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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Panasonic Avionics Corp.

Serial No. 86499954

Brian Furrer, Panasonic Avionics Corp. Legal Dep't.,
for Panasonic Avionics Corp.

David Yontef, Trademark Examining Attorney, Law Office 118,
Thomas G. Howell, Managing Attorney.

Before Cataldo, Shaw, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Panasonic Avionics Corp. ("Applicant") seeks registration on the Principal Register of FLIGHTLINK in standard characters as a mark for services identified as "Meteorological forecasting; providing meteorological information; providing weather information; weather forecasting; weather information services; weather reporting," in International Class 42.[1]

[1] Application Serial No. 86499954 was filed on January 9, 2015 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), on the basis of Applicant's claimed use of the mark. Applicant subsequently amended its filing basis to seek registration under Section 1(b) of the

The Trademark Examining Attorney has refused registration under Section 2(e)(1) the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark is merely descriptive of the services identified in the application. When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which was denied. The case is fully briefed. We reverse the refusal to register.

I. Record on Appeal

The record consists of the following:

- Applicant's specimen of use;[2]
- Dictionary definitions of the word "flight" as "a trip made by or in an airplane or spacecraft" and/or "a group of similar beings or objects flying through the air together" (April 23, 2015); [3]

Trademark Act, 15 U.S.C. § 1051(b), on the basis of Applicant's allegation of a *bona fide* intention to use the mark in commerce.

[2] The Examining Attorney rejected the specimen because it did "not show the applied-for mark in use in commerce in connection with any of the services specified in International Class 42 in the application." He found that it "merely show[ed] the applied-for mark used to identify a technological weather system comprised of, among other things, a 'patented device [that] collects and transmits weather data' rather than showing the mark used in the sale or advertising of the identified services of 'meteorological forecasting', 'providing meteorological information', 'providing weather information', 'weather forecasting', 'weather information services' and 'weather reporting.'" April 23, 2015 Office Action.

[3] *Merriam-Webster Dictionary* (merriam-webster.com). April 23, 2015 Office Action. We grant the Examining Attorney's request, 10 TTABVUE 7, that we judicially notice additional definitions of "flight" from *The American Heritage Dictionary of the English Language* (4th ed. 2006). 10 TTABVUE 14-16. We may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed form or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

- Dictionary definitions of the word "link" in its noun form as "a connecting element or factor," "a unit in a communication system," and "an identifier attached to an element (as an index term) in a system in order to indicate or permit connection with other similarly identified elements,"[4] as "something that enables communication between people,"[5] and as "anything serving to connect one part or thing with another;"[6] and in its verb form as "to connect computers so that information can be sent between them" (April 23, 2015 and November 30, 2015 Office Actions);[7]

- A page from a search of the *Merriam-Webster Dictionary* (merriam-webster.com) showing no entry for the word "flightlink" (May 23, 2016 Request for Reconsideration);

- Third-party registrations of the marks AIRFLITE and design, WSI INFLIGHT ("INFLIGHT" disclaimed), FLIGHT SENTINEL ("FLIGHT" disclaimed), FLIGHT FOCUS and design ("FLIGHT" disclaimed), and SPIRE FLIGHT SOLUTIONS ("FLIGHT SOLUTIONS" disclaimed) for various services, and an application to register TIMEX DATA LINK ("DATA LINK" disclaimed) for a variety of goods and services, made of record by the Examining Attorney to show the Patent and

[4] *Merriam-Webster Dictionary* (merriam-webster.com). April 23, 2015 Office Action.

[5] *Oxford Dictionaries* (oxforddictionaries.com). November 30, 2015 Office Action.

[6] *Dictionary.com* (dictionary.com). November 30, 2015 Office Action.

[7] *Macmillan Dictionary* (macmillandictionary.com). November 30, 2015 Office Action. We grant the Examining Attorney's request, 10 TTABVUE 7, that we judicially notice additional definitions of "link" in its noun and verb forms from *The American Heritage Dictionary of the English Language* (4th ed. 2010), the *Dictionary of Aeronautical English* (1999), and the *Dictionary of Computing* (6th ed. 2010). 10 TTABVUE 18-25.

Trademark Office's past treatment of the words "FLIGHT" and "LINK" in applications for registration (April 23, 2015);[8]

- Pages from Applicant's website at airdate.com (November 30, 2015 Office Action and June 13, 2016 Denial of Request for Reconsideration); and

- Third-party registrations of the marks DRIVERLINK, QUIKLINK, ACULINK, nůLink, FLIGHT BRIEF, FLIGHTGUARDIAN, FLIGHTCAM, FLIGHTMAX, FLIGHT SENTINEL ("FLIGHT" disclaimed), and SPIRE FLIGHT SOLUTIONS ("FLIGHT SOLUTIONS" disclaimed), for various goods and services, and the application to register TIMEX DATA LINK, made of record by Applicant to show the Patent and Trademark Office's past treatment of the words "FLIGHT" and "LINK" in applications for registration (May 23, 2016 Request for Reconsideration).[9]

II. Analysis

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them." 15 U.S.C. § 1052(e)(1). "A mark that is 'suggestive' may be registered, but a mark that is 'merely descriptive' may not be

[8] The application has become abandoned and we have given it no consideration. *Interpayment Services Ltd. v. Docters & Thiede*, 66 USPQ2d 1463 (TTAB 2003) (applications show only that they have been filed).

