

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 28, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re ServiceNow, Inc.*  
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Serial No. 86474833  
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Molly B. Markley of Young Basile Hanlon & MacFarlane P.C.,  
for ServiceNow, Inc.

Howard B. Levine, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

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Before Cataldo, Shaw and Greenbaum,  
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

ServiceNow, Inc. (“Applicant”) seeks registration on the Principal Register of CREATORCON (in standard characters) as a mark for “Arranging and conducting business conferences for software development,” in International Class 35.<sup>1</sup>

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that

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<sup>1</sup> Application Serial No. 86474833 was filed on December 9, 2014 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an intent to use the mark in commerce. Applicant filed an Amendment to Allege use on September 18, 2015 which was accepted by the Examining Attorney.

CREATORCON is merely descriptive of the identified services. When the refusal under Section 2(e)(1) was made final, Applicant appealed and requested reconsideration.<sup>2</sup> The Examining Attorney denied the request for reconsideration and the appeal resumed. The case is fully briefed. We reverse the refusal to register.

I. Mere Descriptiveness under Section 2(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 Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). Moreover, in order to be descriptive, the term must immediately convey information as to the qualities, features or characteristics of the goods with a “degree of particularity.” *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978); *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972). *See also, In re Entenmann’s Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990)

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<sup>2</sup> Applicant, in its request for reconsideration and its brief, seeks registration on the Supplemental Register in the event the Board affirms the refusal to register. 5 TTABVUE 3 and 8 TTABVUE 8. Since we reverse the refusal to register, the request is moot.

## II. Arguments and Evidence

The Examining Attorney contends that CREATORCON “merely describes the characteristics of the services.”<sup>3</sup> A dictionary definition submitted by the Examining Attorney defines “creator” as “one that creates.”<sup>4</sup> In addition, the Examining Attorney submitted, *inter alia*, news articles and web pages from the Internet showing use of the term “creator” in connection with software development. The following examples are representative:<sup>5</sup>

- A Yahoo! News article referencing John McAfee as “the reclusive anti-virus software creator. . .”
- A Financial Tribune article featuring the headline “Call For Full Protection of Computer Software Creators.”
- A Stanford University online text entitled “Open Source Primer for Stanford Software Creators.”
- An article abstract concerning healthcare professionals who create software used in physical therapy – “Rehabilitation Therapists as Software Creators?”
- A release from NOVADYS® referring to their entire business concern as “one of the top 250 software creators. . .”
- A Malstrom’s Articles News blog entry entitled “App software creators make no money.”
- A news release from PCDJ mentioning themselves as “Karaoke/DJ software creators.”

From this, the Examining Attorney argues: “Overall, the evidence supports the conclusion that within the computer software development industry, the term CREATOR is used to refer to people who create software.”

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<sup>3</sup> Examining Attorney’s Br., p. 2; 10 TTABVUE 3.

<sup>4</sup> American Heritage Dictionary, Office Action of February 20, 2015, p. 5.

<sup>5</sup> Office Action of August 25, 2015.

Regarding the meaning of the term “con,” the Examining Attorney contends that it is an abbreviation for “convention.” In support, the Examining Attorney submitted, *inter alia*, an excerpt from acronymfinder.com showing that “CON stands for convention,”<sup>6</sup> as well as a number of Internet web pages for conventions such as Gen Con, Comic-Con, New York Comic Con, Walker Stalker Con, VividCon, Brony Con, and BrittanaCon. The Examining Attorney thus contends that when CREATOR and CON are combined, “[t]he commercial impression imparted by the mark as a whole is that the ‘arranging and conducting business conferences for software development’ services feature a conference or convention for creators of software.”<sup>7</sup>

We agree with the Examining Attorney that “con” is an abbreviation for “convention” and is descriptive of Applicant’s services. Applicant argues that “con” is not descriptive of its services because Applicant conducts conferences, not conventions, but we do not find this argument to be persuasive. The record establishes that “con” is an abbreviation for convention. The meanings of “convention” and “conference” are so similar that the Oxford Dictionary defines “convention” as “a large meeting or *conference* . . .”<sup>8</sup> Indeed, Applicant’s own evidence of third-party registrations comprising “-con” formative marks, discussed *infra*, establishes that “con” appears in marks used in connection with both conventions and conferences.

