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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77149255
Applicant	SELLING SOURCE, LLC
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UNITED STATES PATENT
AND TRADEMARK OFFICE

SERIAL NO: 77149255 **APPLICANT:** SELLING SOURCE, LLC	
CORRESPONDENT ADDRESS: BRADFORD R. NORTON 325 EAST WARM SPRINGS ROAD, SUITE 200 LAS VEGAS, NV 89119 Phone: 702-835-8058 Fax: 702-851-6974 brad.norton@sellingsource.com	**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD ON APPEAL**
MARK: OPTIMIZED CONTACT SOLUTIONS	

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INDEX OF CASES

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2. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985).

3. *In re Rank Organization Ltd.,* 222 USPQ 324, 326 (TTAB 1984).

DESCRIPTION OF THE RECORD

Mail / Create Date	Document Description
July 30, 2008	Assignment of Ownership not Updated Automatically
July 7, 2008	Ex Parte Appeal - Instituted
July 7, 2008	Ex Parte Appeal Acknowledged
July 7, 2008	Ex Parte Appeal to Board
June 11, 2008	Automatic Update of Assignment of Ownership
April 16, 2008	TEAS Revoke/Appoint Attorney Received
April 16, 2008	Attorney Revoked and/or Appointed
February 11, 2008	Notification of Final Refusal E-mailed
February 11, 2008	Final Refusal E-mailed
February 11, 2008	Final Refusal Written
January 23, 2008	Amendment and Mail Process Complete
January 22, 2008	TEAS/E-mail Correspondence Entered
January 21, 2008	Communication Received from Applicant
January 21, 2008	TEAS Response to Office Action Received
July 21, 2007	Notification of Non-Final Action
July 21, 2007	Non-Final Action E-mailed
July 21, 2007	Non-Final Action Written
July 21, 2007	XSearch Search Summary
July 19, 2007	Assigned to Examining Attorney
April 5, 2007	New Application Entered

The Record

The Record consists of the prosecution history, the drawing, the application, the XSearch search summary, the examining attorney's non-final refusal of the application, the Applicant's response to the Examining attorney's non-final refusal of the application, the Examining attorney's final refusal of the application, and Applicant's ex parte appeal of the Examining attorney's final refusal of the application to the trademark Trial and Appeal Board.

STATEMENT OF THE ISSUES

1. Whether the mark OPTIMIZED CONTACT SOLUTIONS is merely descriptive of identified goods;

2. Whether the Examining attorney erred in his analysis of Applicant's mark; and

3. Whether Applicant's mark should be labeled as arbitrary or at most suggestive and notice of publication should be issued for OPTIMIZED CONTACT SOLUTIONS.

RECITITATION OF THE FACTS

1. On April 5, 2007, Applicant submitted an application for registration of the mark OPTIMIZED CONTACT SOLUTIONS (the "Mark") in relation to direct mail marketing and consulting services.

2. An Examining attorney was assigned to review the Mark on July 19, 2007 and two days later issued and notification of non-final action stating that Applicant's mark was merely descriptive of the identified goods and provided a definition of each word independent of the others.

3. On January 21, 2008, Applicant filed a response to the Examining attorney's assertion that the Mark was merely descriptive of the identified goods and set forth arguments as to why the Mark is not merely descriptive of the identified goods and that Examining attorney's review and conclusion was incorrect.

4. The Examining attorney issued a final action on February 11, 2008 denying Applicant's arguments and upholding the earlier decision that the Mark is merely descriptive of the identified goods.

5. Applicant filed an ex parte appeal with the Trademark Trial and Appeal Board on July 7, 2008.

ARGUMENT

The question before the Trademark Trial and Appeal Board is whether or not the mark OPTIMIZED CONTACT SOLUTIONS is merely descriptive of the identified goods. Upon review of Applicant's application and Applicant's subsequent response to the Examining attorney's non-final action, the Examining attorney issued a non-final action concluding that OPTIMIZED CONTACT SOLUTIONS is merely descriptive of the identified goods. In order to determine whether this mark is merely descriptive of identified goods, it is necessary to review its definition. The Trademark Act Section 2(e)1, 15 U.S.C. Section 1052(e)(1); TMEP section 1209 *et seq.*, states that the statutory basis for refusing registration of a trademark or service mark is if the mark is merely descriptive, meaning that it describes an ingredient, quality characteristic, function, feature, purpose or use of the relevant services.

