

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: May 31, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Ralph Birchard Lloyd
—

Serial No. 97464017
—

Ashley D. Johnson of Dogwood Patent and Trademark Law,
for Ralph Birchard Lloyd.

Wendell S. Phillips III, Trademark Examining Attorney, Law Office 110,
Chris Pedersen, Managing Attorney.

—
Before Kuhlke, Wellington, and Johnson,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Ralph Birchard Lloyd (Applicant) seeks registration on the Principal Register of the mark DISINFECTION AS A SERVICE (in standard characters) for services ultimately identified as:¹

Providing automated disinfection and sanitization services for medical devices, rooms, plumbing fixtures, and laundry, such services using chemical disinfectants, UV radiation, air filtration, and combinations, in Class 37.

—
¹ Application Serial No. 97464017 was filed on June 17, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant's declaration of a bona fide intent to use the mark in commerce for the services.

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the basis that the mark is merely descriptive of the services.

When the refusal was made final, Applicant requested reconsideration and filed an appeal. The Examining Attorney denied the request for reconsideration and the appeal was resumed. We affirm the refusal to register.

I. Section 2(e)(1) Merely Descriptive Refusal

Section 2(e)(1) of the Trademark Act excludes from registration any “mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive ... of them.” 15 U.S.C. § 1052(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.” *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (citations omitted). In contrast, a mark is suggestive if the evidence shows that “imagination, thought and perception” are required to arrive at the feature(s), quality(ies), or characteristic(s) in question. *See, e.g., In re N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017); *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1378 (Fed. Cir. 2017).

“A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need only describe a single feature or attribute.” *Chamber of Com.*, 675 F.3d at 1300 (cleaned up; citation omitted). “[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 and services are

will understand the mark to convey information about them.” *Earnhardt*, 864 F.3d at 1378 (cleaned up; citations omitted).

A. Arguments and Analysis

The Examining Attorney argues that “both the individual components and the composite result [DISINFECTION AS A SERVICE] are descriptive of Applicant’s services and do not create a unique, incongruous, or nondescriptive meaning in relation to the services.”² The Examining Attorney requests the Board take judicial notice, which we do, of the following dictionary definition:³

Disinfection: (noun) the act of disinfecting something especially: the process of using a disinfectant to destroy, inactivate, or significantly reduce the concentration of pathogenic agents (such as bacteria, viruses, and fungi).

The Examining Attorney further argues that “[w]ith respect to the prepositional phrase ‘AS A SERVICE’ in the applied-for mark, a plain reading of this phrase would literally indicate that the preceding term -- DISINFECTION -- is an activity that Applicant offers ‘as a service’ for others.”⁴ In support, the Examining Attorney submitted Internet evidence showing the phrase “disinfection as a service” used to

² 8 TTABVUE 5.

³ Copy of definition from MERRIAM-WEBSTER.COM DICTIONARY, Merriam-Webster, www.merriam-webster.com, accessed December 13, 2023; attached to Examining Attorney’s brief; 8 TTABVUE 11-12. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁴ 8 TTABVUE 5.

describe the same or very similar services to those described in the application. For example:



-and-

occupants[21], [22]. Although the public has shown high acceptance to service and collaborative robots (cobots), especially during the COVID-19 pandemics[11], [23], this team is aware of no deployed robotic solutions for the safe disinfection of human-occupied spaces in socially-distanced settings. Therefore, this paper is intended to propose a solution to irritation-free **disinfection as a service** that enhances student safety in reopening classrooms, through means of a cobot with a specially designed air filtration payload.

6

Other Internet evidence shows companies advertising their services using the exact phrase “disinfection as a service” to describe the services they offer. To wit, Fair Trade Home Solutions touts its services on Facebook as follows:

⁵ Excerpt of website screenshot attached to Office Action issued on June 7, 2023, p. 5 (pdf).

⁶ Excerpt from abstract from online “Robotics and Autonomous Systems” publication, attached to Office Action issued on June 7, 2023, p. 8 (pdf).



Todd Hunter and 14 others like this.

9 Shares

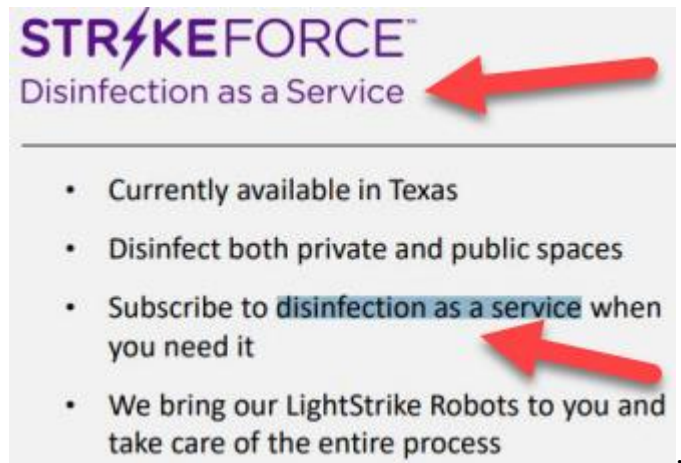
Steve William Lindsey
Use those now. Prefer the backpack model.
2 yrs Report

Fair Trade Home Solutions
I considered one but this areas structures don't have such a large square footage that I thought it necessary
2 yrs Report

Sharon Brady Laflamme
Such a great service! Thank you 🙌 Brandon 🙌👍💜
2 yrs Report

.7

The company Strikeforce offers a “disinfection as a service” subscription plan:⁸



“Disinfection as a service” is also used in online informational pieces. An article in *Forbes*, online edition, describes precautions regarding post-Covid office work conditions, by suggesting one company: “Dallas startup PureBeam offers in-depth workspace UV **disinfection as a service**. Unlike other companies offering

⁷ Excerpt from website, attached to Office Action issued on June 7, 2023, p. 16 (pdf).

