

**THIS OPINION IS  
NOT A PRECEDENT  
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Mailed:

June 15, 2007  
GDH/gdh

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Destination Club Partners, L.L.C.

Serial No. 78524615

Grant R. Clayton of Clayton, Howarth & Cannon, P.C. for  
Destination Club Partners, L.L.C.

John Hwang, Trademark Examining Attorney, Law Office 114 (K.  
Margaret Le, Managing Attorney).

Before Hohein, Drost and Cataldo, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Destination Club Partners, L.L.C. has filed an  
application to register on the Principal Register in standard  
character form the term "EQUITY RESIDENCE CLUB" for "real estate  
development services" in International Class 37.<sup>1</sup>

Registration has been finally refused under Section  
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the  
ground that, when used in connection with applicant's services,  
the term "EQUITY RESIDENCE CLUB" is merely descriptive thereof.

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<sup>1</sup> Ser. No. 78524615, filed on November 30, 2004, which is based on an  
allegation of a bona fide intention to use such term in commerce.

Applicant has appealed and briefs have been filed. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, 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 or is intended to be 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 such use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant, by way of background, asserts in its brief that:

Appellant specializes in the design, marketing and sale of member-owned vacation properties at prestigious resort and urban locations. Appellant is the pioneer and most experienced company in this rapidly growing segment of the real estate industry. .... Appellant typically does not own the underlying properties, but assists others in developing the property. .... In addition to expertise in all facets of property development, Appellant has a full-service, in-house marketing staff for promoting the properties.

Appellant assists developers and/or landowners in developing their real estate properties. In particular, Appellant helps developers and/or landowners develop their properties for the luxury vacation market. The properties are then sold to consumers in fractional interests. That is, each purchaser only owns a fraction of the property, similar to time-shared ownerships. As a fractional owner of the property, the owner is entitled to use the property for several weeks a year.

Applicant further contends in its brief that it "uses its mark, EQUITY RESIDENCE CLUB, to distinguish its development of fractional ownership properties from others involved in the fractional ownership business." Applicant insists, in this regard, that (underlining in original):

The EQUITY RESIDENCE CLUB mark simply does not immediately convey knowledge of the real estate development services for which registration is sought, nor does it tell consumers "only" about these services. Instead, this mark is at least suggestive, since an additional mental step is required to attach significance between the words comprising it and the service of real estate development. Neither the terms "equity," "residence" or "club" either separately or collectively merely describe[s] the Appellant's services.

Applicant, noting that at the request of the Examining Attorney, it deleted the language "namely, development of real estate time

sharing projects, undivided interest clubs, private habitat clubs, right to use clubs, and long term lease projects" from its original recitation of services, additionally maintains that its competitors and the public "do not have any reason to use the term EQUITY RESIDENCE CLUB to describe ... competing services" inasmuch as they "are free to use the terms 'fractional real estate interests,' 'shared ownership,' and/or 'time shares' to describe ... [such] services." In view thereof, applicant urges that the term "EQUITY RESIDENCE CLUB" is not merely descriptive of its "real estate development services."

The Examining Attorney, on the other hand, argues in his brief that, with respect to applicant's services, the term "EQUITY RESIDENCE CLUB" "merely describes a characteristic" or "intended purpose" thereof in that the record indicates that applicant "provides residence club services," which according to the Examining Attorney, involve the "sharing of residences with other members of the club or program" under which certain "time-share" or "equity club" real estate properties are developed and sold. Noting, in particular, that the record contains various definitions, which applicant does not dispute, from The American Heritage Dictionary of the English Language (3rd ed. 1992) which show, in relevant part, that among other things the word "equity" is defined as meaning "[t]he residual value of a business or property beyond any mortgage thereon and liability thereon," the term residence is listed as signifying both "[t]he place in which one lives; a dwelling" as well as "[t]he act or a period of residing in a place" and the word "club" is defined as "[a] group

of people organized for a common purpose, especially a group that meets regularly: *a garden club*," the Examining Attorney maintains that the combination of such words into the term "EQUITY RESIDENCE CLUB" results in a term which is merely descriptive of "developing commercially viable residence clubs."

