

This Opinion Is Not A  
Precedent Of The TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Clearsounds Communications*

Serial No. 85798182

Jennifer Fraser of Novak Druce Connolly Bove + Quigg LLP,  
for Clearsounds Communications.

Charles L. Jenkins Jr., Trademark Examining Attorney, Law Office 118,  
Thomas G. Howell, Managing Attorney.

Before Bucher, Cataldo, and Ritchie,  
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Clearsounds Communications (“Applicant”) filed an application to register on the Principal Register the mark HEARING NEWS NETWORK<sup>1</sup> in standard character format for “development, operation and administration of digital signage systems and digital advertising systems for others, namely, providing advertising space by electronic means and global computer information networks,” in International Class 35. The Examining Attorney

<sup>1</sup> Application Serial No. 85798182, filed December 8, 2012, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging dates of first use and first use in commerce in December 2011.

has refused registration of the application under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of the identified services. When the refusal was made final, Applicant filed an appeal. Both Applicant and the Examining Attorney filed briefs, and Applicant filed a reply brief. Upon careful consideration of the relevant arguments and evidence, we affirm the refusal to register.

### **Section 2(e)(1)**

A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *See In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012), *citing In re Gyulay*, 820 F.2d 1216, 1217, 3 USPQ2d 1009 (Fed. Cir. 1987). 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 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 its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that “[t]he 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 or services are will understand the mark to convey information about them.” *In*

*re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). *See also In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

The Examining Attorney argues that the applied-for mark HEARING NEWS NETWORK describes a feature or function of Applicant's services, namely that "[t]he applicant provides a digital venue that allows hearing health care professionals to advertise, educate and market their products by providing the latest in hearing news over an electronic network." (EA's statement at unnumbered 9 of 12). A composite of descriptive terms is registrable only if it has a separate, non-descriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (holding SUGAR & SPICE not merely descriptive of bakery products). Accordingly, we look to the plain meaning of the words. The Examining Attorney submitted definitions, of which we note the following relevant portions:

"Hearing": 1. The sense by which sound is perceived; the capacity to hear; 2. Range of audibility; earshot; 3. An opportunity to be heard; 4. *Law* a. A preliminary examination of an accused person.  
*http: education.yahoo.com* (2013).

"News": 1.a. information about recent events or happenings, especially as reported by newspapers, periodicals, radio or television; b. a presentation of such information, as in a newspaper or on a newscast; 2. New information of any kind. 3. Newsworthy material.  
*http: education.yahoo.com* (2014).

"Network": 2. Something resembling an openwork fabric or structure in form or concept. c. an extended group of people with similar interests

or concerns who interact and remain in informal contact for mutual assistance or support.

*http: education.yahoo.com (2014).*

Both Applicant and the Examining Attorney submitted pages from Applicant's website, showing usage of Applicant's applied-for mark in relation to the identified services, wherein Applicant notes that its services are geared to the "hearing health care professional" and the "hearing health care audience." Applicant's webpages further state that it provides a "platform for education and awareness" in order to "[i]ncrease the quality of dialogue between patient and hearing health care professional thereby initiating recommendation opportunities." Excerpts include the following:

The screenshot displays the HEARING NEWS NETWORK website. The header features the site name and a navigation menu with links: Home, About Us, Our Process, Demo, Pricing, Faq, Blog, and Contact. Below the header is a row of buttons: Professionals, Advertisers, Our Process, Partners, and a highlighted Specials button. The main content area is titled "Advertisers." and includes the HNN logo. The text states: "HNN provides a platform for locally based and national focused advertising that is complimentary to the goals of the hearing health care professional." Below this, a paragraph encourages subscribers to promote local advertising content. A "Local:" section provides instructions for service providers to contact local staff for advertising. On the right, a sidebar titled "You're watching HNN" shows a video player for "The Hearing News Network Live!" and a section titled "For Professionals By Professionals" which mentions that hearing health care professionals recognize the benefits of the HNN as a valuable silent partner.

**HEARING NEWS NETWORK** Home About Us Our Process Demo Pricing Faq Blog Contact

Professionals Advertisers Our Process Partners Specials

**Advertisers.** HNN

HNN provides a platform for locally based and national focused advertising that is complimentary to the goals of the hearing health care professional.

Our subscribers are encouraged to promote local advertising content to support existing referral sources and promote local businesses and services that are interested in reaching the hearing care audience.

**Local:** If you are a local or regionally based service provider or distributor or related products that would like to get your message out to the audience within a hearing care centre, contact local staff to enquire about advertising on HNN. Your local hearing health care professional co-manages locally based advertising with HNN personnel.

**You're watching HNN**

The Hearing News Network Live!