[9] Applicant noted in its Request for Reconsideration that three of the registrations have been cancelled. We have given them no consideration. *See Action Temporary Services Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002). Any benefits conferred by the registrations, including the evidentiary presumptions afforded by Section 7(b) of the Trademark Act were lost when the registrations were cancelled. *See, e.g., Anderson, Clayton & Co. v. Krier*, 478 F.2d 1246, 178 USPQ 46 (CCPA 1973).

registered without showing that it has acquired secondary meaning." *StonCor Group, Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014).

"The line between a mark that is merely descriptive and may not be registered absent secondary meaning, and one that is suggestive and may be registered, is that a suggestive mark 'requires imagination, thought and perception to reach a conclusion as to the nature of the goods,' while a merely descriptive mark 'forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods.'" *Duo ProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)); *see also In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). The "immediate idea" of a quality, feature, function, or characteristic of the goods or services conveyed by a descriptive term "must be conveyed forthwith with a 'degree of particularity.'" *Goodyear Tire & Rubber Co. v. Continental General Tire Inc.*, 70 USPQ2d 1067, 1069 (TTAB 2003) (citing *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978) and *In re Entenmann's Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990)).

Whether a mark is merely descriptive is determined in relation to the goods or services for which registration is sought, not in the abstract or on the basis of guesswork. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016). "In other words, we evaluate whether someone who knows what the [services] are will understand the mark to convey information about them." *Id.* (citing *Duo ProSS*,

103 USPQ2d at 1757). "The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant." *Id*. (citing *In re Stroh Brewery*, 34 USPQ2d 1796, 1797 (TTAB 1994)).

Applicant's position is that the Examining Attorney "has relied on various materials obtained from the internet, including Applicant's own website, in order to re-define Applicant's relevant services based on Applicant's actual use of the 'FLIGHTLINK' mark" from the actual identification of services in the application to "meteorological and weather services provided to various airplanes and airline fleets connected to a shared voice and data communications system for safe travel, airspace management and accurate real-time aviation monitoring, analysis and reporting." 8 TTABVUE 3. Applicant argues that FLIGHTLINK "is suggestive of the stated services because it is a unitary, compound mark having at least two readily apparent meanings from the mark itself, resulting in a double entendre, such that any import would not be understood without a measure of analysis, imagination and/or mental pause." 8 TTABVUE 3.[10] Applicant accepts the meanings of the words "flight" and "link" from the dictionary definitions made of record by the Examining Attorney, but contends that its compound mark comprised of those words "conveys at least two different meanings when considered in relation to Applicant's services of [sic] Applicant's services as defined by the Examiner in which one of the meanings is

[10] For purposes of Section 2(e)(1) of the Trademark Act, a "double entendre" is "an expression that has a double connotation or significance *as applied to the goods or services*. The mark that comprises the 'double entendre' will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods or services." Trademark Manual of Examining Procedure Section 1213.05(c) (Oct. 2016) (emphasis in original).

plainly NOT descriptive of such services. In other words, the compound word mark 'FLIGHTLINK' comprises a *double entendre* in that it has multiple interpretations in the context of Applicant's services as stated by the Examiner." 8 TTABVUE 5-6 (emphasis in original).[11] Applicant argues that FLIGHTLINK is suggestive, not merely descriptive, because it "requires imagination, thought or perception to reach a conclusion as to the nature of the services." 8 TTABVUE 7. In its reply brief, Applicant argues more specifically that "[w]hile the mark FLIGHTLINK may *suggest* that the related services may have something to do with an airplane due to the term 'flight' in the mark, the impression of the overall mark FLIGHTLINK in connection with providing weather information does NOT immediately convey information regarding an important feature, function or purpose of the identified services." 11 TTABVUE 4 (emphasis in original).

The Examining Attorney's position is that "it is clear that consumers will immediately recognize and perceive the nature of the identified services when encountering the mark FLIGHTLINK with meteorological and weather services provided to various airplanes and airline fleets connected to a shared voice and data communications system for safe travel, airspace management and accurate real-time aviation monitoring, analysis and reporting." 10 TTABVUE 9. The Examining

[11] The two meanings of FLIGHTLINK argued by Applicant in support of its double entendre theory are (1) "connections between flights or airplanes," and (2) "a unit in a communication system related to airplanes or flights." 8 TTABVUE 6-7. Applicant argues that the first meaning is not descriptive because "making connections between flights or airplanes has absolutely nothing to do with Applicant's services." 8 TTABVUE 6. Applicant states that the second meaning "is descriptive of a component or function of the system that provides the services." 8 TTABVUE 7.

