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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85760873
Applicant	Internet Promise Group LLC
Applied for Mark	SMART BROWSER
Correspondence Address	TARA CHAND INTERNET PROMISE GROUP LLC 2390 CRENSHAW BLVD , STE 239 TORRANCE, CA 90501-3300 UNITED STATES chand@InternetPromise.com
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Filer's Name	Tara Chand
Filer's e-mail	chand@InternetPromise.com
Signature	/Tara Chand/
Date	06/10/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: INTERNET PROMISE GROUP®, LLC
Applicant

Mark: SMART BROWSER
Application Ser. No.: 85/760,873
Filed: 10/23/2012

REPLY BRIEF

Honorable Commissioner of Trademarks
P O Box 1451
Alexandria, VA 22313-1451

Examiner Attorney having filed Examiner Appeal Brief, Applicant files the attached Reply Brief. The Reply Brief is timely filed within 20 days of the Examiner Brief dated 05/23/2014 that is on or before 06/13/2014.

Respectfully submitted,

Date: June 10, 2014

By: /Tara Chand/
Tara Chand, President
Internet Promise Group LLC
2390 Crenshaw Blvd. Ste 239
Torrance, CA 90501-3300
310 787 1400
chand@InternetPromise.com

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REPLY BRIEF

INTRODUCTION

The Arguments advanced by the Examining Attorney in the Examiner Attorney Appeal Brief are responded to as follows:

The mark is SMART BROWSER and the identification of the goods/services is:

Computer software application for use in computing and communication devices that reformats a received web page content into the device to remove and/or reposition advertising content and reformats the webpage content for viewing on limited size screens.

The examiner has argued that this mark is “Merely Descriptive” under Section 2(e) (1) as the Examiner states in the Final Rejection as well in the Examiner Appeal Brief.

Applicant Arguments in the Reply Brief:

Examiner has raised the following issues:

ISSUES ON APPEAL

Whether the asserted mark SMART BROWSER defined as “a web browser that assists a user in obtaining the desired website content,” primarily merely describes features and functions as well as the use and purpose of the Applicant’s software for use in reformatting a received web page’s content for viewing on limited size screen, within the meaning of Section 2(e)(i) of the Trademark Act.

This issue had been addressed in the Applicant’s Appeal Brief. However, given the contents of the Examiner Appeal Brief, Applicant provides the following additional arguments and remarks.

Examiner misunderstands and misconstrues the identification of the goods in the following respects:

The identification of the Applicant's goods is directed to human-factors aspect of use of handheld devices such as smart phones and are not a "browser" as that word is used in the industry as had been claimed by the Examiner in the different definitions of browser, browsing and smart browsing provide in the Examiner's Appeal Brief.

Applicant here first provides brief historical information that would help the Appeal Judges understand the Applicant's identification of the goods.

There has been since the advent of smart phones around year 2007, a new type of device with the ability to access web and for searching and retrieving web content. Before the advent of the smart phones, laptop and PC used a computer application called browser. The same browser application that was designed for large screens as in laptop and PCs was ported over to the smart phone type devices.

This had created a unique human-factors problem for the users as the web content that was designed for larger screens and when it displayed on smaller size

screen of the device shrunk in size format, the web content was not readable and required the user to zoom and scroll the content.

The second issue was that the full size web page content had displayed advertising content and images as part of the web page, either on the top, left, bottom and/or right margins of the webpage as well as some times positioned in the middle of the webpage itself obstructing the content.

Such intrusive advertising content though palatable to a user was disliked. When the same advertising content in the same format was displayed in a webpage displayed on a small size screen that made the entire content less readable as well as irritated the user of the smart phone type devices.

Industry addressed only the first of these two issues as the industry created reformatted web pages for small screen sizes in the web server itself and sent those reformatted web pages to the smart phone device if it knew in advance that the receiving device was a smart phone type device with limited screen size. However such a solution to this human factors problem was not workable in all situations and further the web server did not have knowledge of the actual device and its size limitations.

Therefore Applicant created a new proprietary patent pending solution where the web page was resized in the device itself and not in the web server and second still further this proprietary solution removed or repositioned the advertising content to make the received webpage more human-factors readable.

The goods of the applicant are directed to this solution of the problem and are computer software application that is directed to a human-factors aspect of technology to assist a user of a smart phone or a mobile device in viewing the web page content.

Therefore, Applicant's goods have nothing to do with a browser or a browser application based on using an HTML language for the browser for searching the web and displaying web page content.

The proprietary technology of the goods is directed to make it easier for a user to view and comprehend web page content and is not a browser feature and can neither be considered browsing in any sense of that word browsing.

In Examiner's Appeal Brief, Examiner has cited five different definitions as follows:

Definition No 1: SMART

Definition No 2: BROWSER

Definition No 3: SMART BROWSER

Definition No 4: SMART BROWSING

Definition No 5: SMART BROWSING

These definitions address the function of browsing or searching the web and not the identification of the applicant's goods, which have nothing to do with the function of browsing.

Applicant's good are used in a smart phone, after the browser has completed its function of searching/requesting a web page and having received the web page into the device. Thus Applicant's goods are not related to Browsing or Smart Browsing as identified in these definitions.

Therefore, with due respect, in her merely descriptive rejections, Examining Attorney has misunderstood and mischaracterized the applicant's identification of the goods and this misunderstanding and mischaracterization of the goods has been

the basis and used by the Examiner when searching for and or citing prior similar uses of the mark and/or prior meanings of the mark and to support Examiner arguments for “merely descriptive”.

