

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: August 28, 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. 85760873  
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Internet Promise Group LLC, *pro se*.<sup>1</sup>

Ronald E. Aikens, Trademark Examining Attorney, Law Office 112,  
Angela Wilson, 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 BROWSER (in standard characters) for:

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, in International Class 9.<sup>2</sup>

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<sup>1</sup> All papers filed in the application and appeal were signed by Tara Chand, Applicant’s president.

<sup>2</sup> Application Serial No. 85760873 was filed on October 23, 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.

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 the purpose and function of Applicant's web page reformatting 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 browser application for wireless mobile devices reformats received web page content to remove or reposition unnecessary advertising content and formats the webpage into display content customized to the limited screen size and customer preferences.

On December 7, 2012, the Examining Attorney issued an Office Action refusing registration under Section 2(e)(1) and requiring Applicant to clarify the identification of goods. On May 31, 2013, Applicant responded by amending the goods identification as follows:

Computer software, namely, a browser application for use on wireless mobile devices; computer software, namely, for use in reformatting received web page content to remove or reposition unnecessary advertising content, for use in custom user formatting of a webpage displays for viewing limited screen sizes.

After the refusal under Section 2(e)(1) was made final, in its Request for Reconsideration, Applicant amended the identification a second and final time to that shown in the first paragraph of this decision, which (unlike the previous two versions) does not include the word “browser.”

## 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).

Evidence made of record by the Examining Attorney includes the following:

- Definitions of “smart,” including: “The terms ‘smart’ or ‘intelligent’ may be used to refer to any computer-controlled device.”<sup>3</sup>
- Definitions of “browser,” including: “A program that accesses and displays files and other data available on the Internet and other networks”<sup>4</sup> and “An application used to view information from the Internet. . . .”<sup>5</sup>
- At least ten third-party registrations for computer software in which the word “SMART” was disclaimed.<sup>6</sup>

Considering first the word SMART, the record evidence makes clear that “smart” describes the nature of Applicant’s goods, namely, that they are a computer software application. Turning to the word BROWSER, and accepting that Applicant’s computer software application is “unique and proprietary”<sup>7</sup> and not itself a browser, the application nonetheless is used to reformat web page content that has been received from an Internet browser. Applicant explains that its goods “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.”<sup>8</sup> Therefore, the term “browser” describes a purpose or function of Applicant’s goods: to reformat web page content that has been accessed by a browser and received into a device.

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<sup>3</sup> December 7, 2012 Office Action at 2 (from The Free Dictionary by Farlex, encyclopedia2.thefreedictionary.com), 5 (from TechEncyclopedia, ubm.computerlanguage.com).

<sup>4</sup> *Id.* at 9-10 (from Yahoo! Education, based on Houghton Mifflin dictionary, education.yahoo.com).

<sup>5</sup> *Id.* at 11 (from csgnetwork.com/glossaryb).

<sup>6</sup> *Id.* at 23-78.

<sup>7</sup> Reply Brief at 8, 11 TTABVUE at 9.

<sup>8</sup> *Id.* at 7, 11 TTABVUE at 8.

When these two descriptive words are combined as SMART BROWSER, 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 received from a "browser." Even if Applicant is the first to use the phrase SMART BROWSER in association with a web content reformatting application, 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).

Applicant argues that:

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.<sup>9</sup>

The latter point, whether someone can come up with the mark SMART BROWSER 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]."

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<sup>9</sup> Appeal Brief at 14, 17, 8 TTABVUE at 15, 18; Reply Brief at 9-10, 12, 11 TTABVUE at 10-11, 13.

*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 argument that “SMART is a quality of human being[s] and not that of an object or a machine”<sup>10</sup> because the record clearly establishes a descriptive meaning for the term SMART in the computing field. *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 BROWSER immediately and directly informs purchasers of a quality, feature, function, and characteristic 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 BROWSER is affirmed.

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<sup>10</sup> Appeal Brief at 18, 8 TTABVUE at 19; Reply Brief at 13, 11 TTABVUE at 14.