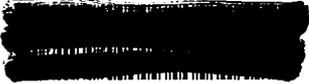

To: BORDER MEDIA PARTNERS, L.L.C. (ip@loefflerllp.com)
Subject: TRADEMARK APPLICATION NO. 78491274 - DIGITAL - 80559.00004
Sent: 6/19/2007 8:58:19 AM
Sent As: ECOM106@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/491274

MARK: DIGITAL



CORRESPONDENT ADDRESS:
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RESPOND TO THIS ACTION:
<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: BORDER MEDIA PARTNERS, L.L.C.

CORRESPONDENT'S REFERENCE/DOCKET NO: 80559.00004
CORRESPONDENT E-MAIL ADDRESS: ip@loefflerllp.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 6/19/2007

This letter responds to the applicant's communication filed on May 29th, 2007.

The refusal of registration on the Supplemental Register under Section 23 is hereby continued and made FINAL. If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or

- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). *See* 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matters. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

Registration is refused on the Supplemental Register because the proposed mark is generic for applicant's services. Trademark Act Section 23(c), 15 U.S.C. §1091(c); *See In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001) (RUSSIANART generic for dealership services in the field of fine art, antiques, furniture and jewelry); *Continental Airlines Inc. v. United Airlines Inc.*, 53 USPQ2d 1385 (TTAB 1999) (E-TICKET generic for computerized reservation and ticketing of transportation services); *In re Log Cabin Homes Ltd.*, 52 USPQ2d 1206 (TTAB 1999) (LOG CABIN HOMES generic for architectural design of buildings and retail outlets selling kits for building log homes); *In re Web Communications*, 49 USPQ2d 1478 (TTAB 1998) (WEB COMMUNICATIONS generic for consulting services to businesses seeking to establish sites on a global computer network); *In re Mortgage Bankers Association of America*, 226 USPQ 954 (TTAB 1985) (CERTIFIED MORTGAGE BANKER ("MORTGAGE BANKER" disclaimed) for "educational services, namely providing qualifying examinations, testing and grading in the field of real estate finance" held so highly descriptive as to be incapable of functioning as a mark notwithstanding evidence of acquired distinctiveness); TMEP §§1209.01(c) *et seq.*

The attached evidence from the Lexis/Nexis Research database submitted with the August 17th, 2006 Office action and this Office action shows that the proposed mark DIGITAL is generic and thus incapable of distinguishing the applicant's services because it clearly shows that this is now a common radio broadcasting format.

Generic terms are terms that the relevant purchasing public understands primarily as the common or class name for the goods or services. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001); *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). Generic terms are by definition incapable of indicating a particular source of the goods or services, and cannot be registered as trademarks; doing so "would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are." *In re Merrill Lynch*, 828 F.2d at 1569, 4 USPQ2d at 1142.

The term DIGITAL is the common name for an important feature of applicant's radio broadcasting service. A term that serves as the common descriptor of a key ingredient, characteristic or feature of the goods is also generic and thus incapable of distinguishing source. A term need not relate solely to the name of the goods or services in order to be held incapable of serving as an indicator of origin. *A.J. Canfield Co. v. Honickman*, 808 F.2d 291, 1 USPQ2d 1364 (3rd Cir. 1986) (CHOCOLATE FUDGE generic for diet sodas); *Miller Brewing Co. v. G. Heileman Brewing Co.*, 561 F.2d 75, 80, 195 USPQ 281, 285 (7th Cir. 1977) (LITE generic for beer), *cert. denied*, 434 U.S. 1025, 196 USPQ 592 (1978); *In re Sun Oil Co.*, 426 F.2d 401, 165 USPQ 718 (C.C.P.A. 1970) (CUSTOM BLENDED generic for gasoline); *In re Helena Rubenstein, Inc.*, 410 F.2d 438, 161 USPQ 606 (C.C.P.A. 1969) (PASTEURIZED for face cream incapable); *Roselux Chemical Co, Inc. v. Parsons Ammonia Co., Inc.*,

299 F.2d 855, 132 USPQ 627 (C.C.P.A. 1962) (SUDSY generic for ammonia); *In re Reckitt & Colman, North America Inc.*, 18 USPQ2d 1389 (TTAB 1991) (PERMA PRESS generic for soil and stain removers); *In re Ricci-Italian Silversmiths, Inc.*, 16 USPQ2d 1727 (TTAB 1990) (ART DECO generic for flatware); *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224 (TTAB 1987) (LA LINGERIE generic for stores that sell lingerie); *In re National Patent Development Corp.*, 231 USPQ 823 (TTAB 1986) (ULTRA PURE for interferons for medical use incapable); *In re Wickerware, Inc.*, 227 USPQ 970 (TTAB 1985) (WICKERWARE generic for mail order and distributorship services in the field of wicker furniture and accessories); *In re Hask Toiletries*, 223 USPQ 1254 (TTAB 1984) (HENNA 'N' PLACENTA generic of ingredients for hair conditioner); *In re Bee Pollen From England Ltd.*, 219 USPQ 163 (TTAB 1983) (BEE POLLEN FROM ENGLAND for bee pollen incapable).

LEVEL 1 - 1 OF 853 STORIES

Copyright 2007 Madison Newspapers, Inc.
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Wisconsin State Journal (Madison, Wisconsin)

June 4, 2007 Monday
ALL EDITION

SECTION: TECH; Pg. C10

LENGTH: 530 words

HEADLINE: FACEBOOK ADDS CLASSIFIED LISTINGS

BYLINE: State Journal wire services

HD Radio is new form of digital radio broadcasting that allows radio stations to deliver extra music content on up to four side channels that piggyback on the frequency it already uses. So far, more than 1,200 radio stations nationwide have adopted the technology.

