

This Opinion is Not a
Precedent of the TTAB

Mailed: June 17, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Time USA, LLC

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Serial No. 90493176

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Elizabeth A. Walker and Miguel C. Danielson of Danielson Legal LLC
for Time USA, LLC.

Salvatore Angotti, Trademark Examining Attorney, Law Office 108
Kathryn Coward, Managing Attorney.

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Before Cataldo, Adlin and Elgin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Time USA, LLC seeks a Principal Register registration for the proposed
mark ECOPRENEUR, in standard characters, for:

downloadable computer application software for mobile phones, portable media players, and handheld computers, namely, software in the field of environmental awareness, environmental issues and initiatives, and improving the environment and the state of the world; downloadable mobile applications in the field of environmental awareness, environmental issues and initiatives and improving the environment and the state of the world, in International Class 9;

promoting public awareness of environmental issues and initiatives, and improving the environment and the state of the world; charitable services, namely, promoting public awareness of environmental issues, and improving the

environment and the state of the world; business consulting in the field of environmental management, namely, advising businesses and individuals on issues of environmental impact, conservation, preservation and protection, and economic analysis for business purposes; providing consumer product information relating to the impact of consumer products on environmental preservation, in International Class 35;

charitable fundraising services by means of organizing and conducting projects to promote awareness (sic) environmental conservation, improving the environment and the state of the world, in International Class 36;

educational services, namely, conducting programs, seminars, webinars, webcasts, and podcasts in the field of environmental awareness, environmental issues and initiatives, and improving the environment and the state of the world; educational services, namely, conducting exhibitions, displays, and interactive exhibits in the field of climate change and future environmental impact; virtual reality game services provided online through a computer network, in International Class 41; and

research in the field of environmental protection; providing a website featuring environmental information; providing a website promoting public awareness of environmental issues and initiatives, and improving the environment and the state of the world; providing temporary use of non-downloadable software in the field of environmental awareness, environmental issues and initiatives, and improving the environment and the state of the world; providing temporary use of non-downloadable cloud-based software in the field of environmental awareness, environmental issues and initiatives, and improving the environment and the state of the world; platform as a service (PAAS) featuring computer software platforms in the field of environmental awareness, environmental issues and initiatives, and improving the environment and the state of the world; software as a service (SAAS) services featuring software in the field of environmental awareness, environmental issues and initiatives, and improving the

environment and the state of the world, in International Class 42.¹

The Examining Attorney refused registration in each Class on the ground that the proposed mark is merely descriptive of the identified goods and services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). After the refusal became final, Applicant appealed and filed a request for reconsideration that was denied. Applicant then requested and was granted two remands, both times for the Examining Attorney to consider amendments to Applicant's identification of goods and services; the amendments were ultimately accepted, but the Examining Attorney maintained the refusal. The appeal is fully briefed.

I. Evidence and Arguments

The Examining Attorney relies on several similar definitions of "ecopreneur." The most extensive is from the Green Business Bureau, which defines an "ecopreneur" as

an entrepreneur focused on creating and selling environmentally-friendly products and services. Ecopreneurship is a new way of doing business – a way to create sustainable business models, and work together with (and for) the environment. Using innovative approaches to old problems, ecopreneurs are looking for ways to capitalize on the environmental problems that our world faces.

August 24, 2021 Office Action TSDR 9.² *See also* April 15, 2022 Office Action TSDR 7 ("masslight.com" article stating "an *ecopreneur* is someone who sells products or

¹ Application Serial No. 90493176, filed January 27, 2021, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

² Citations to the application file are to the USPTO's Trademark Status & Document Retrieval ("TSDR") online database, by page number, in the downloadable .pdf format.

services that are beneficial to the environment in some way, whether it's an app that helps plant trees or a training program to educate people on proper composting and recycling"); *id.* at 11 ("glosbe.com" entry defining an ecopreneur as "[a]n entrepreneur operating an environmentally sustainable business"); *id.* at 12 (10 Minute Biz Tools entry stating "Ecopreneurs are entrepreneurs who have spotted opportunities in the environment to start businesses which supports sustainability. They care for the future generations who face the consequences of abuse of nature by previous generations. They are sensitive to maintaining ecological balance while making money with innovative solutions."); *id.* at 13 ("yourdictionary.com" definition of "ecopreneur" as "[a]n entrepreneur operating an environmentally sustainable business").