⁸ Office Action issued on June 7, 2023, p. 24 (pdf).

commercial disinfection, PureBeam can sanitize spaces with the mess or residue left by aerosol cleaners.”⁹ A posting on the LinkedIn website describes the hazards of chemical disinfectants and, in a discussion of the “The Future of Disinfection,” notes that “[y]ou can access UVC [ultraviolet-C irradiation] **disinfection as a service**, or you can buy permanent fixtures.”¹⁰

In sum, the Examining Attorney contends that DISINFECTON AS A SERVICE “merely describes that applicant’s services are in the nature of disinfection, that the services feature disinfection, or that the services are for the purpose of providing disinfection activities, and that these disinfection activities are rendered ‘as a service,’ i.e., for the benefit of others.”¹¹

Applicant, for his part, “respectfully submits that the mark cannot describe the function or purpose of Applicant’s services with any degree of precision, because the terms DISINFECTON and SERVICE are capable of several different possible meanings, such that the meaning of the mark cannot immediately be ascertained.”¹² Applicant contends that the component terms of its proposed mark have multiple meanings: “[f]or example, the term DISINFECTON can refer to the act of cleansing a surface, to relieve something of an undesirable quality, or to remove a software virus,” and “the term SERVICE can refer to the quality of being useful, the duties provided by a waiter, a set of dishes, a worship ritual, the military, public

⁹ Office Action issued on June 7, 2023, p. 19 (pdf).

¹⁰ Office Action issued on June 7, 2023, p. 23 (pdf).

¹¹ 8 TTABVUE 6.

¹² 6 TTABVUE 15-16.

transportation, and the like.”¹³ Applicant also points to various third-party registrations for marks containing the term DISINFECT[-S, -ION, -ING] or the phrase AS A SERVICE and, based on thereon, argues that that its mark “should likewise be approved for registration on the Principal Register.”¹⁴

We do not agree with Applicant’s contention that DISINFECT AS A SERVICE is not merely descriptive, nor do we find the evidence Applicant submitted to be persuasive. Rather, the plain meaning of the words in Applicant’s proposed mark, as understood in the context of Applicant’s “disinfection and sanitization services,” clearly and concisely describes these services. That is, Applicant disinfests “medical devices, rooms, plumbing fixtures, and laundry” as a service to others.


The evidentiary record overwhelmingly supports the refusal based on Applicant’s proposed mark being merely descriptive of the services recited in the application. The Internet evidence, as shown above, demonstrates that “disinfection as a service” to others is already an understood way of describing such services. The evidence further shows that other companies performing the same or very similar services as those described in the application use “disinfection as a service” to describe their services. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, at 217 (CCPA 1978) (“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

¹³ 6 TTABVUE 16.

¹⁴ 6 TTABVUE 16.

infringement suits by the registrant against others who use the mark when advertising or describing their own products.”).

With respect to the third-party registrations that Applicant submitted and relies upon, many of these do not support a finding that Applicant’s mark is not merely descriptive because, as the Examining Attorney pointed out, many of the registered marks are a play on words, nonsensical, or are part of a larger phrase that is not merely descriptive, e.g., DISINFECTON AT THE SPEED OF LIGHT¹⁵ or DISINFECTON FROM A HIGHER POWER. Some of the registrations contain disclaimers of the term DISINFECT, by itself or with a suffix, and actually corroborate the descriptive nature of the term. For example, the registered composite

mark  for, inter alia, “disinfecting services,” and contains a disclaimer of the wording NATURAL DISINFECTON SOLUTIONS.¹⁶

As to the registrations for marks containing the phrase AS A SERVICE, we are not privy to any evidence, or lack of evidence, to support any possible descriptiveness refusal that may or may not have been warranted in connection with those registrations. For this reason, these third-party registrations are of little, if any, probative value. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (TTAB 2001). We note that many of the registered marks include an initial term that, when followed by AS A SERVICE, may create an incongruous or nonsensical expression,

¹⁵ Reg. No. 4934811

¹⁶ Reg. No. 6331981.

e.g., CANNABIS AS A SERVICE for business services involving cannabis or SUN AS A SERVICE for software as a service in the field of controlling artificial light.

In any event, we must make our findings in this appeal based on the record before us and not on decisions made by examining attorneys regarding different marks and goods or services. *See, e.g., In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174 (Fed. Cir. 2009) (“Applicant’s allegations regarding similar marks are irrelevant because each application must be considered on its own merits.”); *In re Boulevard Entm’t*, 334 F.3d 1336, 1343 (Fed. Cir. 2003). As outlined above, there is ample evidence showing that DISINFECTION AS A SERVICE immediately describes Applicant’s services.

B. Conclusion

In sum, we agree entirely with the Examining Attorney’s analysis of Applicant’s proposed mark and have no doubt that DISINFECTION AS A SERVICE is merely descriptive of “automated disinfection and sanitization services for medical devices, rooms, plumbing fixtures, and laundry, such services using chemical disinfectants, UV radiation, air filtration, and combinations.” Consumers encountering the proposed mark, in the context of the recited services, will immediately perceive it as conveying precisely the type and nature of said services.

Decision: The refusal to register DISINFECTION AS A SERVICE, under Section 2(e)(1), on the ground that the proposed mark is merely descriptive of the services is affirmed.