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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Schwartz

Serial No. 85495793

Jennifer Heisler Lavalley of GTC Law Group LLP & Associates, for Jacob Schwartz.

Florentina Blandu, Trademark Examining Attorney, Law Office 117 (Brett J. Golen, Managing Attorney).

Before Grendel, Ritchie, and Adlin, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Jacob Schwartz, applicant herein ("applicant"), seeks registration on the Principal Register of the mark "MANAGE,"¹ in standard character format, for goods and services identified as "Downloadable software for professional scheduling and appointment-keeping," in

¹ Serial No. 85495793, filed on December 15, 2011, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b) in all classes, expressing a bona fide intent to use in commerce.

International Class 9, and "Providing on-line, non-downloadable software for professional scheduling and appointment-keeping," in International Class 42.

The trademark examining attorney refused registration in all classes on the ground that applicant's mark is merely descriptive of the identified goods and services under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). Both applicant and the examining attorney filed briefs. We affirm.

Descriptiveness

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012), citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[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 or services are will understand the mark to convey information about them." *DuoProSS Meditech*

Corp. v. Inviro Medical Devices, Ltd., 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (citation omitted); *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). If, on the other hand, a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services, then the mark is suggestive. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). In order for a mark to be characterized as "merely descriptive" under Section 2(e)(1), it is not necessary that the mark immediately convey an idea of each and every specific feature of the applicant's goods or services. It is sufficient that one significant attribute, function or property be described. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

The examining attorney argues that the term "manage" is descriptive of a feature of the goods and services in the application, in that it refers to the way in which consumers of applicant's products and services may "manage" their scheduling and appointment-keeping, as set forth in the identification of goods and services.

We take judicial notice of the following relevant portions of the definition of "manage":

Manage: to have control of something; to take care of and make decisions about (someone's time, money, etc.)²

The examining attorney submitted evidence of third party uses of the term "manage" to describe their professional scheduling and appointment-keeping software. Some examples include the following:

Appointment Quest: Online Scheduling Software: Appointment Quest Online Appointment Manager - Online scheduling software for service businesses, schools and universities. Since 2001, Appointment Quest makes it easy to **manage** your appointment scheduling on the web. Attached to May 23, 2012 Office Action, p.8.
www.appointmentquest.com.

Appointment-plus: Mobile means business: **Manage** your appointments on the go with our mobile apps for Apple and Android. Attached to December 12, 2012 Office Action, p.6.
www.appointment-plus.com.

UIC University of Illinois at Chicago: Medical Practice Management Software: Medical Practice Management Software is used to **manage** the everyday activities in a hospital or other such institutions. This software helps to maintain patient records, schedule appointments, write prescriptions, generate reports, and some even provide insurance details. Attached to December 12, 2012 Office Action, p.8.
<http://healthinformatics.uic.edu>

Time Center: Top 3 reasons for web based appointment scheduling:

² Merriam-Webster Online Dictionary (11th ed. 2008); www.merriam-webster.com. The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596, (TTAB 1982) *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

2. No more playing phone tag: You and your customer will not get interrupted by the phone ringing your ears off. Your staff can devote their entire attention to the customers while TimeCenter **manages** your schedules. Attached to December 12, 2012 Office Action, p11-12. www.timecenter.com.

ScheduleOnce: Appointment management software: ScheduleOnce is an appointment management software that can be used to **manage** appointments in multiple scheduling scenarios. Attached to December 12, 2012 Office Action, p. 21. www.scheduleonce.com.

Appointy - Appointment Scheduling Software: Here are examples of how some of our customers are using Appointy:
A salon, which have [sic] 5 staff and performs 20 services, accepts appointments from their clients 24X7X365. They accept partial payments at the time of booking. All of their staff can login and **manage** their appointments. They use it as a Point of Sale software. They generate receipts, send thank you SMS and email and ask their client to rate their services. Attached to December 12, 2012 Office Action, p. 28-29. www.google.com/enterprise/marketplace

Chiro QuickCharts: QuickCharts Practice Management Software for Chiropractors: Appointment Scheduler - Create, edit and **manage** appointments for all the practitioners in your office. Sort by doctor or by treatment area and easily schedule multiple appointments in advance. Attached to December 12, 2012 Office Action, p.35/40. www.quick-charts.com.

Applicant argues that the mark is not descriptive despite that competitors may use it in "ordinary English uses." (appl's brief at 8). Rather, applicant argues that the mark has only "vague aspirational significance." *Id.* However, the third party uses indicate otherwise.

The primary purposes for refusing registration of a merely descriptive mark include "(1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) 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." *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). There are multiple instances in the record of software being touted as a tool to "manage" scheduling and appointment-keeping for professionals. Accordingly, we have no doubt that applicant's applied-for mark conveys information about the goods and services in its application and that consumers would understand it as such. We affirm the refusal to register based on Section 2(e)(1) for the goods and services in both classes.

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