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

Proceeding	85935508
Applicant	Outdoorlink, Inc.
Applied for Mark	SMART LINK SYSTEMS
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Date	10/15/2018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of

Outdoorlink, Inc.

For: SMART LINK SYSTEMS and Design

Serial No. 85/935508

Filed: May 17, 2013

Trademark Law Office: 110

Examining Attorney: Sara N. Benjamin

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT'S REPLY BRIEF

ARGUMENT

In the Examining Attorney's Appeal Brief filed on September 24, 2018, the Examiner alleges that "the specimen simply do not support monitoring activities which involve the applicant actively watching, keeping track of, or check billboards for the benefit of third parties." For at least the reasons set forth in Applicant's Appeal Brief filed on August 10, 2018, Applicant respectfully traverses this allegation and contends that Applicant's services involve "watching, keeping track of, or check(ing) billboards for the benefit of third parties." Applicant fails to see, in particular, how the functionality performed by the "Smartlink™ Servers" clearly advertised in the specimen do not at least "keep track of" the billboard advertisements of its customers. In this regard, as explained in Applicant's Appeal Brief, the specimen clearly shows that "Smartlink™ Servers" are used to provide images to Applicant's customers and one of the bullet points of the substitute specimen reads "Stored images in SmartLink™ System." Thus, it is clear that the advertised system is doing more than just sending images of billboard advertisement in real-time. As shown by the substitute specimen, the advertised system is storing the images in the "Smartlink™ Servers" thereby defining a history of the advertisements over time, and Applicant's customers may access those images at any time, thereby assisting them in confirming compliance with contractual terms related to advertising dates. Applicant fails to see how creating and maintaining such a history of stored images is not at least "keeping track of" the billboard advertisements for the benefit of its customers.

Moreover, it is clear from the substitute specimen that Applicant is not simply selling equipment to its customers who then use the equipment to monitor the billboard advertisements free of any services from Applicant, as the Examiner seems to be arguing. Such a hypothetical

solution would not require the use of "Smartlink™ Servers" that are clearly depicted in the substitute specimen.

In arguing her position in the Examining Attorney's Appeal Brief, the Examiner has attempted to deprecate Applicant's services as being "ancillary and merely part of the system sold by the applicant." First of all, it is irrelevant whether the Applicant provides or sells equipment to its customers. Indeed, it is common for service providers to sometimes provide equipment as part of a service offering. As an example, a provider of a cellular service may provide or sell a cellular telephone to its customers. In such a situation, the service provider may file for trademark protection in a goods class for cell phones and a service class for cellular service. In the instant case, if Applicant is providing equipment to its customers, it would similarly have the right to file for trademark protection in a goods class, but this does not preclude Applicant from also filing in a services class if a service is also being offered. Moreover, the "SmartLink System" advertised in the specimen clearly includes the services provided through the "Smartlink™ Servers" even it is assumed for the sake of argument that various components of such system are also sold or otherwise provided to customers. That is, the fact that customers may receive components of the "SmartLink System" does not change the fact that the specimen shows Applicant is providing a service through its "Smartlink™ Servers".

In addition, Applicant traverses the Examiner's characterization of its services being "ancillary." Indeed, the monitoring of billboard advertisements performed by the "Smartlink™ Servers" goes to the heart of the "Transparency" so advertised in the specimen. However, even it is assumed for the sake of argument that Applicant's services are "ancillary" as alleged by the Examiner, Applicant notes that the Examiner has not cited to any support in the law or proffered any reason why an "ancillary" service is not entitled to registration. Moreover, Applicant's

services (for which its customers pay a monthly subscription fee) are correctly described by its description and are advertised by the specimen, which is all that is required for the substitute specimen to be accepted.

Respectfully Submitted,

Maynard, Cooper & Gale, P.C.

By

Jon E. Holland
Attorney for Applicant