**For Professionals By Professionals**

Hearing Health Care Professionals recognize the benefits of the Hearing News Network. News Network as a valuable Silent Partner



Finally, the Examining Attorney submitted evidence of third-party use of the term “hearing news” or “hearing network” used in a descriptive manner (emphasis supplied):

MNT: Medical News Today: ***Hearing News*** /Deafness News: The latest Hearing & Deafness News articles published daily. Includes news on hearing loss/decline, auditory rehabilitation, lip reading and much more. Attached to April 2, 2013 Office Action, p. 2.  
*Medicalnewstoday.com*

David Kirkwood, Editor, ***Hearing News*** Watch Jacob’s ride to raise awareness of hearing loss and \$1 million to help those who have it. Attached to April 2, 2013 Office Action, p. 18  
*http://hearinghealthmatters.org.*

Advanced Hearing Technologies Inc.: ***Hearing News*** and Articles:  
Research Debunks Treatments for Sudden Hearing Loss; Gene Responsible for Common Hearing Loss Identified for First Time; Serious Hearing Loss Among Sacrifices Soldiers Make for Our Nation. Attached to September 22, 2013 Final Office Action, p. 23.  
*Advancedhearingtechnologies.com.*

The State Press: ASU student starts Deaf and **Hearing Network**, set to broadcast in January: November 25, 2013: When Petron Gallovich was a freshman at ASU, she had a dream one night that she bought out the Oprah Winfrey Network and started her own television network. Her network, however featured news, sitcoms and children's shows that were done entirely in sign language. Now, as a journalism sophomore, she is seeing her dream come to life with the creation of Deaf and **Hearing Network**, a news outlet accessible for the deaf, hard of hearing and hearing alike. DHN is set to make its first broadcast available in January. . . . "We already have offers to be on TV and to be in newspapers," she said. "We have offers to have advertisements on the radio and online." Attached to April 21, 2014 Denial of Request for Reconsideration, p. 10.  
*Statepress.com.*

**Hearing News:** Doing the Job Right-the Au.D. Way  
The following View Point article, which appeared in *The Hearing Journal*, is adapted from a letter Dr. Remensnyder sent to Ron Burley, a columnist for AARP magazine. Mr. Burley wrote a column about an 88 year old female who was fitted with hearing aids that she couldn't insert and couldn't manage. Attached to April 21, 2014 Denial of Request for Reconsideration, p. 27.  
*Http://hearingdoc.com.*

Applicant argues that its applied-for mark HEARING NEWS NETWORK is not merely descriptive, and is, in fact, a double entendre, since the goal is "for consumers to 'hear' the message." (Appl's brief at 3). Applicant's applied-for mark, however, does not include the term "HEAR," but rather the word "HEARING," which has a different connotation, particularly when used with the follow-on terms "NEWS NETWORK." Applicant also cites its advertising, which Applicant points to as a clever reference to itself as a "Silent Partner" in contrast to the term "HEARING."



Our case law dictates that a double entendre must be recognizable from the mark itself, in relation to the goods or services in the identification. *See In re The Place, Inc.*, 76 USPQ2d 1467, 1470 (TTAB 2005) (finding THE GREATEST BAR for “restaurant and bar services” is not a double entendre; “A mark is thus deemed to be a double entendre only if both meanings are readily apparent *from the mark itself*.” [emphasis in original]); *In re Ethnic Home Lifestyles Corp.*, 70 USPQ2d 1156, 1158-59 (TTAB 2003) (finding ETHNIC ACCENTS for TV programs in the field of home décor merely descriptive and noting, “To have a double entendre, both meanings must be

readily apparent, but the meaning suggested by applicant is not apparent upon seeing the mark in connection with the services.”); *In re Polo Int’l Inc.*, 51 USPQ2d 1061, 1063 (TTAB 1999) (finding in context DOC in DOC-CONTROL would be understood to refer to the “documents” managed by applicant’s software, not “doctor” as shown by dictionary definition); cf. *In re Grand Metropolitan Foodservice Inc.*, 30 USPQ2d 1974, 1976 (TTAB 1994) (finding *Muffins* to be a double entendre and not merely descriptive of baked mini muffins), citing *In re Colonial Stores, Inc.*, 157 USPQ at 385 (finding SUGAR & SPICE not merely descriptive for various bakery products).

We find no double entendre in the applied-for mark “HEARING NEWS NETWORK” for “development, operation and administration of digital signage systems and digital advertising systems for others, namely, providing advertising space by electronic means and global computer information networks.” The evidence shows that the featured content of Applicant’s “network” or “advertising platform” can accurately be summarized as “hearing news.” This will be the overwhelming perception of the relevant audience. While we understand Applicant’s position that this term could also be parsed to mean a “news network” that provides Applicant’s advertising customers with “*an opportunity to be heard*” (Appl’s brief at 3, emphasis in original), this convoluted meaning is not “readily apparent.” See *In re The Place, Inc.*, 76 USPQ2d at 1470. As to the use of the tagline “Your Silent Partner,” we cannot find a double entendre where the asserted second

meaning is not obvious from the language of the mark itself. *Id.* Regardless of the connotation of “Your Silent Partner” as used in advertisements by Applicant, because such wording is not part of the applied-for mark “HEARING NEWS NETWORK,” it does not provide support for Applicant’s contention that its mark is a double entendre.

We look then to how consumers would view the applied-for mark in relation to the identification of services. *In re Tower Tech Inc.*, 64 USPQ2d at 1316-17. Based on the dictionary definitions, the third-party uses, and Applicant’s own website, we have no doubt that a consumer would understand “HEARING NEWS NETWORK,” used in connection with Applicant’s services, as directly conveying information about them, namely, that it provides a network for hearing professionals, service providers and product distributors to disseminate information about products, services and hearing news to hearing patients. Thus, the applied-for mark immediately describes a key function, characteristic or aspect of the recited services that provides, *inter alia*, a network for news in the field of hearing. Therefore, we find that the mark is merely descriptive of the identified services, and we affirm the refusal to register.

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