To further provide an understanding of the identification of the goods, for the benefit of the Appeal Judges, the identification of the goods is parsed into its five different elements as follows:

(i) Computer software application for use in (ii) computing and communication devices (iii) that reformats a received web page content into the device (iv) to remove and/or reposition advertising content and (v) reformats the webpage content for viewing on limited size screens.

These five features of the identification of the goods as delineated above have been misunderstood by the Examining Attorney to argue “merely descriptive” in her refusals and appeal brief and to confuse them somehow to the mark itself or how others in the industry have used similar marks.

These features of the identification of the goods of the applicant’s mark, as described above are unique and proprietary and are not commercially available.

Therefore, the applicant's identification of the goods is unlike other commercially available goods being used by others in the industry and therefore the identification is not merely descriptive of commercially available goods referred to as with words that may include SMART and BROWSER.

Therefore Applicant respectfully submits that based on the foregoing analysis, the mark is not "merely descriptive" as the mark does not satisfy the legal standard of "merely descriptive".

From the Applicant's Appeal Brief:

ARGUMENTS:

Applicant submits that the mark SMART BROWSER based on the identification of the good/services fits in the continuum in "suggestive" identification and not "merely descriptive".

Based on a fair and equitable reading of the TMEP Section 1209 and it many cites, the mark is not "merely descriptive" because:

An objective person being exposed to the mark "SMART BROWSER" alone cannot come up with any sensible identification of the goods, as the goods have nothing to do with a browser or a browse function as used in the Internet

industry for web searches; and vice versa, an objective person reading the identification of the goods alone cannot come up with the mark. Thus the mark cannot be “merely descriptive” and

the mark is suggestive because: suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services. *See In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985); the mark SMART BROWSER requires imagination, thought or perception to reach a conclusion as to the nature of the goods or services.

With this mark an objective person requires imagination, thought or perception as to the nature of the goods, which are a specific kind of computer application for a specific application, which is not a “browser” that is used for web searches and is identified as: *Computer software application for use in computing and communication devices that reformats a received web page content into the device to remove and/or reposition advertising content and reformats the webpage content for viewing on limited size screens.*

Examiner cites two different definitions as follows:

Definition No 1: SMART BROWSER – A Web browser that implements smart browsing features. See smart browsing

Definition No. 2: SMART BROWSING – features in a Web Browser that assist the user in obtaining website or content. Basic features include automatic entering of the http:// prefix or .com suffix as well as using previous lookups to complete the URL after the first several characters have been typed in. Other features include analyzing what is typed in and determining whether the browser should go to a site with that name or to search site to search for content.

With due respect, this definition of smart browser and smart browsing as cited by the Examiner and reproduced above has no relationship to the description of the goods. The description of the goods is reproduced here below:

Computer software application for use in computing and communication devices that reformats a received web page content into the device to remove and/or reposition advertising content and reformats the webpage content for viewing on limited size screens.

The definitions as has been cited by the examiner have everything to do with computer applications generally caller Internet Browser, as these definitions are directed to the act of browsing or searching, whereas in contrast, the description of goods has nothing to do with either searching or browsing the Internet or Web but to reformat and present data on a received web page on a limited size screens of

devices that includes remove or reposition the advertising content on the webpage.

The mark therefore is suggestive and not merely descriptive.

Further, based on a fair and equitable reading of the TMEP Section 1209 and it many cites therein, the mark is not “merely descriptive” because:

An objective person being exposed to the mark “SMART BROWSER” alone cannot come up with any sensible identification of the goods, as the goods have nothing to do with a browser or a browse function as used in the Internet industry for web searches; and vice versa, an objective person reading the identification of the goods alone cannot come up with the mark. Thus the mark cannot be “merely descriptive” and

the mark is incongruent because: the Board has described incongruity in a mark as “one of the accepted guideposts in the evolved set of legal principals for discriminating the suggestive from the descriptive mark.”

And has noted that the concept mere descriptiveness “should not penalize coinage of hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and “mental pause”.

The mark “SMART BROWSER” are word combinations whose import cannot be grasped without some measure of imagination and mental pause. Each of the words in the mark SMART and “BROWSE” and its noun version BROWSER individually are common English language words and thus an incongruent combination of them cannot be merely descriptive.

The combination of the words is incongruent because SMART is a quality of human being and not that of an object or a machine and BROWSER in the mark does not refer to any aspect of the identified goods, as in the identification of goods, the goods refers to something entirely different than a browse function or a search function or as a browser used in the Internet industry; and thus a combination of these words SMART and BROWSER is incongruent.

Applicant respectfully submits that the mark is not merely descriptive but suggestive for the following reasons. First, the words SMART and BROWSER are incongruous terms as these two terms are not commonly used in combination. Second the mark does not convey an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant’s goods and/or services.

Based on the applicable law and regulations above, Applicant argues the applicant's mark for the identified good/services is suggestive and the mark is also incongruent and thus also suggestive.

The identification of goods defines the goods in question as: *computer software application for use in computing and communication devices that reformats a received web page content into the device to remove and/or reposition advertising content and reformats the webpage content for viewing on limited size screens.*

Therefore, with due respect, with this identification of the goods, the mark cannot be construed as “merely descriptive as the mark does not convey an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services and therefore is not merely descriptive.

Therefore Applicant respectfully submits that based on the foregoing analysis, the mark is not “merely descriptive” as the mark does not satisfy the legal standard of “merely descriptive”.

Signed/Date: 06/10/2014

//Tara Chand//

President

Internet Promise Group® LLC

2390 Crenshaw Blvd. Ste 239,

Torrance, CA 90501-3300,

310 787 1400