According to the Green Business Bureau, ecopreneurs have a "triple bottom line," focused not just on financial goals, but also the "social bottom line" (how the business "gives back to the community") and the "environmental bottom line" (how environmental impact is reduced and can be further improved). August 24, 2021 Office Action TSDR 9. *See also* April 15, 2022 Office Action TSDR 7 (addressing "The Importance of the Triple Bottom Line"). Similarly, the Insteading website article "Ecopreneur or Entrepreneur: What's the Difference?" explains that while ecopreneurs and entrepreneurs embrace failure and are innovative, flexible, independent and risk tolerant, ecopreneurs "go beyond organic, beyond compliance to laws and regulations (or redefine them), beyond consumerism, beyond minimum

wages and beyond the free market economy to conduct business.” August 24, 2001 Office Action TSDR 8.

The Examining Attorney’s evidence also reveals how third parties and the media use the term. For example, SUBLIME MAGAZINE’s article “Best Ecopreneurs 2021” states that ecopreneurs “play a huge role in finding solutions to environmental and social concerns in their industries.” August 24, 2021 Office Action TSDR 6.

The Ecopreneur Evolution website “creates opportunities for the **initiation of sustainable businesses** in impoverished marketplaces by developing Ecopreneurs through an online curriculum ...” *Id.* at 7 (bolded text in italics in original).

An article on the That Marketing Lady website entitled “Let’s Be Clear: Sustainability is Not a Marketing Trend Anymore!” features “a few concepts for the Eco-preneur to consider on their road to building a sustainable brand.” April 15, 2022 Office Action TSDR 6.

The magazine SUSTAINABILITYX provides “Top Sustainability Resources & Ideas for Responsible Ecopreneurs,” including ways to “understand climate change and global warming” and “reduce their carbon footprint.” *Id.* at 8.

“The Ecopreneurs” is a “docu-style” video series by FORTUNE Brand Studio and Salesforce. It “highlights people and companies committed to curtailing the climate crisis.” *Id.* at 10.

Based on this evidence, the Examining Attorney argues that “ecopreneur” describes “the characteristics and intended audience of” Applicant’s goods and services. 18 TTABVUE 7. More specifically, it describes “people who are currently

providing environmentally friendly businesses,” “goods and services which can help a person to become” an ecopreneur and “people, businesses, and new business models” focused on environmental concerns. *Id.* at 8-9.

For its part, Applicant relies on “negative” dictionary evidence showing that the Merriam-Webster dictionary does not include an entry for “ecopreneur.” February 23, 2022 Office Action response TSDR 31.

Applicant also relies on a number of third-party registrations. Some include words ending in the same “PRENEUR” suffix as “ecopreneur.” February 23, 2022 Office Action response TSDR 42-55; October 14, 2022 Request for Reconsideration TSDR 6-9. Others include words beginning with the same “ECO” prefix as “ecopreneur.” *Id.* at 57-68. Some, “like Applicant’s Mark, contain the general category or title of a ‘person’ or ‘individual’ (not proper nouns), and are registered in connection with publications of some sort,” such as THE ECONOMIST and CAR AND DRIVER. February 23, 2022 Office Action response TSDR 23, 70-83; October 14, 2022 Request for Reconsideration TSDR 11-12.

Applicant argues that ECOPRENEUR is suggestive rather than descriptive, because “understanding of the goods and services in connection with the Mark is not instantaneous,” but requires “several mental steps.” 16 TTABVUE 8. Applicant points out that it is not an “entrepreneur operating an environmentally sustainable business,” or “a person or company who intend to sell products or services that are beneficial to the environment in some way.” *Id.* at 10. Furthermore, Applicant claims that its “intended audience or purchasers” are not ecopreneurs (though later in the

same paragraph seems to back off that assertion by stating that ecopreneurs “would not be the **only** audience or sort of people” interested in Applicant’s goods and services). *Id.* at 13 (emphasis added).

