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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re in3media, Inc.

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Serial No. 77171708

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Before Rogers, Chief Administrative Trademark Judge, and  
Kuhlke and Wellington, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, in3media, Inc., has filed an application to register in standard characters RADIO-INFO.COM for services ultimately identified as "providing online news and information in the field of radio broadcasting; providing on-line electronic bulletin boards for transmission of messages among computer users concerning radio entertainment, radio personalities and the radio industry" in International Class 38 and "providing online news and information in the field of radio entertainment

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personalities and radio entertainment programming" in International Class 41.<sup>1</sup>

Registration was originally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that RADIO-INFO.COM is merely descriptive of applicant's services and it has not acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f). On May 6, 2009, the examining attorney issued a new refusal on the basis that RADIO-INFO.COM is generic and incapable of identifying applicant's services under Section 23(c) of the Trademark Act, 15 U.S.C. §1091.

Applicant maintains its position that it may register RADIO-INFO.COM on the Principal Register and has appealed the refusals based on genericness under Section 23(c) and the failure to acquire distinctiveness under Sections 2(e)(1) and 2(f).

When a proposed mark is refused registration as generic, the examining attorney has the burden of proving genericness by "clear evidence." In re Hotels.com LP, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009). See also In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d

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<sup>1</sup> Application Serial No. 77171708, filed on May 3, 2007, based on an allegation of first use and first use in commerce on June 1, 2000, under Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a), and asserting a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f).

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1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); and In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987). The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods or services in question. H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); In re Women's Publishing Co. Inc., 23 USPQ2d 1876, 1877 (TTAB 1992). Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" Ginn, 228 USPQ at 530. Evidence of the public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. Merrill Lynch, 4 USPQ2d at 1143, and In re Northland Aluminum Products, Inc., 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

"An inquiry into the public's understanding of a mark requires consideration of the mark as a whole. Even if each of the constituent words in a combination mark is generic, the combination is not generic unless the entire

formulation does not add any meaning to the otherwise generic mark." In re 1800Mattress.com IP LLC, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) quoting In re Steelbuilding.com, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005).

Finally, "[t]he test is not only whether the relevant public would itself use the term to describe the genus, but also whether the relevant public would understand the term to be generic." 1800Mattress.com, 92 USPQ2d at 1685 ("Thus, it is irrelevant whether the relevant public refers to online mattress retailers as 'mattresses.com.' Instead, as the Board properly determined, the correct inquiry is whether the relevant public would understand, when hearing the term 'mattress.com,' that it refers to online mattress stores.")

We find that the genus of services at issue in this case is adequately defined by applicant's identification of services, specifically, "providing online news and information in the field of radio broadcasting; providing on-line electronic bulletin boards for transmission of messages among computer users concerning radio entertainment, radio personalities and the radio industry ... and "providing online news and information in the field of radio entertainment personalities and radio

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entertainment programming." Thus, the term RADIO-INFO.COM is generic if the relevant public understands it to refer to such online information services. See 1800Mattress.com, 92 USPQ2d at 1684 (genus of services is "online retail store services in the field of mattresses, beds, and bedding ... [a]ccordingly, the mark is generic if the relevant public understands MATTRESS.COM to refer to such online services.")

Applicant asserts that it provides "two different genera of services ... (1) the online provision of news and information (in the fields of the radio broadcasting industry, radio entertainment personalities, and radio entertainment programming); and (2) the provision of online electronic bulletin boards to enable the relevant public to discuss topics in the aforementioned fields." Supp. Br. pp. 2-3. Applicant argues that "a word that has been used on a wide range of different types of products or services that are not within the same species may be less likely to be considered generic." *Id.* The essence of applicant's services is the provision of news and information in the field of radio by either the applicant providing information in the field of radio broadcasting, radio personalities and radio entertainment programming (the news and information services in International Classes 38 and

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41) or the applicant providing the means by which others provide information to each other in the field of radio (the electronic bulletin board services in International Class 38). Thus, to the extent the identification of services includes "two genera" they do not constitute "a wide range of different types" of services. Moreover, even if we were to find that the term is only generic for the provision of online information, that is sufficient to refuse registration for all of the class 38 services. In re Analog Devices, Inc., 6 USPQ2d 1808 (TTAB 1988) (registration is properly refused where term is generic for one or more, but not all, items in an application). See also In re Eddie Z's Blinds and Drapery, Inc., 74 USPQ2d 1037, 1042 (TTAB 2005) (BLINDSANDDRAPERY.COM generic for retail store services featuring blinds, draperies, and other wall coverings, conducted via the Internet; "So long as BLINDSANDDRAPERY.COM is generic for one of the recited services, it must be refused registration. It need not be shown to be generic for each of the recited services.") Accordingly, the term RADIO-INFO.COM is generic if the relevant public understands it to refer to such online information services. 1800Mattress.com, 92 USPQ2d at 1684.