Applicant strongly contests that OPTIMIZED CONTACT SOLUTIONS is in no way descriptive of the associated purpose or services which are "direct mail marketing and consulting services." Upon review of the Examining attorney's argument in the final notice, Applicant is not swayed and believes that the TTAB should not be swayed by the argument presented.

It is Applicant's contention that in the examining attorney's analysis of the mark, the examining attorney improperly dissected the mark; that the evidence of record does not show any descriptive use of the phrase; that consumers would not recognize the term OPTIMIZED CONTACT SOLUTIONS as descriptive of "direct mail marketing and consulting services," and; that the composite mark is not merely descriptive but rather arbitrary or at most, suggestive. In the analysis of why the examining attorney refused registration, the examining attorney only provided a definition of each word of the mark and concluded that the independent definitions described the features, nature, characteristics and purpose of the services contained in Applicant's application.

It is well established that the determination of mere descriptiveness must be made 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, not in the abstract or on the basis of guesswork. *In re Recovery*, 196 USPQ 830 (TTAB 1977). While the Applicant acknowledges that it is not necessary, in order to determine a mark is merely descriptive, that the mark describe each feature of the goods and services, only that it describe a single, significant quality, feature, etc., Applicant does not believe that such descriptiveness exists. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985).

No one word of Applicant's mark describes a single, significant quality, feature, etc., and in evaluating the mark OPTIMIZED CONTACT SOLUTIONS as a whole, it is clear that the mark does not describe any particular property or feature of the applicant's goods or services for "direct mail marketing and consulting services." Instead, the mark is arbitrary, or at most, suggestive of the goods and services intended under the mark. Furthermore, it is important to remember that the examining attorney is required to resolve whatever doubt may exist regarding the merely descriptive character of the mark in favor of the applicant and that in such cases, the mark should be published for opposition. *See, In re Rank Organization Ltd.,* 222 USPQ 324, 326 (TTAB 1984) and cases cited therein.

As confirmed by the examining attorney, there are no similar registered or pending marks which would bar registration OPTIMIZED CONTACT SOLUTIONS. This gives credence to that fact that the mark is not merely descriptive. Were the mark merely descriptive, it would likely be in conflict with other marks; the fact that there are no similar registered or pending marks is evidence of the arbitrary, or at most, suggestive nature of the mark.

Furthermore, in the examining attorney's final action, the examining attorney asserts that similar wordings are being used by Applicant's competitors and supplied 22 attachments in support. In reviewing these examples, Applicant again disagrees with the examining attorney's conclusions. Applicant would argue that none of the entities contained in the attachments are even Applicant's competitors. Moreover, Applicant contends that the attachments either have nothing to do with the issue at hand and/or are stretching to find some connection between the attachments and OPTIMIZED CONTACT SOLUTIONS solely because the attachments have one or two of the same terms contained in mark. Applicant would further contend that none of

the attachments even represent examples of services related to those associated with OPTIMIZED CONTACT SOLUTIONS.

SUMMARY

Applicant disagrees with the examining attorney's assertion the mark OPTIMIZED CONTACT SOLUTIONS is merely descriptive, and would argue instead that it is arbitrary or, at most, suggestive. OPTIMIZED CONTACT SOLUTIONS, when combined together and considered as a whole, requires some cogitation or mental processing for prospective consumers of Applicant's goods and services to connect the mark with the goods and services provided. Considering the foregoing, along with the requirement that any doubt regarding the merely descriptive character of the mark be resolved in the Applicant's favor, the examining attorney should reconsider the previous determination that the mark is merely descriptive of the identified goods, acknowledge that the mark is arbitrary or, at most, suggestive. Therefore, Applicant respectfully requests that the Trademark Trial and Appeal Board overturn the examining attorney's decision and allow the mark to be published for opposition.