

Applicant: Wired Solutions, LLC : BEFORE THE
Trademark: INTERACTIVE PROFILE : TRADEMARK TRIAL
CARD
Serial No: 76-128628 : AND
Attorney: Erik B. Cherdak : APPEAL BOARD
Address: 1330 Connecticut Avenue, NW : ON APPEAL
Washington, DC 20036

EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the examining attorney's refusal to register the service mark "INTERACTIVE PROFILE CARD" because the proposed mark is merely descriptive under Section 2(e)(1) of the Trademark Act.

FACTS

Wired Solutions, LLC filed an intent to use application to register the mark "INTERACTIVE PROFILE CARD" for consulting services namely designing and facilitating implementation of electronic compact disc based business cards for use in personal computer compact disc players. Registration was refused because the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1). The refusal was ultimately made final. This appeal followed.

ARGUMENT

A. "INTERACTIVE PROFILE CARD" IS MERELY DESCRIPTIVE OF THE SERVICES.

1. The proposed mark describes characteristics and features of the services.

A mark is merely descriptive under Section 2(e)(1) of the Trademark Act Section, 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Whether a particular term is merely descriptive must be determined, not in the abstract, but in relation to the identified services for which registration is sought, the context in which the term is used and the significance it would have to the average purchaser of the services because of the manner of use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). A term is descriptive if, when considered in relation to these factors, it projects a readily understood meaning to the average purchaser of the services. *Bright-Crest* at 594.

The proposed mark “INTERACTIVE PROFILE CARD” is merely descriptive because, when considered in relation to the identified services, it describes a feature and characteristic of the applicant’s consulting services. A business card is a card containing a company profile or a personal profile. Thus, a profile card is a type of business card. See the previously attached evidence titled *An Innovation in the Digital CD Industry* where it states that the subject card is “A combination of CD and the traditional business card...”. The excerpt also provides the following definitions:

“Business Card – A business card with a difference. Containing your company profile or introduction in a streaming multimedia presentation...

Profile Card – For describing about famous personalities and their achievements. and the list is never ending....”

“Business Card” is a broad term that includes the “Profile Card”. See the attached excerpt from the Internet titled *Your Business Profile Card for Alleghany.info!* where it states: “To create your own Business Profile Card, fill out...” Business describes a type of profile card. The consulting services in this application are for assisting clients in designing and facilitating implementation of electronic compact disc based business cards for use in personal computer compact disc players. A characteristic and feature of the consulting service is a profile cards that is interactive.

2. The proposed composite mark is not incongruous.

Applicant’s sole argument is that the mark INTERACTIVE PROFILE CARD is suggestive of applicant’s services. Applicant argues that the proposed mark is “a catchy term that its customers associate with high quality consulting services.” The record does not support this argument. Applicant’s services are consulting services. Specifically, applicant consults on designing and facilitating implementation of electronic compact disc based business cards. PROFILE CARD is not unique to applicant. The Nexis® evidence previously made part of the record shows that “profile card” is used by third parties. INTERACTIVE is defined as: “Of or relating to a two-way electronic or communications system in which response is direct and continual”. See the previously attached dictionary definition. There is nothing suggestive about the INTERACTIVE PROFILE CARD as it relates to the services. The fact that an applicant may be the first and only user of a merely descriptive or generic designation does not justify registration

if the term is merely descriptive. *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983). TMEP §1209.03(c).

To support its argument that the mark is suggestive, the applicant argues that an ordinary consumer must use imagination, thought, or perception since none of the component parts of the mark either alone or in combination immediately describes "consulting services" such as assisting clients in designing and facilitating implementation of electronic compact disc based business cards for use in personal computer compact disc players. In this case, the term "INTERACTIVE PROFILE CARD" immediately conveys an idea of an essential and significant characteristic and feature of the consulting services.

Applicant would like us to believe that the only way a term can be descriptive is if it is the name for the service. It is enough for a mark to be merely descriptive if the mark describes a feature or characteristic of the services. In this case, INTERACTIVE PROFILE CARD clearly describes features and characteristics of the services.

Specifically, the term INTERACTIVE PROFILE CARD immediately conveys to potential purchasers that the consulting services feature profile cards that are interactive. Additionally, other providers of similar services might want to use similar terminology to describe their services.

The ordinary and common meaning of the words in the mark combine to form a mark which immediately conveys a feature of applicant's services, specifically, consulting services featuring a profile card that is interactive.

3. The proposed mark has a specific meaning when applied to the services.

A common understanding of profile card is a card that contains a formal analysis or summary or data. A profile card gives a quick profile of information in a particular field. For example, instead of an entire medical record it could give you a profile of highlighted information. Interactive modifies a feature and characteristic of the card. Applicant is providing consulting services about a profile card that gives you interactive information as opposed to static information. Applicant's consulting services allow applicant to set up profile cards that are interactive with the customer. The profile cards are, therefore, adaptable to provide more information. "PROFILE CARD" is not a term applicant has created. Consumers know what profile cards do for others and may want their own profile card. INTERACTIVE describes the type of profile card. A user can interact and get more information. Taken as a whole, "INTERACTIVE PROFILE CARD" merely describes the services.

Applicant submitted an Internet site in response to an information request about its services. The web site submitted by applicant states:

"Interactive Profile Cards" (IPCs) The IPC is a business card-sized CD-ROM that showcases a company's product/services and dynamically directs consumers to take effective action. Customized using full motion graphics, original audio and distributed like business cards, the IPC is a marketing tool that generates core results and trackable statistics. Where print, TV, and radio ads do not produce clear ROI [return on investment], the IPC is 100% accountable for its results using intuitive client-side tracking."

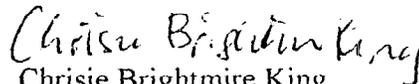
The applicant is referring to a "business card-sized CD-ROM that showcases a company's product/services..." The definition of profile is "a formal summary or analysis of data, often in the form of a graph or table, representing distinctive features or

characteristics..." See the previously attached dictionary definition. Applicant's business card-sized CD-ROM is a profile card. The applicant's proposed mark is the reason that people would seek out applicant's services. The proposed mark informs potential consumers that applicant is offering consulting services about this particular device, i.e., the interactive profile card. The applicant determines if the interactive profile card is appropriate for your business and if using it would benefit your business.

CONCLUSION

The proposed mark "INTERACTIVE PROFILE CARD" immediately describes a characteristic and feature of the Applicant's consulting services namely designing and facilitating implementation of electronic compact disc based business cards for use in personal computer compact disc players. The examining attorney properly refused registration of the proposed mark pursuant to 15 U.S.C. Section 1052(e)(1). Accordingly, the refusal to register should be affirmed.

Respectfully submitted,


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