

**THIS DISPOSITION  
IS NOT A PRECEDENT  
OF THE TTAB**

Mailed: March 31, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re Targus Information Corporation  
\_\_\_\_\_

Serial No. 77203841  
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Kathleen A. Pasulka of Procopio Cory Hargreaves & Savitch LLP for applicant.

Linda M. Estrada, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

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Before Seeherman, Grendel and Taylor, Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Targus Information Corporation (applicant) has filed an application to register the mark ON-DEMAND LOCATION, in standard character format, on the Principal Register for services ultimately identified as "Business information services, namely, providing client organizations with statistical and demographic information about callers and visitors to their web sites" in International Class 35.<sup>1</sup>

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<sup>1</sup> Serial No. 77203841, filed June 12, 2007, and alleging a bona fide intention to use the mark in commerce.

The trademark examining attorney has refused registration on the ground that applicant's proposed mark ON-DEMAND LOCATION is merely descriptive within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

When the refusal was made final, applicant appealed and requested reconsideration. The request for reconsideration was found unpersuasive and this appeal was resumed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The examining attorney maintains that the proposed mark ON-DEMAND LOCATION is merely descriptive of applicant's business information services, namely, providing client organizations with statistical and demographic information about callers and visitors to their web sites because it conveys to consumers that "the services include the provision of location information" and that "the information is provided 'on demand'." (Br. at unnumbered p. 3).

In support of the refusal, the examining attorney submitted the following definitions, in pertinent part (emphasis supplied):

**on-demand:** Refers to stored content that users can access whenever they want, as opposed to live or one-time-only broadcast. (Netlingo).<sup>2</sup>

**on-demand:** On-Demand refers to a service or feature which addresses the user's need for instant gratification and immediacy of use. (Wikipedia).<sup>3</sup>

**on-demand computing:** On-demand (OD) computing is an increasingly popular enterprise model in which computing resources are made available to the user as needed. The resources may be maintained within the user's enterprise, or made available by a service provider. The on-demand model was developed to overcome the common challenge to an enterprise of being able to meet fluctuating demands efficiently. Because an enterprise's demand on computing resources can vary drastically from one time to another, maintaining sufficient resources to meet peak requirements can be costly. Conversely, if the enterprise cuts costs by only maintaining minimal computing resources, there will not be sufficient resources to meet peak requirements. On-demand computing products are rapidly becoming prevalent in the marketplace. Computer Associates, IP, IBM, Microsoft, and Sun Microsystems are among the more prominent on-demand vendors. These companies refer to their on-demand products and services by a variety of names. IBM calls theirs "On Demand Computing" (without the hyphen). Concepts such as grid computing, utility computing, autonomic computing, and adaptive management seem very similar to the concept of on-demand computing. Jason Bloomberg, Senior Analyst with ZapThink, says that on-demand computing is a broad category that includes all the other terms, each of which means something slightly different. Utility computing, for example, is an on-demand

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<sup>2</sup> NetLingo Classification: Online Business term retrieved from [www.netlingo.com/lookup.cfm?term=on%demand](http://www.netlingo.com/lookup.cfm?term=on%demand) (September 15, 2007). (Office Action issued September 15, 2007).

<sup>3</sup> <http://en.wikipedia.org/wiki/On-demand> (November 5, 2008). (Denial of Request for Reconsideration issued November 5, 2008).

approach that combines outsourced computing resources and infrastructure management with a usage-based payment structure (this approach is sometime known as metered services) (WhatIs.com).<sup>4</sup>

In addition to the definitions, the examining attorney made of record printouts from applicant's website (www.tarusinfo.com) which discuss applicant's services. These materials indicate that applicant provides "A Wealth of Knowledge at the Moment You Need it." In addition, the materials reference a suite of services, including those provided under the mark ON-DEMAND LOCATION, and inform potential consumers that "in a split second, you can access our rich data and analytics to identify, verify, qualify and locate the people who are interacting with your organization."