Applicant claims to use “ecopreneur” in an “incongruous manner” because the term refers to “a type of person or entrepreneur,” which “is not how one would normally refer to **goods and services.**” 16 TTABVUE 14 (bolded text in italics in original). Moreover, “Applicant is not selling ‘ecopreneurs.’” *Id.*

Applicant also argues that the proposed mark is a “general term” and “so broad that it requires consumer imagination to reach a conclusion as to the nature of” the identified goods and services.” *Id.*

Finally, “Applicant is unaware of third parties using Applicant’s Mark on the same or similar goods claimed in the Application.” *Id.* at 16.

II. Analysis

We have no doubt that ECOPRENEUR is merely descriptive because it “immediately conveys knowledge of a quality, feature, function, or characteristic” of one or more of Applicant’s identified goods and services in each Class. *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Because the proposed mark is merely descriptive of at least one product or service in each International Class, each “entire class will fail.” *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013) (citing *In re Chamber of Com.*, 102 USPQ2d at 1220). Here, the mark

immediately conveys that Applicant's environmentally-focused goods and services may be targeted to or used by ecopreneurs.

Terms such as the proposed mark "ecopreneur" that describe the intended user or purchaser of a product or service are often found to be merely descriptive. *See e.g. In re Planalytics Inc.*, 70 USPQ2d 1453 (TTAB 2004) (GASBUYER merely descriptive of providing on-line risk management services in the field of pricing and purchasing decisions for natural gas); *Hunter Publ'g Co. v. Caulfield Publ'g Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER merely descriptive of a trade journal for systems users); *In re Camel Mfg. Co.*, 222 USPQ 1031, 1032 (TTAB 1984) (MOUNTAIN CAMPER found merely descriptive of retail and mail order services in the field of outdoor equipment and apparel, stating "we embrace the holding that a mark is merely descriptive if it describes the type of individuals to whom an appreciable number or all of a party's goods or services are directed ... That not every item sold by applicant is so directed does not render the mark registrable."); *In re Hunter Publ'g Co.*, 204 USPQ 957, 962 (TTAB 1979) (finding JOBBER AND WAREHOUSE EXECUTIVE merely descriptive of a trade magazine, stating "it has been consistently held that a mark which describes the intended users of a particular product is merely descriptive of such goods"). *See also MBNA Am. Bank., N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (affirming descriptiveness refusal based in part on Board's "[f]inding that the marks thus identified the community of intended users" of the identified services). Thus, Applicant's argument that the proposed mark is suggestive rather than merely descriptive is not well-taken.

We acknowledge that, at one point in its Appeal Brief, Applicant claims that ecopreneurs are not the “intended audience or purchasers” for its identified goods and services. 16 TTABVUE 13. This would not call our finding that the proposed mark is merely descriptive into question, however, for two reasons.

First, Applicant contradicts itself later in the same paragraph of its Appeal Brief when it states that ecopreneurs “would not be the **only** audience or sort of people in the world interested” in its goods and services. *Id.* This is essentially an admission that Applicant’s “intended audience or purchasers” would include ecopreneurs.

Second, Applicant’s identification of goods and services is broad enough to encompass matters of interest to ecopreneurs, whether or not Applicant targets all of its goods and services to ecopreneurs specifically. Indeed, each Class in the involved application – 9, 35, 36, 41 and 42 – includes goods or services in the fields of “environmental awareness,” “environmental issues and initiatives,” “improving the environment and the state of the world,” “environmental management,” “environmental preservation,” “climate change,” “environmental information” or “environmental protection.” As the definitions cited above make clear, each of these fields is of interest to ecopreneurs.

Moreover, the Examining Attorney’s evidence establishes that each Class of the involved application includes goods or services that ecopreneurs may use or purchase to understand or participate in these environmental fields. For example, the SUSTAINABILITYX MAGAZINE article entitled “Top Resources & Ideas for Responsible Ecopreneurs” is explicitly targeted to ecopreneurs, is provided via a website, and can

be heard “on Apple Podcasts, Spotify and wherever you get your podcasts.” April 15, 2022 Office Action TSDR 8. Online articles and podcasts such as this may be accessed through “downloadable computer application software for mobile phones, portable media players, and handheld computers ... in the field of environmental awareness ... and improving the environment,” such as the Class 9 goods identified in the involved application.