As additional support for his position, the Examining Attorney relies on excerpts made of record from his searches of the Internet that assertedly show that applicant's "mark is descriptive, commonly used and understood in the real estate industry" to describe "a type of real estate time share arrangement." Such excerpts include the following (emphasis added) :

"The **equity residence club**<sup>SM</sup> is a natural evolution of luxury vacation real estate, and dramatically expands the market. **Equity residence clubs** allow for the ...." -- [www.destinationclub.com/nf/membership.html](http://www.destinationclub.com/nf/membership.html) as of July 1, 2005;

"The Chateaux at Silver Lake is located in Silver Lake Village at mid-mountain Deer Valley Resort. The Chateaux is an elegant full-service condominium resort with lobby, restaurant, shops, pool, spa and conference and convention facilities. .... The Phase I and II residential condominium units are whole-ownership condominiums. Phase III contains 19 three- and four-bedroom units and is under construction .... Phase III is being offered as a private **equity residence club**." -- [www.deervalley.com/about-us/real-estate-information.jsp](http://www.deervalley.com/about-us/real-estate-information.jsp) as of July 1, 2005;<sup>2</sup>

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<sup>2</sup> Although not reiterated or otherwise mentioned in its brief, applicant claims in its response to the initial Office Action issued on July 1, 2005 that such "web page is in fact Applicant's own use of the mark" as "demonstrated by the attached print out of Applicant's webpage listing the Chateaux at Silver Lake Private Residence Club as a client of the Applicant" and that applicant "has no knowledge of any other entity using the term EQUITY RESIDENCE CLUB in relation to developing time share properties." It is noted, however, that among other things, the printout of applicant's webpage states that

"Introducing The Residence Club at PGA WEST®--a luxurious **equity residence club** in La Quinta, California's celebrated golf community ...." -- [www.palmspringslife.com/media/Newsletter](http://www.palmspringslife.com/media/Newsletter) as of January 30, 2006;

"An **equity residence club**, The Club Cabins at Hidden Meadow Ranch provides you and your family a carefree way to own a log vacation home ...." -- [www.hiddenmeadow.com/ownership](http://www.hiddenmeadow.com/ownership) as of January 30, 2006;

"The Markers is the world's first **equity residence club** with a portfolio of luxury homes situated among 36 of the world's legendary golf destinations and here's why - Unlike other residence clubs that offer golf as one of their amenities, The Markers is a club purely for golfers." -- [www.themarkers-club.com/home.php](http://www.themarkers-club.com/home.php) as of January 30, 2006;

"Or, second, you could buy into a so-called "**equity residence club**"--US estate agents' jargon for a time-share--where you can buy two months' use of a cabin each year." -- [money.independent.co.uk/property/homes/article331544.ece](http://money.independent.co.uk/property/homes/article331544.ece) as of January 30, 2006;

"Try that with a timeshare, non-**equity residence club**, or a fully burdened, private form of ownership!" -- [www.fractionalvillas.com/ownership.htm](http://www.fractionalvillas.com/ownership.htm) (except captioned "Fractional Villas--Dream vacation homes at a fraction of the cost ...") as of January 30, 2006;

"The Club Cabins at Hidden Meadow Ranch offers you a carefree way to enjoy owning a vacation home at Hidden Meadow Ranch. Ownership is similar to membership in an equity golf country club. However, instead of tee times, our owners reserve luxurious cabins and hassle-free vacations. As an owner, you may vacation as often as you like, subject only to reservation policies.

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applicant "has provided its specialized services for the following **residence club** developments" (emphasis added) and otherwise repeatedly refers generically to the term "residence club" in connection with the development, sale and/or marketing of both "fractional ownership" and "whole ownership" real estate properties.

....

As an owner, you and your guests have access to Hidden Meadow Ranch's luxurious Lodge, including its dining facilities, recreational activities and amenities. The Club staff handles everything--from the maintenance of your Cabin to your horseback riding reservations.