With particular regard to applicant's ON-DEMAND LOCATION services, the advertising states

**Identify the Best Location Every Time**

With TARGUSinfo On-DemandLocation<sup>SM</sup> solutions, you can pinpoint a customer's location within a radius of 105 feet, whether you're routing callers or providing your locations.

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<sup>4</sup> SearchDataCenter.com Definitions at [www.searchdatacenter.techtarget.com/sDefinition/0..sid80\\_gci903730.00.html](http://www.searchdatacenter.techtarget.com/sDefinition/0..sid80_gci903730.00.html) (November 5, 2008). (Denial of Request for Reconsideration issued November 5, 2008).

**ON-DEMAND LOCATION**

Frequently Asked Questions

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**How quickly can I get a single query returned?**

Query response speed varies with the type of connection our customers select. Responses to a single query are in sub-second time.

Applicant, in urging reversal of the refusal, maintains that "[t]he words 'ON DEMAND' alone, and in combination with the word 'LOCATION' are not merely descriptive of Applicant's services because Applicant's mark does not convey that Applicant's services provide information about location of consumers or that such information is provided 'on-demand'," which applicant suggests is commonly understood to mean 'instantly provided.' (Br., pp. 2 and 3).

A mark is deemed to be merely descriptive of the services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the services in order to be considered merely descriptive; it is enough that the term describes

one significant attribute, feature or property of the services. In re MBAssociates, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the services for which registration is sought, the context in which it is being used or intended to be used, and the possible significance that the term would have to the average purchaser of the services because of the manner of its use. In re Recovery, Inc., 196 USPQ 830 (TTAB 1977).

When two or more descriptive terms are combined, the determination of whether the composite mark also has a descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its descriptive significance in relation to the services, the combination results in a composite that is itself descriptive. See, e.g., In re Tower Tech, Inc. 64 USPQ2d 1314 (TTAB 2002) [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; In re Sun Microsystems Inc., 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs]; In re Putnam Publishing Co., 39 USPQ2d 2021 (TTAB 1996) [FOOD & BEVERAGE ONLINE merely descriptive of news information services for the food

processing industry]; and In re Copytele Inc., 31 USPQ2d 1540 (TTAB 1994) [SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays].

We find that the mark sought to be registered is merely descriptive of significant attributes of applicant's services, that is, that the services include the provision of location information and that such information is provided for immediacy of use, i.e., on-demand. Despite applicant's contentions to the contrary, the definitions submitted by the examining attorney as well as applicant's own use of the term "on-demand" in the informational material displayed on its website show that the term ON-DEMAND directly describes an attribute of applicant's services, namely that the services are provided "when asked for" and in a "split second." For this reason, applicant's contention that its services are not provided "on-demand" because they are offered to customers that sign up and request them, is unpersuasive. Additionally, the term "location" is descriptive in relation to applicant's services as evidenced by the disclaimer. Indeed, the web pages from applicant's website confirm that location information is included in the statistical information provided about applicant's clients.

We also find that the individual words do not lose this descriptiveness in the combination ON-DEMAND LOCATION. While a combination of words may be registrable if it creates a unitary mark with a unique, nondescriptive or incongruous meaning, in this case each component of applicant's mark ON-DEMAND LOCATION retains its descriptive significance when used in the combination, and the combination as a whole is merely descriptive of applicant's services. Put simply, we perceive no incongruity in applicant's mark. As stated, when purchasers and prospective purchasers encounter the designation ON-DEMAND LOCATION in the context of applicant's services, it is clear that it would immediately inform these purchasers that applicant's services include the provision of location information and that such information is provided when requested.

We thus conclude that the designation ON-DEMAND LOCATION, when used in connection with applicant's business information services, namely, providing client organizations with statistical and demographic information about callers and visitors to their web sites, is merely descriptive of such services.

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