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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 Tablus, Inc.

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Serial No. 78279935

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John Alunit of Patel & Alunit, P.C. for Tablus, Inc.

John T. Lincoski, Trademark Examining Attorney, Law Office  
113 (Odette Bonnet, Managing Attorney).

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Before Hairston, Walters, and Drost, Administrative  
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On July 28, 2003, Tablus, Inc. (applicant) applied to register the mark CONTENT ALARM, in standard character form, on the Principal Register for "computer software that uses linguistic analysis to monitor the transmission of sensitive digital content and provides instant visibility into sensitive information in outgoing network traffic" in Class 9. The application (Serial No. 78279935) includes a

date of first use of the mark anywhere (May 15, 2003) and a date of first use in commerce (July 24, 2003).

The examining attorney refused to register applicant's mark on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1) when used on applicant's goods. The examining attorney's position (Brief at 5) is that the term "content alarm" is a term that describes goods that "serve to alert the user that sensitive content is leaving the network." Final Office Action at 2. Applicant, on the other hand, argues that "content" falls "short of describing applicant's services in any one degree of particularity" and that there "is no electrical, electronic, or mechanical device within the software that warns of danger by means of a sound or signal." Brief at unnumbered p. 3.

Our principal reviewing court in In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) recently discussed the issue of when a mark is merely descriptive.

A mark is merely descriptive if it immediately conveys information concerning a quality or characteristic of the product or service. [In re Nett Designs, 236 F.3d 1297, 1341, 57 USPQ2d 1564 (Fed. Cir. 1999)]. The perception of the relevant purchasing public sets the standard for determining descriptiveness. *Id.* Thus, a mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the

product or service. On the other hand, "if a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods [or services], then the mark is suggestive." *Id.*

When we consider a mark, the test is not whether prospective purchasers, presented with the words alone, can guess what the goods or services are. Instead, we must view the mark in the context of its use in association with the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) ("Appellant's abstract test is deficient - not only in denying consideration of evidence of the advertising materials directed to its goods, but in failing to require consideration of its mark 'when applied to the goods' as required by statute").

We begin our analysis by looking at the evidence of record. We start by observing that applicant's own identification of goods indicates that its goods "monitor the transmission of sensitive digital content." The examining attorney has submitted the following support for his position that the term "content" is descriptive. Applicant's website literature claims that its Content Alarm software "monitors all traffic leaving the network perimeter and accurately identifies sensitive content leaving the network in email and email attachments." It

identifies "sensitive content to protect. Content Alarm provides a number of mechanisms to maintain content classification as the protected content is modified or updated." The software "notifies a content auditor quickly when violations occur." The website goes on to ask: "What is Content Security?... Content security is the proactive protection of critical information." Applicant argues (brief at unnumbered p.2) that "content" "does not sufficiently identify the applicant's goods with any degree of particularity, even though the identification of goods states that the software manages digital content." We disagree. Any purchaser viewing the goods would conclude that that the term "content" describes software that monitors the content of email traffic or similar electronic transmissions. Nothing is left to the imagination.

Next, we look at the term "alarm." Applicant (brief at unnumbered p. 3) cites a dictionary definition of the term as an "electrical, electronic, or mechanical device that serves to warn of danger by means of a sound or signal." Based on this definition, applicant points out that there "is no electrical, electronic, or mechanical device within the software that warns of danger by means of a sound or signal." Id. In response, the examining attorney notes (Brief at 5) that "alarm" is also defined as

"a warning of existing or approaching danger."<sup>1</sup> The examining attorney then argues (Brief at 5) that "[b]y definition, an 'alarm' need not comprise a buzzer, claxon or other audible signal. All that the definition requires is a *warning* of existing or approaching danger." We agree that applicant's software does provide a "warning of existing or approaching danger," i.e., that sensitive data or content is leaving the defined protected area of the network.

Content Alarm notifies a content auditor quickly when violations occur. The auditor is then able to see the transmission in detail and determine if it truly reflects a violation of content policies.

Speeds reaction to content policy violations.

Supports administrator's preferred notification.