**Equity residence clubs**, like The Club Cabins at Hidden Meadow Ranch, offer owners the most appealing vacation destinations, the most luxurious accommodations, plus personal service and first-class amenities, all at a fraction of the cost.

**Equity residence clubs** are popular in many of the most desirable destinations, including: Manhattan; Aspen, Vail and Steamboat Springs, Colorado; Deer Valley, Utah; Napa Valley and Palm Springs, California; and Cabo San Lucas, Mexico." -- [www.hiddenmeadow.com/ownership/club-cabins/-index.php](http://www.hiddenmeadow.com/ownership/club-cabins/-index.php) as of January 30, 2006;

"The Residence Club at El Corazon de Santa Fe is a luxurious **equity residence club** in the heart of downtown Santa Fe. Representing a unique opportunity to own affordable real estate just steps from the Plaza, the Club is designed to *eliminate the hassles and expense of traditional vacation home ownership*. Ownership at the Club entitles you to a host of additional privileges and conveniences that help make every visit to Santa Fe memorable." -- [www.elcorazondesantafe.com](http://www.elcorazondesantafe.com) (italics in original) as of August 10, 2006; and

"FAQ

*WHAT IS CLUB CASA MINA?*

Club Casa Mina is a luxurious **equity residence club** comprising seven elegant two- and three-bedroom residences, a well-appointed reception lobby and lounge, and fitness room. Each residence is fully furnished and exquisitely accessorized. Your Club staff ensures that you enjoy worry-free ownership and hassle-free vacations. There are only eight owners per residence, so that each enjoys abundant and flexible lodging privileges.

*IF I PURCHASE AT CLUB CASA MINA, DO I OWN REAL ESTATE?*

Yes. Ownership is evidenced by a real estate grant deed, which is recorded and insured by a title policy. Each owner is conveyed a one-eighth, debt-free, undivided, deeded interest in one of the Club's fully furnished residences and an interest in the common areas.

*WHAT ARE THE ADVANTAGES OF RESIDENCE CLUB OWNERSHIP?*

Club Casa Mina has been designed to provide owners with generous and flexible vacation use, offer exceptional services not normally available with a Santa Barbara real estate purchase, remove the worries typically associated with vacation-home ownership, and significantly reduce the financial burden through shared ownership of the residences and Club facilities.

*HAVE RESIDENCE CLUBS BEEN DEVELOPED AT OTHER PRESTIGIOUS LOCATIONS?*

Yes. This ownership concept has been enthusiastically embraced by affluent buyers since the early '90s. Residence clubs have enjoyed success at premier resorts, such as Aspen, Vail, Telluride, and Steamboat Springs, Colorado, Deer Valley, Utah, Jackson Hole, Wyoming, La Quinta and Napa Valley, California, Los Cabos, Mexico, and Tucker's Town, Bermuda. There is also a luxurious residence club in Manhattan. Each of these residence clubs is owned and operated much like Club Casa Mina. Additional **equity residence clubs** are in development in a variety of other prestigious beach, golf, mountain and urban destinations.

....  
*IS THE CLUB A TYPICAL TIMESHARE DEVELOPMENT?*

No. Timeshare is typically the right to use only a specific week and lodging is limited to a specific unit. Club owners have access to all residences within their ownership category (two- or three-bedroom) with the right to use anytime, subject to the reservation policies and availability." -- [www.clubcasamina.com/ownership-faq/html](http://www.clubcasamina.com/ownership-faq/html) (italics in original) as of August 10, 2006.