Turning to the second inquiry, the examining attorney and applicant did not specifically delineate the "relevant

public"; however, in its brief, applicant stated that "Applicant is a provider of news, information, and bulletin boards primarily targeted to persons in the radio broadcasting industry as well as its fans." Br. p. 11. Thus, the relevant public includes people in the industry and the general public interested in radio broadcasting, personalities and programming. The examining attorney does not address this issue and the record does not point to a different conclusion.

Highlighting the various references to "radio," "news" and "information" in the identification of services, the examining attorney argues that applicant's "own recitation of services describes the common commercial or generic name for the services." Br. p. 4. In addition, the examining attorney argues that the term "'INFO' is a commonly-used abbreviation for 'information' [and] the definition of the term 'NEWS' is 'information.'" Finally, the examining attorney argues that the top-level domain .COM "merely indicates an Internet address and adds no source-identifying significance." Br. p. 5. Having determined that the separate parts of the mark are generic, the examining attorney also argues that the separate terms, when combined, are not incongruous and do not evoke a

unique commercial impression but rather retain their generic significance. Specifically, he argues:

Combining the terms, because 'RADIO' is generic for the topic of Applicant's services, namely, 'radio broadcasting, radio entertainment, radio personalities and the radio industry,' and 'radio entertainment personalities and radio entertainment programming,' as well as 'INFO' being generic for 'news' and 'information,' and '.COM' not adding any source-identifying significance for online services, the combined expression is generic and incapable of denoting source. As attached in previous Office actions, sufficient evidence exists to demonstrate that 'RADIO INFO' and 'RADIO INFORMATION' is widely used to describe the class or genus of services providing news and information relating to radio operation, broadcasting, and entertainment.

Br. p. 9.

In support of his argument that RADIO-INFO.COM is generic, he submitted various dictionary definitions, including the following:

INFO - n. *informal* Information; abbreviation;

INFORMATION - n. facts provided or learned about something or someone; and

RADIO - n. the activity or industry of broadcasting sound programs to the public.

The New Oxford American Dictionary (2d ed. 2005).<sup>2</sup>

In addition, he submitted printouts from several third-party websites using the terms "radio" and "information" or "info" in conjunction with providing



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information in the field of radio (e.g., ham radio information) over the Internet. A few examples are set forth below, including examples that use the words "radio" and "info" or "information" in their web addresses (emphasis added):

Welcome to the S-Meter Website. Check your signal and listen to others on remote receivers. Read thousands of pages of ham **radio information**. Download virus-free radio-related design programs. (Smeter.net);

Hawaii Ham **Radio Information** Pages (the website provides information about ham radio usage) (chem.hawaii.edu/uham/);

**Radio Information** ... What is a radio format? A radio format, or programming format, or programming genre refers to the overall content broadcasting over a radio station. Some stations broadcast multiple genres on set schedule. Over the years, formats have evolved and new ones have been introduced. ... Contemporary hit music radio/CHR Dubbed mainstream pop music radio, CHR (contemporary hit radio) stations play a variety of popular music of today and the past few years (or decades). (www.houseoffantasia.com/unradio.html);

Research Triangle Amateur **Radio Info** ... Feel free to distribute this info however and wherever you want. Of course nothing is guaranteed to be correct but it is usually close. Local Ham Radio Clubs and Organizations Local Ham radio Related Businesses (www.virhistory.com);

Community **Radio Info** and Links - Links and information about Community Radio Stations across the United States (www.eagle973.com/community.html);

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<sup>2</sup> See also, The American Heritage Dictionary of the English Language (4<sup>th</sup> ed.) INFO n. *informal* Information.

