

This Opinion is Not a
Precedent of the TTAB

Mailed: August 25, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Nicholas Piggott

—
Serial Nos. 79140372 and 79144500

—
Brian M. Davis of VLP Law Group LLP for Nicholas Piggott.

Melissa Vallillo, Trademark Examining Attorney, Law Office 105,
Susan Hayash, Managing Attorney.

—
Before Zervas, Wellington, and Heasley, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Nicholas Piggot (“Applicant”) seeks Principal Register registrations for the marks
RADIODNS HYBRID RADIO (in standard characters) and the stylized version
with a design shown below:



Serial Nos. 79140372 and 79144500

each for a long list of goods and services in International Classes 9, 16, 38 and 41.¹ Applicant disclaimed HYBRID RADIO in both applications. In final refusals to the applications, the Examining Attorneys responsible for the two applications each took the position that the term RADIO DNS is merely descriptive of Applicant's goods and services and, accordingly, the standard character mark (Application '372) was refused registration on the ground that the entire mark is merely descriptive under Section 2(e)(1) of the Trademark Act ("the Act"), 15 U.S.C. § 1052(e)(1); and the stylized with a design mark (Application '500) was refused registration in the absence of a disclaimer of the term RADIO DNS, under Section 6(a) of the Act, 15 U.S.C. §1056(a).² Applicant appealed the refusals.

In a decision that issued on July 7, 2016, the Board affirmed the refusals to register. With respect to Application '500 in particular, the Board stated that the affirmance of the disclaimer requirement would be set aside if Applicant submitted the required disclaimer within thirty days. 37 C.F.R. §2.142(g).

On August 8, 2016, Applicant submitted the required disclaimer. The disclaimer is approved and entered.

¹ Application Serial No. 79140372 (standard character mark), filed August 21, 2013 and Application Serial No. 79144500 (stylized with design mark), filed on October 17, 2013. Both applications were filed under Section 66(a) based on international registrations. The identifications of goods and services in both applications are the same for classes 16 and 38, and differ slightly for classes 9 and 41.

² The Examining Attorney handling Application '372 excluded the following goods in International Class 16 from the descriptiveness refusal: "pens; pencils; erasers; pen and pencil cases." See Office Action issued on September 2, 2015.

Serial Nos. 79140372 and 79144500

Accordingly, the Board's July 7, 2016 decision is set aside, in part,³ with respect to Application '500 and the affirmance of the disclaimer requirement; and the application is forwarded for publication of Applicant's mark for opposition with the following disclaimer:

"No claim is made to the exclusive right to use RADIO DNS apart from the mark as shown."

³ The Board's July 7, 2016 decision remains in force as to Application '372 and the affirmance of the refusal to register the standard character mark with respect to all of the goods and services in International Classes 9, 16, 38 and 41, excluding "pens; pencils; erasers; pen and pencil cases" in International Class 16.