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

Proceeding	86112839
Applicant	Jingit Holdings, LLC
Applied for Mark	COMMERCE GRAPH
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of the following U.S. Trademark Application of Jingit Holdings, LLC

Mark: COMMERCE GRAPH
Serial No.: 86/112,839
Filed: November 7, 2013
Int'l Class: 035

APPEAL BRIEF OF APPLICANT

Introduction

Applicant, Jingit Holdings, LLC, submits the following Appeal Brief regarding the final refusal to register the above-identified mark. In view of the remarks factors discussed below, it is respectfully requested that the rejection be reversed.

Background

On November 7, 2013, Applicant filed U.S. Trademark Application No. 86/112,839 for the mark COMMERCE GRAPH in standard characters for:

COMPUTER SOFTWARE FOR USE IN DATA ANALYSIS; CONSULTING SERVICES IN THE FIELD OF DATA ANALYSIS; ADVERTISING SERVICES; MARKETING SERVICES; PURCHASING SERVICES; PAYMENT SERVICES in International Class 009

In an Office Action dated March 5, 2014, the Examining Attorney refused registration under Section 2(e)(1) contending that the mark was merely descriptive of Applicant's goods and/or services.

On September 5, 2014, a Response was filed providing arguments supporting why consumers would not perceive the mark as being merely descriptive of Applicant's services.

Thereafter, in a Final Office Action dated October 6, 2014, the Section 2(e)(1) rejection was maintained. The Final Office Action also objected to a portion of the Identification of Services.

Applicable Law

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used or intended to be used. In re Gyulay, 820 F.2d 1216, 3 U.S.P.Q.2d 1009 (Fed. Cir. 1987).

The question of whether a particular term is merely descriptive must be determined not in a vacuum or on the basis of speculation, but in relation to the goods [services] for which registration is sought. See In re Engineering Systems Corp., 2 U.S.P.Q.2d 1075 (T.T.A.B. 1986).

On the other hand, a term is suggestive if, in the context of the goods [services], a purchaser must use imagination, thought, or some type of multi-stage reasoning to understand the term's significance. See Plyboo America Inc. v. Smith & Fong Co., 51 U.S.P.Q.2d 1633 (T.T.A.B. 1999).

As is often stated there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment and with any doubt on the matter being resolved in applicant's favor. Id. Moreover, the determination is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. Id.

Section 1209.03(d) of the TMEP indicates that “a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods.”

For example, the TTAB has held that the mark SNO-RAKE is not merely descriptive of a snow removal hand tool. In re Shutts, 217 USPQ 363 (TTAB 1983). Similarly, it has been held that the mark SUGAR & SPICE was not merely descriptive of bakery products. In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968).

Argument

Applicant has not yet begun publicly using the mark in conjunction with the services identified in this application. As such, Applicant is unable to provide materials to substantiate that the manner of Applicant’s use of the mark would not be perceived by consumers as being merely descriptive.

Since this evidence is not available, Applicant has amended the Identification of Services, in the Request for Remand submitted herewith, to provide additional details on the manner in which Applicant intends to use the mark COMMERCE GRAPH to support the contention that consumers would not perceive this mark as being merely descriptive of the identified services.

The non-downloadable computer software and the consulting services have both been amended to provide additional details on the nature of Applicant’s services as is set forth below:

NON-DOWNLOADABLE COMPUTER SOFTWARE FOR USE IN DATA
ANALYSIS OF INVOLVEMENT AMONG PARTICIPANTS IN PURCHASE
TRANSACTIONS FROM THE DISPLAY OF ADVERTISING AND/OR

INCENTIVES THROUGH A MEDIA CHANNEL TO THE CONSUMER
PURCHASING THE PRODUCT AT A MERCHANT LOCATION;
CONSULTING SERVICES IN THE FIELD OF BUSINESS DATA ANALYSIS
OF INVOLVEMENT AMONG PARTICIPANTS IN PURCHASE
TRANSACTIONS FROM THE DISPLAY OF ADVERTISING AND/OR
INCENTIVES THROUGH A MEDIA CHANNEL TO THE CONSUMER
PURCHASING THE PRODUCT AT A MERCHANT LOCATION

As such, Applicant's computer software and consulting services encompass a variety of aspects that extend from promotional materials to the point of purchase. Applicant's services are utilized such as by brand owners to enhance the effectiveness of promotional activities. Applicant has come to appreciate that far too often brand owners put significant money into advertising and/or incentives without an understanding of how such advertising and/or incentives cause a consumer to select a particular product when shopping at a merchant's location.

In view of the preceding more fully defined computer software and consulting services, brand owners, merchants and buyers who are using Applicant's services would not view the mark COMMERCE GRAPH as immediately conveying the nature of such services.

Rather, the consumers would have to use imagination or reasoning to associate the mark with the identified services as this term was created by Applicant to identify their data analysis computer software and data analysis consulting services.

Consumers would thereby perceive the mark COMMERCE GRAPH as being a source identifier for Applicant's services as opposed to being a request for a particular service.

It is well settled that where there is any doubt as to the character of a mark, such doubt shall be resolved in favor of the Applicant. Based upon the preceding comments, it is submitted that consumers would not view the mark COMMERCE GRAPH as being merely descriptive

when used in conjunction with the services in International Class 35. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

In view of the factors discussed above, Applicant respectfully requests that the Board reverse the final refusal under Section 2(e)(1) and allow this application to pass to publication.

Dated: 06/05/2015

JINGIT HOLDINGS, LLC

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