusal to accept the specimen for lack of "inference" fails to acknowledge the simple meaning of the words "inference" and "infer" as that meaning is set out by reliable and competent authority and which is attached hereto as exhibit #1.

The action of the examining attorney on the grounds cited in the Final Office Action fails to acknowledge the marketing and sales strategy that the submitted specimen employs. This and similar sales and marketing approaches purposefully do not use the word "sale" or "for sale" or formally or specifically request a prospect to "place an order" on provided forms. These alternative sales protocols are said to be "soft" in that they seek to build a relationship with a prospect by an invitation to further communication, as is the case with the offer of "information" published in the specimen. In any case these sales and marketing strategies are legitimate commercial protocols in common use especially when, as in the instant case, introducing a new product to potential wholesale customers. The refusal of the specimen for cited inadequacies in this area fails to acknowledge the meaning of "distributorship" as that meaning is set out by reliable and competent authority and which is attached hereto as exhibit #2.

CONCLUSION

- 1) The specimen as submitted (the contents of the internet web site www.teemail.com), is in fact an actual distributorship utilizing the world wide web to introduce and market a golf product.
- 2) The decision of the examining attorney in the instant matter effects to ignore the actual meanings of the words "inference", "infer" and "distributorship" in the application of these meanings as determining factors in the validity of the submitted specimen.
- 3) The examiner's decision of refusal on the grounds cited is exclusionary as it ignores legitimate wholesale (and retail) marketing protocols which may for good cause initially exclude specific pricing, availability and ordering information.
- 4) The specimen as submitted on February 18, 2002 properly reflects the description of goods and services as set down in the application for registration of the mark tee-mail.

Dated December 16, 2003

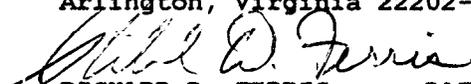
Respectfully submitted,



Richard D. Ferris
Owner of the mark
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I hereby certify that this paper is being deposited this date with the U.S. Postal Service as first class mail addressed to:

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RICHARD D. FERRIS

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Exhibit

1

inference

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in·fer·ence n.



(ĭn fĕr-əns)

- a. The act or process of deriving logical conclusions from premises known or assumed to be true.
 - b. The act of reasoning from factual knowledge or evidence.
- 2.
- a. Something inferred.
 - b. *Usage Problem.* A hint or suggestion: *The editorial contained an inference of foul play in the awarding of the contract.* See Usage Note at

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inference

[P] : log in for this definition of inference and other entries in Merriam-Webster Dictionary of Law, available only to members.

: *Merriam-Webster Dictionary of Law*, © 1996
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inference

\In"fer*ence\, n. [From .] 1. The act or process of inferring by deduction or induction.

Though it may chance to be right in the conclusions, it is yet unjust and mistaken in the method of inference. --
 Glanvill.

2. That which inferred; a truth or proposition drawn from another which is admitted or supposed to be true; a conclusion; a deduction. --Milton.

These inferences, or conclusions, are the effects of reasoning, and the three propositions, taken all together, are called syllogism, or argument. --I. Watts.

Syn: Conclusion; deduction; consequence.

Usage: Inference, An inference is literally that which is brought in; and hence, a deduction or induction from premises, -- something which follows as certainly or probably true. A conclusion is stronger than an inference; it shuts us up to the result, and terminates inquiry. We infer what is particular or probable; we conclude what is certain. In a chain of reasoning we have many inferences, which lead to the ultimate conclusion. "An inference is a proposition which is perceived to be true, because of its connection with some known fact." "When something is simply affirmed to be true, it is called a proposition; after it has been found to be true by several reasons or arguments, it is called a conclusion." --I. Taylor.

: *Webster's Revised Unabridged Dictionary*, ©
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inference

n : the reasoning involved in making a logical judgment on the basis of circumstantial evidence and prior conclusions rather than on the basis of direct observation
 [syn:]

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: WordNet ® 1.6, © 1997 Princeton University

inference

<logic> The logical process by which new facts are derived from known facts by the application of [rules](#) s.

See also [deduction](#), [induction](#)

(1995-03-20)

: *The Free On-line Dictionary of Computing*, © 1993-2003 Denis Howe

inference

: in CancerWEB's On-line Medical Dictionary

: *On-line Medical Dictionary*, © 1997-98 Academic Medical Publishing & CancerWEB

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distributorship

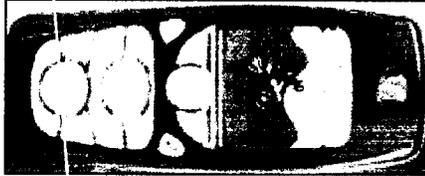
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1 entry found for
distributorship.

dis·trib·u·tor Pronunciation

Key (dĭ-strĭb'yə-tər)
n.

1. One that distributes, especially a device that applies electric current in proper sequence to the spark plugs of an engine.
2. One that markets or sells merchandise, especially a wholesaler.

dis·trib'·u·tor·ship' n.

Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*
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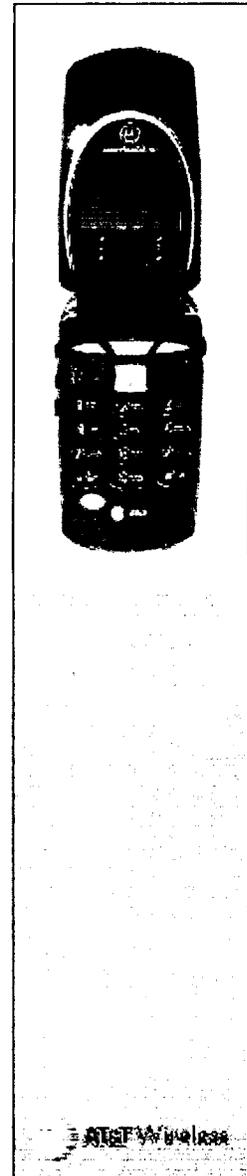
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