**Radio Info** For Listeners Station Finder Broadcast Schedules Listener Comments; For Broadcasters Promotional Resources Satellite Feed Information Broadcaster TTP Broadcaster FAQ's ([www.truthforlife.org/radio-info/](http://www.truthforlife.org/radio-info/));

The Center for **Radio Information** The Center for Radio Information was born in 1977 to perform a computer analysis of leading radio stations for the magazine "TV-Radio Age" ... Today, CRI furnishes data on both radio and TV stations for the SmartPlus computer media buying service of Media Resources Plus. ([www.the-cri.com](http://www.the-cri.com));

The **Radio Information** Board Your source for radio information. ([Radioinfoboard.com](http://Radioinfoboard.com)); and

**Radio Information** & Resource Page General **Radio Information** Batlabs - Motorola Radio Discussion Batlabs- **Radio Information** ([www.jtx203.com/1-RadioInformation.html](http://www.jtx203.com/1-RadioInformation.html)).

We find RADIO-INFO.COM to be a compound term and properly analyzed under the Gould analysis. Gould, 5 USPQ2d at 1111-1112; In re Wm. B. Coleman Co., Inc., 93 USPQ2d 2019 (TTAB 2010); In re DNI Holdings Ltd., 77 USPQ2d 1435 (TTAB 2005); Eddie Z's, 74 USPQ2d 1037. The dictionary definitions establish that each component is generic for significant aspects of the services. RADIO is the generic term for the field of the services and INFO is the generic term for the type of services. The examples from the Internet serve to illustrate the public's understanding of "radio" and "info" or "information" used in combination to refer to services that provide

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information in the field of radio. See 1800Mattress, 92 USPQ2d at 1684 and In re Reed Elsevier Properties Inc., 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007). Further, the inclusion of the TLD .com in this case does not present an "exceptional circumstance" and, as such, is wholly without source-identifying significance. Eddie Z's, 74 USPQ2d at 1042. Thus, we conclude that RADIO-INFO.COM to be "no more than the sum of its parts." 1800Mattress.com, 92 USPQ2d at 1684.

While it could be argued that unlike MATTRESS.COM, the proposed mark here includes three components "radio" "info" and ".com" and, therefore, "bears closer conceptual resemblance to a phrase than a compound word," the evidence of record includes examples of use of the composite RADIO INFO and RADIO INFORMATION as a whole. In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832, 1837 (Fed. Cir. 1999). As noted above, the examples from the Internet provide support for the public's understanding of "radio" and "info" or "information" used in combination to refer to services that provide information in the field of radio.

In view thereof, we find that under both the Gould and the American Fertility standards RADIO-INFO.COM is generic

for applicant's services which include the provision of information in the field of radio over the Internet.

Applicant asserts that the "Examining Attorney essentially argues that anything related to the word "radio" could be included within Applicant's recitation of services [and] this argument is flawed and disingenuous." Reply Br. p. 4. To the extent this point was argued, it does not properly frame the issue. The point is that the terms RADIO and INFO are generic for the services of providing information in the field of radio, including those specified in applicant's identification. The fact that some examples pertain to other types of radio information (e.g., ham radio) simply serve as examples within that broad field of radio information. Moreover, certain examples do provide information regarding radio broadcasting and entertainment. See, e.g., the excerpts from [www.houseoffantasia.com](http://www.houseoffantasia.com); [truthforlife.org](http://truthforlife.org); and [www.the-cir.com](http://www.the-cir.com).

Applicant points to its survey conducted to show acquired distinctiveness. Overall, we find this survey to be lacking in probative value. The participants in the survey were limited to people already on applicant's website which has the effect of skewing the results in applicant's favor. After the participants have already

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come to applicant's website they were asked the following questions:

Do you associate RADIO-INFO.COM with the website of one, or more than one company?

Do you believe RADIO-INFO.COM to be the brand name of the website located at the URL www.radio-info.com?

The survey did not follow the "Teflon" methodology discussed in *E.I. du Pont deNemours & Co. v. Yoshida Int'l, Inc.*, 393 F. Supp. 502, 185 USPQ 597 (EDNY 1975). For example, the survey does not adequately reflect the difference between a brand name and a domain name.

Applicant argues that 80% of the participants of the survey "associated RADIO-INFO.COM as the website of one company [and] 481 of 515 people who participated in the survey answered that they believed RADIO-INFO to be the brand name of the website." Supp. Br. p. 7. Aside from the serious flaws in the survey, as noted in *Hotels.com* "consumers may automatically equate a domain name with a brand name." In re *Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1536, quoting In re *Hotels.com L.P.*, 87 USPQ2d 1100, 1109 (TTAB 2008).

