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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Nvest, Inc.

Serial No. 77154507

John S. Hale for Nvest, Inc.

Linda E. Blohm, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Zervas, Mermelstein, and Ritchie de Larena,
Administrative Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark
Judge:

Nvest, Inc., applicant herein, seeks registration on
the Principal Register of the mark WIKINVEST, in standard
character format, for services ultimately identified as
"providing financial information, news, commentary,
analysis and consultation all in the field of finance;
providing a computer database in the field of finance;" in
International Class 36 and "hosting of digital content on

the Internet; providing news and information in the field of finance using an interactive electronic format via the Internet; design and development of computer software" in International Class 42.¹

The trademark examining attorney refused registration on the ground that applicant's mark is merely descriptive of the identified services under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). Applicant appealed the final refusal. Both applicant and the examining attorney filed briefs. After careful consideration of all of the arguments and evidence of record, we affirm the refusal to register.²

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor*

¹ Serial No. 77154507, filed on April 11, 2007, under Trademark Act Section 1(b), 15 U.S.C. §1051(b), asserting a bona fide intent to use in commerce. Applicant originally included other classes of goods which it then placed in a divisional application, Serial No. 77975506.

² The examining attorney also issued a requirement regarding the classification of one of the services in International Class 42. Inasmuch as applicant has conceded the point, we affirm the requirement. However, since we affirm the refusal to register under 2(e)(1), the requirement is moot.

Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applicant has telescoped the words "wiki" AND "invest" to create the single word "wikinvest." Thus, we consider whether the meaning of the resulting telescoped word is

merely descriptive. See *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (finding FIRSTIER to be a telescoped word combining First and Tier, and therefore merely descriptive of applicant's banking services); *In re U.S. Steel Corp.*, 225 USPQ 750 (TTAB 1985) (SUPEROPE merely descriptive of wire rope); and *In re Gagliardi Bros., Ind.*, 218 USPQ 181 (TTAB 1983) (BEEFLAKES is merely descriptive of thinly sliced beef).

The examining attorney has submitted dictionary definitions of "wiki" and "invest" as follows:

Invest: 1. to commit (money or capital) in order to gain a financial return; 2.a. to spend or devote for future advantage or benefit. *American Heritage Dictionary of the English Language* (3rd ed. 1992).

Wiki: collaborative website whose content can be edited by anyone who has access to it. *American Heritage Dictionary of the English Language* (4th ed. 2000).

The examining attorney has further submitted evidence of use of the telescoped word "wikinvest," including descriptions of applicant's wiki for investments. In response to applicant's objection to this evidence on the basis of hearsay, we note that we are considering it not "to support the truth of statements in the text but to illustrate common descriptive use of the expression." *In*

re Omaha, supra, 2 USPQ2d at 1859, citing *In re Bed & Breakfast Registry*, 791 F.2d 157, 160-161, 229 USPQ 818, 819-820 (Fed. Cir. 1986); *Dan Robbins & Assocs., Inc. v. Questor Corp.*, 599 F2d 1009, 1014, 202 USPQ 100, 105 (CCPA 1979). Accordingly, applicant's objection is overruled.

Internet Printouts:

"Wikinvest is just as it sounds; a wiki for investing." *CrunchBase*, October 1, 2007.

"I use sites like wikinvest and wikipedia as launch pads for my own inquiries." *CrunchBase, user content blog*, October 1, 2007.

"If you take the free-for-all financial advice of a public message board and apply the anyone-can-edit approach of a wiki, does it add up to a reliable source of investment data? That's what the founders of Wikinvest are hoping." *Wired*, September 27, 2007.

"Wikinvest is an online community where users can add their two cents about the stock market. The community of course operates around wikis that are created and modified by all the users of Wikinvest." *Online blog*, August 7, 2007.

"Wikinvest is a wiki destination for investors with a wealth of in-depth and practical information on companies, business trends and concepts." *Pod Tech*, October 1, 2007.

"Wikinvest Launches Wiki for Investing, Raises Cash: Wikinvest, a site that allows investors to collaborate by editing pages about stocks and other opportunities, has raised \$2.5 million in a first round of capital." *Venture Beat*, October 1, 2007.

We find that the evidence submitted by the examining attorney indicates that the relevant public understands the term "WIKINVEST" to refer to a function or purpose of applicant's recited services. See *In re Gyulay*, 3 USPQ2d at 1009; *In re Abcor Development Corp.*, 200 USPQ at 217-18. In particular, no imaginative step is required for consumers to understand "WIKINVEST" as a wiki for investments including "providing financial information, news, commentary, analysis and consultation all in the field of finance; providing a computer database in the field of finance;" (International Class 36), and "providing news and information in the field of finance using an interactive electronic format via the Internet;" (International Class 42).

Applicant's brief asks us to consider whether "WIKINVEST" is merely descriptive of "each and every" one of the services in its application. However, the test is not whether applicant's mark is "merely descriptive" of each and every listed service. Rather, we consider whether

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applicant's mark is "merely descriptive" of at least one service listed in each International Class. *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) ("it is a well settled legal principle that where a mark may be merely descriptive of one or more items of goods in an application but may be suggestive or even arbitrary as applied to other items, registration is properly refused if the subject matter for registration is descriptive of any of the goods for which registration is sought." (citations omitted)). We find that to be the case here.

In sum, it is clear that a consumer would understand "WIKINVEST" used in connection with applicant's services as conveying information about them. *See In re Tower Tech Inc.*, 64 USPQ2d at 1316-17. Accordingly, we affirm the refusal to register.

Decision: The refusal to register under Trademark Act Section 2(e)(1) is affirmed.