Attorney characterizes "the descriptive impression created by the mark" as "providing meteorological and weather services to airplanes and airline fleets/carriers connected to/through a shared datalink for safe travel, airspace management and accurate real-time aviation monitoring, analysis and reporting." 10 TTABVUE 11.

The Examining Attorney bases his conclusion of mere descriptiveness upon the dictionary definitions of "flight" and "link" set forth above, statements in Applicant's specimen of use that "*connected aircraft* benefit from a wide range of aviation applications that enhance the operating of *partnering airlines*, including automatic, global real-time aircraft position reports" and that "[t]he *shared satellite datalink provides carriers* with improved air-ground and ground-air communications, including both voice & text during each *flight*," 10 TTABVUE 8 (emphasis supplied by the Examining Attorney), and the following statements on Applicant's website:

> 1. "FlightLink is a complete 'end-to-end' solution that includes a multi-function atmospheric and GPS sensors, *dedicated two-way satellite communication system*, and ground-based data management and quality assurance.";
>
> 2. "FlightLink is compatible with all aircraft types, and the *communication architecture provides real-time two way information exchange* at any altitude, everywhere aircraft fly, even over the poles.";
>
> 3. "The FlightLink system includes a dedicated Iridium satellite *datalink* and operates automatically, requiring no crew involvement."; and
>
> 4. "The patented TAMDAR sensor collects sophisticated weather data through the upper atmosphere during the flight of an aircraft, and *transmits the information via Iridium satellites in real-time* for analysis and assimilation into high-resolution weather forecasting models."

10 TTABVUE 8 (emphasis supplied by the Examining Attorney).[12]

We disagree with the Examining Attorney's conclusion that Applicant's mark is merely descriptive, and find that FLIGHTLINK does not forthwith convey an immediate idea of the qualities or characteristics of Applicant's identified services, with any degree of particularity.[13] A consumer of the meteorological services identified in the application would not immediately understand them to involve "airplanes and airline fleets/carriers connected to/through a shared datalink for safe travel, airspace management and accurate real-time aviation monitoring, analysis and reporting," as the Examining Attorney contends. 10 TTABVUE 11. If a consumer could ever glean that understanding from the mark as applied to the identified services, which we doubt, it would only be after the sort of painstaking analysis of extrinsic materials undertaken by the Examining Attorney. If "one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978).

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[12] We find that Applicant's specimen has limited probative value on the issue of whether FLIGHTLINK is merely descriptive of the services identified in the application given the Examining Attorney's position that the specimen did not show the mark in use in commerce for any of those services. Because Applicant's website essentially describes the same "technological weather system" that the Examining Attorney found was described in the specimen, we find that the website also has limited probative value.

[13] At the same time, we reject Applicant's double entendre theory because we find that neither of the two meanings of the mark argued by Applicant, "connections between flights or airplanes" and "a unit in a communication system related to airplanes or flights," 8 TTABVUE 6-7, conveys meaningful information about the services identified in the application with any degree of particularity. As discussed below, the mark is vague as to its meaning in the context of the identified services, making it at least suggestive.

While the word "flight" means "a trip made by or in an airplane or spacecraft" and the word "link" means "a connecting element or factor," "a unit in a communication system," and "something that enables communication between people," we find that the combination of the words in Applicant's unitary mark does not immediately make clear a specific feature, function, or characteristics of the services of "meteorological forecasting; providing meteorological information; providing weather information; weather forecasting; weather information services; weather reporting" identified in the application.[14] We find that FLIGHTLINK, as applied to the identified meteorological services, is vague as to who and what are linked, why they are linked, and in what manner they are linked, rendering it at least suggestive of some sort of weather-related communications connection involving aircraft.

Decision: The refusal to register is reversed.

[14] As noted above, both Applicant and the Examining Attorney offered third-party registrations in support of their respective positions. Third-party registrations are not conclusive on the question of mere descriptiveness, and neither the Examining Attorney nor the Board is bound by prior registration decisions involving different marks and records. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Although one of the registrations made of record by Applicant, Registration No. 3257799 of DRIVERLINK for "providing weather conditions updates for the transportation industry via a website on a global computer network," is for a mark that is similar in nature to Applicant's mark and covers services that are similar in nature to the services that the Examining Attorney references in support of the refusal, the record as a whole does not reflect a pattern of treatment by the Patent and Trademark Office of similar marks that is probative of the issue of the descriptiveness of Applicant's particular mark. *Cf. In re Waverly, Inc.*, 27 USPQ2d 1620, 1623 (TTAB 1993) (third-party registrations probative where they illustrated inconsistent past treatment of marks similar to the applicant's mark).