Furthermore, we observe that the excerpts of record provide the following general information about "residence club" real estate developments which are equity or ownership based as



opposed to non-equity residence club properties. In particular, the following excerpts make clear that member-owned or fractional share residence clubs of the type developed by applicant differ from so-called "destination club" properties in that purchasers of the former actually stand to acquire equity in the real estate interests which they purchase instead of possessing only the right to the use of the property at a specific time interval (emphasis added):

"Total sales of fractional real estate properties in 2004 came to \$625 million .... The owner of a private **residence club** share is just that, an **equity** owner ...." -- [www.golfcoursehome.net/doc/prcfaquesnew.html](http://www.golfcoursehome.net/doc/prcfaquesnew.html) as of August 10, 2006;

"'A destination club typically has a structure similar to a golf country club,' says Peterson, who has represented all kinds of 'vacation experience' products, including timeshare, fractionals and **non-equity residence clubs**. 'That means that a person makes a refundable deposit rather than buying a permanent interest in real estate or a permanent, non-deeded interest in a club; they make a refundable deposit to the club sponsor pursuant to which they have the right to reassign whenever they wish ....'

The sister product is the **private residence club**, where one can buy an undivided interest in a condo and where one gets a deed." -- [www.lhonline.com/article/-12264](http://www.lhonline.com/article/-12264) as of August 10, 2006; and

"With fractionals, rather than buying your own place, you purchase a deeded share of your chosen slice of paradise: a condo, a townhouse or even a single-family home. You then have the right to use the property for a certain number of weeks or months each year, as with a time-share. ....

....

*How to buy fractional*

....

The second home market has become elaborately segmented, so it's important to

research the details of the myriad programs. In particular, know the difference between **non-equity destination clubs**, which sell prepaid weeks in a resort, and the actual real estate investment that comes with true deeded ownership.

....  
Do you want to fly fish, ski or golf? Hang around cities, coasts, mountains (or all three)? There is a fractional program for virtually any lifestyle or leisure pursuit, and they're located everywhere from San Francisco to Florida. You can commit to a single vacation spot or choose an **equity residence club** with reciprocal privileges at multiple locations." -- [airtranmagazine.com/contents/2006/03/fractional-ownership](http://airtranmagazine.com/contents/2006/03/fractional-ownership) (italics in original) as of August 10, 2006.

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "EQUITY RESIDENCE CLUB" is merely descriptive of applicant's "real estate development services." The Internet excerpts noted above and the dictionary definitions demonstrate that the term "EQUITY RESIDENCE CLUB" immediately conveys, without the need for speculation or conjecture, that the subject matter or a significant feature of applicant's services is the development of real estate properties which are known in the trade or industry as equity residence clubs. In the context of applicant's real estate development services, there is nothing in the term "EQUITY RESIDENCE CLUB" which, to those in the market for real estate developments which feature equity ownership of a residence club property (through the purchase of fractional interests therein), is incongruous, ambiguous or even suggestive, nor is there anything which would require the exercise of imagination, cogitation or mental

processing, or necessitate the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to such customers. Instead, the term "EQUITY RESIDENCE CLUB" conveys forthwith that a significant aspect of the particular subject matter of applicant's services is that it develops real estate properties which are known generically as equity residence clubs in order to distinguish such from other types of timeshare developments, such as non-equity residence clubs.

Moreover, as to applicant's argument that its competitors and the real estate purchasing public "do not have any reason to use the term EQUITY RESIDENCE CLUB to describe ... competing services" inasmuch as they "are free to use the terms 'fractional real estate interests,' 'shared ownership,' and/or 'time shares' to describe ... [such] services," suffice it to say that even if, for instance, potential competitors of applicant are able to describe or advertise the same or similar real estate development services by terms other than "EQUITY RESIDENCE CLUB," that does not mean that such term is not merely descriptive of applicant's services. See, e.g., Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc., 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962). Thus, even if applicant were a "pioneer" in that it was the first and/or at one time the only user of the term "EQUITY RESIDENCE CLUB" in connection with its real estate development services, it is well settled that such does not entitle applicant to the registration thereof where, as here, the term has been shown to immediately convey only a merely descriptive

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significance in the context of applicant's services. See, e.g., In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983); and In re Mark A. Gould, M.D., 173 USPQ 243, 245 (TTAB 1972).

**Decision:** The refusal under Section 2(e)(1) is affirmed.