Similarly, this article shows that ecopreneurs may be part of the target audience for “promoting public awareness of environmental issues and initiatives,” which are among Applicant’s Class 35 services. Ecopreneurs may also be potential purchasers of “charitable fundraising services”³ related to “environmental conservation,” identified in Class 36 in the involved application. And, because the article is available via podcast, *id.*, it shows that “educational services, namely ... podcasts in the field of ... environmental issues,” identified in Class 41 in the involved application, may be targeted to ecopreneurs. In the same way, the article, made available online, *id.*, shows that the service of “providing a website featuring environmental information,” which is among Applicant’s Class 42 services, may be targeted to ecopreneurs.

More generally, ecopreneurs would be potential customers for at least some of Applicant’s goods and services in each Class because of their interests and goals, which include: “finding solutions to environmental and social concerns in their

³ The record makes clear that “ecopreneurs” encompasses nonprofit or charitable enterprises or individuals associated with them. Indeed, ecopreneurs’ “bottom line” is not just financial, but also “social,” and specifically focused on giving back to the community. August 24, 2001 Office Action TSDR 9; April 15, 2022 Office Action TSDR 7.

industries,” August 24, 2021 Office Action TSDR 6; initiating “sustainable businesses,” *id.* at 7; building “sustainable brands,” April 15, 2022 Office Action TSDR 6; understanding “climate change and global warming” and how to “reduce their carbon footprint,” *id.* at 8; and “curtailing the climate crisis.” *Id.* at 10. These interests and goals would be served by: “software in the field of ... environmental issues” (Class 9); “business consulting in the field of environmental management ...” (Class 35); “charitable fundraising ... by means of organizing and conducting projects to promote ... improving the environment” (Class 36); “educational services ... in the field of environmental issues and initiatives” (Class 41); and “providing a website featuring environmental information” (Class 42).

There is nothing “incongruous” about Applicant’s proposed mark. As the record shows, and as discussed above, ecopreneurs are potential customers for one or more of Applicant’s environmentally-focused goods and services in each Class in the application. *In re Planalytics*, 70 USPQ2d at 1454 (“A mark can be descriptive if it describes the intended users of the goods or services.”). The proposed mark describes them.

Furthermore, Applicant’s argument that the proposed mark is a “general term” and “so broad” that consumers would not know what the goods and services are misapprehends the applicable test. “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 or services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med.*

Devices Ltd., 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). In other words, whether a mark 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 the goods or services, and the possible significance that the proposed mark would have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Here, someone who knows that Applicant offers environment-focused goods and services would understand that ECOPRENEUR conveys information about the intended users/purchasers of Applicant's goods and services.

Finally, “the fact that applicant may be the first and/or only entity using ... [ECOPRENEUR for the identified goods or services] is not dispositive where, as here, the term unequivocally projects a merely descriptive connotation.” *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001). *See also KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111 (2004), 72 USPQ2d 1833, 1838 (trademark law does not countenance someone obtaining “a complete monopoly on use of a descriptive term simply by grabbing it first”) (citation omitted).⁴

⁴⁴ Applicant's reliance on third-party registrations of marks containing the “ECO” prefix, the “PRENEUR” suffix, or titles or job descriptions, is misplaced. We are not privy to relevant evidence concerning those marks or the records in those cases, Applicant has not demonstrated how those registered terms are used or perceived, and neither the existence of these third-party registrations nor any of the evidence in their prosecution records (even if it were of record here) compels a specific result in later, allegedly analogous cases. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1377 (Fed. Cir. 2018) (“these prior registrations do not compel registration of [Applicant's] proposed mar[k]”) (citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016)); *In re Shinnecock*

III. Conclusion

The record leaves no doubt that ECOPRENEUR is merely descriptive of potential users or purchasers of Applicant's environment-focused goods and services. Applicant's competitors should remain free to continue using "ecopreneur" for their own goods and services. *See In re Abcor Dev.*, 200 USPQ at 217 ("The major reasons for not protecting [merely descriptive] marks are ... to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.").

Decision: The refusal to register Applicant's proposed mark on the Principal Register because it is merely descriptive under Section 2(e)(1) of the Trademark Act is affirmed.

Smoke Shop, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009). As we stated in an analogous situation, to the extent that our decision here is inconsistent with the third-party registrations, "it is the decision required under the statute on the record before us." *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, at *11 (TTAB 2020).