A listener, however, needs a special radio receiver to hear HD Radio signals, which also have improved sound quality. About 50 models are available already.

LEVEL 1 - 2 OF 853 STORIES

Copyright 2007 HT Media Ltd.
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US Fed News

May 31, 2007 Thursday 12:33 AM EST

LENGTH: 5967 words

HEADLINE: FCC ADOPTS 'IN-BAND, ON-CHANNEL' SYSTEM FOR DIGITAL AUDIO BROADCASTING

BYLINE: US Fed News

DATELINE: WASHINGTON

BODY:

The Federal Communications Commission's Media Bureau issued the following document:

7. In the DAB R&O, the Commission selected the hybrid AM and FM IBOC system tested by the NRSC as the de facto standard for interim digital operation. As of the effective date of the DAB R&O, we stated we would no longer entertain any

proposal for digital radio broadcasting other than IBOC. We found that IBOC was the best way to advance our DAB policy goals. We also found that this technology was supported by the broadcast industry and was the only approach that could be implemented in the near future. We recognized that the IBOC system was spectrum-efficient because it can accommodate digital operations for all existing AM and FM radio stations with no additional allocation of spectrum. The NRSC tests, as explained in the DAB R&O, showed that both AM and FM IBOC systems offer enhanced audio fidelity and increased robustness when encountering interference and other signal impairments. The tests also indicated that coverage for both systems would be at least comparable to analog coverage. We stated that audio fidelity and robustness will greatly improve when radio stations move to all-digital operations.

LEVEL 1 - 3 OF 853 STORIES

Copyright 2007 AFX News Limited
Company News Feed formerly Regulatory News Service

May 30, 2007 Wednesday 7:00 AM GMT

LENGTH: 6381 words

HEADLINE: Equity Pre-IPO Inv - Annual Report and Accoun

Founded in 1996, RadioScape has become a world leader in software solutions for Digital Radio. The company's pioneering approach gives it the flexibility to add

innovation and rapidly incorporate changes to suit evolving standards. The company has continued to enhance its broadcast system products, which has enabled it to address the emerging Mobile TV market based on the DMB standard. RadioScape uses its unique Software Defined Digital Radio approach to ensure that it can offer customers the latest features and greatest flexibility in its product offerings. It has leveraged its unique, end-to-end systems knowledge to become a world leader in Digital Radio broadcasting, advanced multi-standard Digital Radio modules, and Mobile TV. (Web site address: www.radioscape.com) There is one further portfolio company that has asked us to keep our investment confidential at this stage.
The cost of our existing in

LEVEL 1 - 4 OF 853 STORIES

Copyright 2007 Tribune Review Publishing Company
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Tribune-Review (Greensburg, PA)

May 30, 2007 Wednesday

LENGTH: 877 words

HEADLINE: Westinghouse to revise design of AP1000 reactor

BYLINE: staff and wire reports

BODY:

Westinghouse Electric Co., Monroeville, said Tuesday it applied to regulators to revise the final design of its AP1000 nuclear reactor. The company requested U.S. Nuclear Regulatory Commission approval to modify the reactor design to reduce the cost and schedule for utilities to obtain a combined construction and operating license from the commission. Westinghouse said utilities are expected to apply for such licenses later this year. The design modifications would further standardize the AP1000 design, as well as incorporate measures to enhance reactor security and resistance to aircraft collisions. Westinghouse's AP1000 reactor design received the commission's design certification in December 2005.

Alcoma course goes public

The 178-acre Alcoma Golf Club and Course in Penn Hills has changed from a semi-public to a fully public course, following its purchase by Arthur F. Hawk for \$1.9 million. Hawk, who acquired the property under Alcoma Golf LP, already has made changes including adding restaurant serving breakfast all day, sandwiches and soups, said Megan Hawk, internal auditor. The golf shop will be remodeled and the swimming pool will be eliminated, but an outdoor pavilion for private parties will be added. The complex on Saltsburg Road sold for \$1.9 million, according to a deed filed in Allegheny County.

Sony's HD Radio products

Sony Corp. says it will introduce its first HD Radio products in July, joining the growing group of companies seeking to make the next-generation digital radio technology a standard feature in audio products over the next several years. HD Radio is a new form of digital radio broadcasting that allows radio stations to deliver extra music content on up to four side channels that piggyback on the frequency it already uses. So far, more than 1,200 radio stations nationwide have adopted the technology. A listener needs a special receiver to hear HD Radio signals, which also boasts improved sound quality.

LEVEL 1 - 10 OF 853 STORIES

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The Australian Financial Review

May 21, 2007 Monday

SECTION: ABIX NEWS SUMMARIES; Pg. 49

LENGTH: 161 words

HEADLINE: Radio 'not expecting much' from switch to digital

BYLINE: Neil Shoebridge

BODY:

ABSTRACT

The Australian Government passed digital radio legislation in May 2007.

Digital radio broadcasting will begin in capital cities from 1 January 2009, but no date has been set for regional areas. Radio companies plan to run digital and analogue radio signals at the same time for around 20 years. Radio industry insiders believe that the launch of digital radio will have little effect - it will not make more people listen to radio and it will not lift the spending on radio advertising. The key benefits of digital radio include better quality sound and the addition of screens to radio sets which can show headlines and sports reports

The following companies were referenced in the original article

/Dominick J. Salemi/
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Law Office 106
Phone: 571 272 9330
Fax: 571 273 9106 (formal responses)

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.