Applicant also points to several third-party registrations for marks containing the term "INFO" registered on the Supplemental Register or on the Principal

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Register based on a showing of acquired distinctiveness under Section 2(f). While the Office strives for consistency, the decisions made to allow third-party registrations are not binding on the Board. As stated in *In re Nett Designs Inc.*, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (internal citation omitted):

The Board must decide each case on its own merits. Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court. Needless to say, this court encourages the PTO to achieve a uniform standard for assessing registrability of marks. Nonetheless, the Board (and this court in its limited review) must assess each mark on the record of public perception submitted with the application. Accordingly, this court finds little persuasive value in the registrations that Nett Designs submitted to the examiner or in the list of registered marks Nett Designs attempted to submit to the Board.

Applicant argues that the cases dealing with magazines are analogous and we should treat online information services similarly. See *In re Waverly Inc.*, 27 USPQ2d 1620, 1622-1623 (TTAB 1993). It has been recognized that titles of magazines present a particular dilemma because "unlike most goods whose appearance will convey their nature, periodicals must depend principally on their titles to convey their character [and c]ourts have been reluctant to find a magazine title generic, perhaps in part because

the magazines in such cases were not literally the class title designated but were about that class." Id. quoting CES Publishing Corp. v. St. Regis Publications, Inc., 531 F.2d 11, 188 USPQ 612, 615 (2d Cir. 1975). Here, a domain name is an address and when used as a trademark, it is not a title. Moreover, in this case, RADIO-INFO.COM, is the service, namely, online radio information. This is even more directly generic than HOTELS.COM where the term hotel simply named a key aspect of the information/reservation services. Hotels.com LP, 91 USPQ2d 1532. As the examining attorney herein stated: "[A] magazine is not the same thing as information itself. Applicant's service of providing information, however, is the same thing as the actual information itself. Because there is an extra step of separation between a magazine and the information itself, the In re Waverly dicta does not apply to the present case." Br. p. 9. The Board has not extended the specific treatment of magazine titles in a genericness analysis to domain names for online information services and we decline to do so now.

Finally, the printouts of articles referencing applicant's website, attached to applicant's March 4, 2008 Response, do not present a mixed record sufficient to rebut the examining attorney's prima facie showing that the term

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RADIO-INFO.COM is generic for applicant's services.

Merrill Lynch, 4 USPQ2d at 1141. See, e.g., "Newsday" (November 27, 2007) (Shock jock gets new job ... "You'd think the bridges would be burned at a couple places." Tom Taylor, news editor at the trade industry Web site Radio-Info.com, said. "You wonder where else they could go."); and "The Houston Chronicle" (November 8, 2007) (In battle of news stations, it may not be about quality; Though the race is close between Channels 11 and 13, what's on before broadcast matters ... Chris Baker's dismissal from Clear Channel's KPRC (950 AM) and KTRH (740 AM) continues to be the buzz. It was the most-viewed thread of the day on the message boards at [www.radio-info.com](http://www.radio-info.com)).

In short, applicant's evidence does not rebut the evidence establishing that the separate terms in combination have a meaning identical to the common meaning of the separate components. *Hotels.com*, 91 USPQ2d at 1537.

We are satisfied from the evidence of record that RADIO-INFO.COM is a generic designation within the guidelines set forth in *Ginn* and applied in similar circumstances. In other ".com" cases, the USPTO has presented evidence of other similar uses of the .com combination and the Federal Circuit has approved of such evidence. See *1800Mattress.com*, 92 USPQ2d 1682



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(MATTRESS.COM generic for online retail stores in the field of mattresses); Hotels.com, 91 USPQ2d 1532 (HOTELS.COM generic for online reservation services); and Reed Elsevier, 82 USPQ2d 1378 (LAWYERS.COM generic for provision of online information exchange in the field of law). While the record in this case may not include the same number of third-party uses of RADIO and INFO or INFORMATION, we find that they are sufficient, at a minimum, to corroborate the evidence of the plain meaning of the terms. It is clear from this record that the relevant public "would readily understand the term to identify a commercial website providing" information about the radio industry. Reed Elsevier, 82 USP2d 1378.

Because we find RADIO-INFO.COM generic, we do not address applicant's arguments that the designation is only merely descriptive and that there is sufficient acquired distinctiveness to allow registration under Section 2(f).

**Decision:** The refusal of registration on the ground of genericness under Section 23 is affirmed.