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

Applicant: GAZETTE COMMUNICATIONS, INC.  
Mark: HOGCAM  
Serial No.: 78/019371  
Filed: AUGUST 2, 2000  
Examining Attorney: STEVEN R. BERK  
LAW OFFICE 102



09-30-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #61

**APPLICANT'S REPLY BRIEF**

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Assistant Commissioner for Trademarks  
2900 Crystal Drive  
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TRADEMARK TRIAL AND  
APPEAL BOARD

Dear Sir:

**INTRODUCTION**

Applicant respectfully requests the Trademark Trial and Appeal Board grant Applicant's registration on the Principal Register for the mark HOGCAM to be used in connection with "agricultural services, namely creating and distributing via the global computer network data and information relating to the raising of hogs".

**STATEMENT OF FACTS**

Applicant filed an intent to use application for the mark HOGCAM on August 2, 2000. On January 23, 2001, Examining Attorney Karla Perkins refused to register the mark arguing

that it was merely descriptive of the services it was to be applied to under 15 U.S.C. §1052 (e)(1).

Applicant traversed Examiner refusal on July 18, 2001, and stated in response to Examiner's inquiries that the mark HOGCAM was not in use in commerce as of that date. Applicant argued that the mark was suggestive, not merely descriptive of the services to which the mark applied.

On November 13, 2001, Examiner issued a final refusal to register the mark HOGCAM on the basis that the mark was merely descriptive in relation to the identified services citing 15 U.S.C. §1052(e)(1).

On May 13, 2002, Applicant filed a Notice of Appeal with appropriate fee. Applicant timely filed an Appeal Brief with the Trademark Trial and Appeal Board on July 15, 2002. Applicant traversed Examiner's refusal arguing that the mark HOGCAM is suggestive, not merely descriptive, in relation to the identified services.

Examining Attorney filed her Appeal Brief on September 6, 2002, arguing again that the mark HOGCAM is merely descriptive of the identified services and refusal to register was proper under 15 U.S.C. §1052 (e)(1).

As permitted by 37 C.F.R. §2.142(b)(1), Applicant submits this brief in reply to Examining Attorney's arguments in her brief dated September 6, 2002.

### **ARGUMENT**

#### **THE TERM "HOGCAM" IS SUGGESTIVE WHEN CONSIDERED IN RELATION TO THE IDENTIFIED SERVICES.**

Applicant concedes that the mark HOGCAM is not an alliteration.

In evaluating whether the mark is suggestive or merely descriptive when applied to the goods and services involved, the determination needs to be made from the standpoint of the

average prospective consumer. Application of Abcor Development Corporation, 588 F.2d 811, 814 (C.C.P.A. 1978). It is necessary that the Board consider the mark in its entirety, with a view toward “what the purchasing public would think when confronted with the mark as a whole”. Equine Technologies, Inc. v. Equitechnology, Inc., 68 F.3d 542, 544 (1<sup>st</sup> Cir. 1995) quoting In re Hutchinson Technology, Inc., 852 F.2d 552, 552-54 (Fed. Cir. 1988). The question then becomes what an individual surfing the Internet would think when seeing the mark HOGCAM in a search engine or on a website.

There is no question that the term “hog” is descriptive. The question, however, is whether the mark, in its entirety, is merely descriptive of Applicant’s services – agricultural information services, creating and distributing via the global computer network data and information relating to the raising of hogs. 68 F.3d at 545. Examiner’s argument boils down to the contention that a consumer would expect a website called HOGCAM to provide a wide range of agricultural services to hog farmers. Contrary to Examiner’s argument, seeing or hearing the name HOGCAM gives virtually no idea of the related services except that they might have to do with hogs. See Equine Technologies, 68 F.3d at 545 (holding that the mark EQUINE TECHNOLOGIES was suggestive, not merely descriptive of horse hoof pads). It would require thought and imagination for a consumer to understand the mark HOGCAM as used on a website relates to a website providing a broad range of agricultural information, and is not primarily for the viewing of hogs via a camera as Examiner contends.<sup>1</sup> This is the requisite mental leap for a mark to be suggestive, not merely descriptive.

In the complex world of connotation, syntax, and meaning, a term may possess elements of suggestiveness and descriptiveness at the same time. In re Nett Designs, Inc., 236 F.3d 1339,

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<sup>1</sup> Examining Attorney’s Appeal Brief at 7.

1341 (Fed. Cir. 2001). No clean boundaries separate these legal categories. *Id.* Rather a term may slide along the continuum between suggestiveness and descriptiveness depending on usage, context, and other factors that affect the relevant public's perception of the term. *Id.* While the terms "hog" or "cam" independently may be somewhat descriptive, when combined to form HOGCAM, the mark is suggestive in relation to agricultural services.

Examiner states: "a term that suggests a number of possible things but does not describe any one thing in particular is suggestive."<sup>2</sup> The term HOGCAM does exactly that – it suggests that the website on which it can be found may have something to do with any number of possibilities including swine, Harley Davidson motorcycles, Hog's Breath Saloon, etc. Contrary to Examiner's argument that no thought or imagination is needed to ascertain Applicant's services, the consumer would have to make a mental leap from the mark HOGCAM to agricultural services.<sup>3</sup>

Registration of the mark HOGCAM will not circumvent the public policy rationale behind refusal to register marks which are merely descriptive. First, Applicant will not be inhibiting competition in the sale of particular services. There is no evidence showing use of the term HOGCAM by Applicant's competitors to describe their services nor is there evidence that the mark has been used on similar services by competitors. Second, the public will be free 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. 588 F.2d at 813. The term HOGCAM is not utilized by others in the trade of providing agricultural information to describe their services; therefore, there is not the evidence of aptness or desirability of a term to describe industry services that would negate a term being suggestive.

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<sup>2</sup> Examining Attorney's Appeal Brief at 3.

<sup>3</sup> Examining Attorney's Appeal Brief at 7.

See In the Matter of the Application of Quik-Print Copy Shops, Inc., 616 F.2d 523, 525 (C.C.P.A. 1980) (the widespread use of the term QUICK-PRINT through the United States by others tended to establish that the term has lost whatever suggestiveness it may have possessed and had taken on a descriptive significance of quick or fast printing services to the general public).

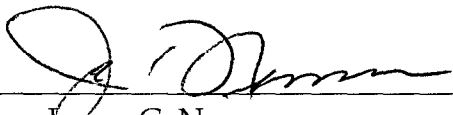
Applicant agrees with Examiner that third party registrations are not conclusive on the question of descriptiveness.<sup>4</sup> However, the Federal Circuit has encouraged the Patent and Trademark Office to achieve a uniform standard for assessing the registrability of marks. 236 F.3d at 1342. In the present case, the registration of Applicant's mark CORNCAM and a refusal to register Applicant's mark HOGCAM does not illustrate that a uniform standard is being applied to determine whether a mark is merely descriptive versus suggestive.

#### CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Trademark Trial and Appeal Board reverse the Trademark Examining Attorney's refusal to register the mark HOGCAM as merely descriptive under 15 U.S.C. §1052 (e)(1).

Respectfully submitted,

GAZETTE COMMUNICATIONS, INC.


By   
James C. Nemmers  
Attorney for Applicant

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<sup>4</sup> Examining Attorney's Appeal Brief footnote 4 at 4.

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September 24, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Box TTAB, NO FEE, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on September 24, 2002



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James C. Nemmers, Registered Representative