Another Content Alarm installed at the perimeter of the provider's network alerts the security officer immediately if any proprietary data leaves the partner's network.

Applicant's own information explains that its software alerts appropriate company officials that content is leaving the defined protected area. This is a warning of an existing or approaching danger. Applicant argues (brief at unnumbered p. 5) that its software is not "capable of

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<sup>1</sup> Both the examining attorney and applicant refer to *The American Heritage Dictionary of the English language*. Applicant refers to the fourth edition and the examining attorney to the third edition.

alerting the security officer immediately if any proprietary data is leaving the network, or before the data leaves." Even if that is true, an alarm does not have to prevent unlawful entry. For example, burglar alarms often do not prevent burglaries and bank alarms do not necessarily prevent holdups but they do permit authorities to take appropriate actions to apprehend intruders and minimize losses. Similarly, applicant's software permits appropriate officials to act on the warning to minimize the consequences of the loss of data and identify and take action against individuals who were responsible for a security breach.

Indeed, that is how the term is used in the NetworkWorldFusion website (emphasis added) in describing applicant's product. "The company's Content Alarm appliances scan data as it moves across corporate networks and can *trigger alarms* if unauthorized files and other digital resources are being moved out of the network." At the Compliance Pipeline website an article about a company's experience with applicant's software has a paragraph entitled "Alarm In Action." Another article referring to Data Network Solutions security software describes (emphasis added) its "Intrusion Detection" feature as follows: "Intrusion detection works with your

firewall and network to act like a burglar *alarm* if sensitive areas of your network are compromised, the intrusion detection system can send an alert to technical personnel and temporarily shut down the affected resources until they can be secured." Therefore, the term alarm, considered in the context of applicant's goods, describes the "alert" or "alarm" function of its goods.

However, the final question is whether the term "content alarm" considered in its entirety is merely descriptive. When the terms "content" and "alarm" are combined, the resulting term CONTENT ALARM describes computer software that sends an alert or alarm when sensitive content has left the protected area of the network. The evidence shows that applicant's software identifies what content the network owner considers to be sensitive information. The software monitors network traffic to determine if the identified content leaves the network. When it does leave the network, applicant's software sends an alert to the content administrator. As applicant's literature explains:

Content Alarm monitors all traffic at the network perimeter and accurately identifies sensitive content leaving the network in email or email attachments, HTTP posts, FTP transmissions and other traffic. It audits these transmissions according to explicitly defined policies, supporting rapid action to close

security gaps and protect corporate and customer interests...

Content Alarm notifies a content auditor quickly when violations occur. The auditor is then able to see the transmission in detail and determine if it truly reflects a violation of content policy.

In effect, applicant's software sets off an alarm when protected content leaves the network. We agree that an email or similar signal alerting the content auditor that protected information is leaving the network would be understood as an alarm. Certainly, a burglar alarm that sends an email to a monitoring center advising the security officer that an intrusion has occurred is just as much of a burglar alarm as one that sounds a bell.

We also note that there is some Internet evidence (emphasis added) that shows how prospective purchasers would understand the term "Content Alarm." See, e.g., Network Performance Services web page ("Please contact Network Performance Services for additional monitors and to learn about advanced web site monitoring options, such as response time alarms and valid page *content alarms*"); [www.webmasterworld.com](http://www.webmasterworld.com) ("You can't copy the content out and into another domain either without triggering googles [sic] duplicate *content alarm*"); [www.rpg.net](http://www.rpg.net) ("While I know Tangency or even Open would trip my company's web *content alarm*, I generally don't expect this in a review").

The record in this case convinces us that the term CONTENT ALARM, used in association with software that monitors the transmission of sensitive digital content and alerts appropriate officials of possible violations of sensitive content restrictions, is merely descriptive.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed. In addition, we note that applicant requests that "the Board permit registration on the Supplemental Register" if the mark is held to be merely descriptive. Applicant's brief at unnumbered p. 5. The examining attorney "believes that amendment to the Supplemental Register is appropriate." Examining attorney's brief at 8. Therefore, the application is forwarded to the examining attorney for appropriate action.