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<sup>6</sup> Office Action of February 20, 2015, p. 2.

<sup>7</sup> Examining Attorney’s Br., p. 6; 10 TTABVUE 7.

<sup>8</sup> <https://en.oxforddictionaries.com> (emphasis added). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 213 USPQ 594 (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).

We do not find the evidence regarding the descriptive nature of CREATOR to be as clear-cut. Applicant argues that CREATOR is suggestive of its services because the “computer industry does not normally refer to [computer programmers or software developers] as CREATORS. . . .”<sup>9</sup> In support, Applicant cites a Wikipedia entry titled “Software developer” which provides a brief overview of the duties of a software developer and the software industry.<sup>10</sup> We recognize that the Examining Attorney has made of record a number of stories regarding “software creators,” but we find that these articles appear to use the term “creator” in a general, conversational sense rather than as a more technical term such as “developer” or “programmer.” “Creator” in Applicant’s mark, therefore, has a less specific, more general meaning not necessarily limited to the software industry. It conveys a broader meaning suggesting anyone who creates something, i.e., artists, authors, business people, etc. We agree with Applicant that, taken together, “[t]he terms “creator” and “con” generate an idea of several characteristics of Applicant’s services, but do not convey an immediate and clear description of any one.”<sup>11</sup> Accordingly, we find that CREATORCON lacks the “degree of particularity” necessary to be merely descriptive of Applicant’s services. *In re TMS Corp.*, 200 USPQ at 59.

Our finding that CREATORCON is not merely descriptive is buttressed by the Office’s treatment of similar marks for similar convention or conference services.

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<sup>9</sup> Applicant’s Reply Br., p. 2; 11 TTABVUE 2.

<sup>10</sup> Applicant’s response of July 30, 2015, pp. 2-5.

<sup>11</sup> Applicant’s Br., p. 5; 8 TTABVUE 5.

Applicant submitted copies of six registrations for “-con” formative marks used in connection with conventions and conferences:<sup>12</sup>

<b>Reg. No.</b>	<b>Mark</b>	<b>Services</b>
4371914	CookieCon	Conducting entertainment exhibitions in the nature of cookie decorating conventions and shows
3989937	RollerCon	Organizing, arranging, and conducting roller derby conventions featuring classes, seminars, exhibitions, bouts and social events
3900616	FailCon	Educational services, namely, providing a conference on business and industry failures and how to recover
2989132	GLAMOURCON	Providing conferences in the field of glamour and pin-up art, photography, memorabilia and collectibles
1635679	DISKCON	Arranging and conducting trade shows and conferences in the field of disks and the disk drive industry
2217096	COSTUME-CON	Arranging and conducting conferences in the field of designing and constructing fantasy, historical and science fiction clothing

While third-party registrations are not conclusive on the question of mere descriptiveness, we view this registration evidence as favoring Applicant’s position that CREATORCON is suggestive. *See In re Waverly Inc.*, 27 USPQ2d 1620, 1623 (TTAB 1993), *quoting In re Women’s Publishing Co., Inc.*, 23 USPQ2d 1876, 1878 (TTAB 1992) (“While superficially it may be easy to dismiss these [similar third-party] registrations, as we often do, on the basis that the records of these registrations are not before us and that each case must be decided on its own merits, it certainly does appear that the Office has in the past taken a different position with respect to marks of the nature of applicant’s.”).

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<sup>12</sup> Applicant’s response of July 30, 2015, pp. 24-34.

### III. Conclusion

For the foregoing reasons, we conclude that the proposed mark CREATORCON is not merely descriptive of Applicant services.

***Decision:*** The refusal to register Applicant's mark CREATORCON under Section 2(e)(1) of the Trademark Act is reversed.