This Opinion is Not a Precedent of the TTAB

Mailed: September 2, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Internet Promise Group LLC

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Serial No. 85690713

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Internet Promise Group LLC, *pro se*.[1]

Kimberly Frye, Trademark Examining Attorney, Law Office 113,
Odette Bonnet, Managing Attorney.

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Before Seeherman, Wellington, and Hightower,
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Internet Promise Group LLC ("Applicant") seeks registration on the Principal Register of the mark SMART DISPLAY (in standard characters) for:

> Computer software application for use in connection with mobile wireless devices equipped with display screens; the application reformats a received web page for display on the screen to make the webpage readable without use of zooming and scrolling functions to be able to view the page content on the display screen

in International Class 9.[2]

[1] All papers filed in the application and appeal were signed by Tara Chand, Applicant's president.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark is merely descriptive of its identified goods, in that it describes a feature and function of Applicant's web page display software application.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

I. Prosecution History

As originally filed by Applicant, the identification of goods in the subject application was:

> A wireless mobile device application that for received web pages displays right sized pages customized to the screen size and customer preferences and without advertising content.

On November 30, 2012, the Examining Attorney issued an Office Action refusing registration under Section 2(e)(1). The Examining Attorney also required Applicant to submit additional information about its goods and answer the following two questions:

- What is the meaning of the wording SMART DISPLAY as applied to the applicant's goods?
- Are the goods intended for use, at least in part, with smart phones?

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[2] Application Serial No. 85690713 was filed on July 30, 2012, based on Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

On May 16, 2013, Applicant amended the goods identification to that shown on the first page of this decision and responded to the Examining Attorney's request for further information as follows:

> The goods feature new technology and no competing goods are available, hence applicant provides a detailed description of goods here:
>
> When a webpage is received on a mobile wireless device with a display screen, the webpage is shrunk in size to be able to be displayed on the limited screen size and thus is unreadable. To make the webpage readable, the user has to zoom and then scroll the page to be able to view the page content on the display screen.
>
> The goods in question is a computer software application resident in the mobile wireless device that reformats a received webpage creating multiple page-parts where each page-part would fit on the display screen and provides navigation to navigate between these multiple page-parts for easy readability and quick comprehension of the webpage content without use of zooming and scrolling functions of the device.

On June 6, 2013, the refusal under Section 2(e)(1) was made final.

II. Analysis

A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the products it identifies. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Determining the descriptiveness of a mark is done in relation to an applicant's identified goods or services, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re Chamber of Commerce of the U.S.*, 102

USPQ2d at 1219 (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1831. In other words, the question is whether someone who knows what the products are will understand the mark immediately to convey information about them. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

The Examining Attorney made the following evidence of record:

- Definitions of "smart," including:
  - "Of, relating to, or being a highly automated device, especially one that imitates human intelligence: *smart missiles*.";[3] and
  - "Said of a program that does the Right Thing in a wide variety of complicated circumstances. . . ."[4]
- Definitions of "display," including:
  - As a transitive verb, "*Computer Science* To provide (information or graphics) on a screen."; and
  - As a noun, "*Computer Science* A video display."[5]
- At least seven third-party registrations for computer software with the word SMART in the mark on the Supplemental Principal or on the Principal Register with SMART disclaimed.[6]

Considering first the word SMART, the record evidence makes clear that "smart" is descriptive of a quality, characteristic, or feature of Applicant's goods, namely,

[3] November 30, 2012 Office Action at 3 (from Yahoo! Education, based on Houghton Mifflin dictionary, education.yahoo.com).

[4] June 6, 2013 Final Office Action at 40 (from Free On-Line Dictionary Of Computing, foldoc.org).

[5] November 30, 2012 Office Action at 7, 8 (from Yahoo! Education, based on Houghton Mifflin dictionary, education.yahoo.com).

[6] June 6, 2013 Final Office Action at 2-39.

that they relate to a program for use with a highly automated device, i.e., a mobile wireless device.

Turning to the word DISPLAY, it is clear from the identification of goods that the function of Applicant's computer software application is to reformat received web pages for preferred "display" "on the display screen" of the user's mobile wireless device. This is also clear from the explanation of the identification of the goods provided in the Reply Brief, which Applicant

> parsed into its seven different elements as follows: (i) Computer software application, (ii) for use in connection with mobile wireless devices, (iii) equipped with display screens, (iv) the application reformats a received web page for display on the screen, (v) to make the webpage readable, (vi) without use of zooming and scrolling functions, (vii) to be able to view the page content on the display screen.[7]

When the descriptive words SMART and DISPLAY are combined as SMART DISPLAY, the phrase as a whole presents no incongruity, as Applicant argues; rather, it directly and immediately describes the function of Applicant's "smart" computer software application, which is used to reformat web page content for display on the display screen of a mobile wireless device. Even if Applicant is the first to use the phrase SMART DISPLAY in association with an application that reformats web pages for display, the fact that an applicant is the first and only user of a descriptive designation does not justify registration if the only significance conveyed by the term is merely descriptive. *See, e.g.*, *In re BetaBatt Inc.*, 89 USPQ2d 1152, 1156 (TTAB 2008).

[7] Reply Brief at 5-6, 11 TTABVUE at 6-7.

Applicant further argues that:

> An objective person being exposed to the mark "SMART DISPLAY" alone cannot come up with any sensible identification of the goods; and vice versa, an objective person reading the identification of the goods alone cannot come up with the mark.[8]

The latter point, whether someone can come up with the mark SMART DISPLAY by reading the identification of the goods, is not a test for whether a term is merely descriptive. In fact, such a test would make no sense, because one would not assume that a descriptive term has been chosen as a trademark. As for the first part of Applicant's argument, it fails to recognize the well-established case law that "in determining whether a mark is merely descriptive, the Board must consider the mark in relation to the goods for which it is registered [or, in this case, applied-for]." *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). "The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them." *In re Tower Tech. Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002) (finding SMARTTOWER merely descriptive for highly automated commercial and industrial cooling towers and accessories).

Similarly, we are not persuaded by Applicant's arguments that its proposed mark is incongruous because "SMART is a quality of human being[s] and not that of an object or a machine and DISPLAY refers to a broad range of products that could

[8] Appeal Brief at 14, 15, 7 TTABVUE at 15, 16; Reply Brief at 7, 8, 11 TTABVUE at 8, 9.

refer to poster, placard, board, screen etc that is a display."[9] The record – including the identification and Applicant's own description of its goods – clearly establishes descriptive meanings for both terms in the computing field. That the term "display" may have other meanings in different contexts is not controlling. *In re Carlson*, 91 USPQ2d 1198, 1200 (TTAB 2009); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). *See also, e.g.*, *In re Finisar Corp.*, 78 USPQ2d 1618 (TTAB 2006) (finding SMARTSFP merely descriptive for optical transceivers), *aff'd per curiam*, 223 Fed. App. 984 (Fed. Cir. 2007); *In re Cryomedical Scis. Inc.*, 32 USPQ2d 1377 (TTAB 1994) (finding SMARTPROBE merely descriptive for cryosurgical probes having electronic or microprocessor components).

We find that Applicant's mark SMART DISPLAY immediately and directly informs purchasers of the function of its goods, and therefore that the mark is merely descriptive under Section 2(e)(1).

Decision: The refusal to register Applicant's mark SMART DISPLAY is affirmed.

[9] Appeal Brief at 16, 7 TTABVUE at 17; Reply Brief at 9, 11 TTABVUE at 10.