

Hearing Date:
June 15, 2000

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Strategic Weather Services, L.P.**

Serial Nos. 75/196,406 & 75/196,905

Rachel L. Brendzel of Blank Rome Comisky & McCauley LLP for
Strategic Weather Services, L.P.

Paula Mays, Trademark Examining Attorney, Law Office 114
(**Margaret Le**, Managing Attorney).

Before **Simms**, Quinn and Rogers, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Strategic Weather Services, L.P. (applicant), a
Pennsylvania limited partnership, has appealed from the
final refusals of the Trademark Examining Attorney to
register the marks THE GLOBAL WEATHER NETWORK and THE BEST
WEATHER FORECAST ON EARTH for the following services:

providing short and long range weather
information services particularly for event
planning provided via a global computer network,
television, cable, fax and telephone and computer

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services, namely, providing access to an interactive Web site in the weather field.¹

The Examining Attorney has refused registration in each case under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's marks are merely descriptive of applicant's services. Applicant and the Examining Attorney have submitted briefs and an oral hearing was held.

We affirm the refusals in both cases.

Serial No. 75/196,905--THE GLOBAL WEATHER NETWORK

The Examining Attorney argues that applicant's asserted mark merely describes the subject matter, characteristic or feature of applicant's services of providing weather information from around the world, or providing weather information to a global audience, by means of computer or other communications networks. The Examining Attorney has relied upon dictionary definitions of the words comprising applicant's mark, including definitions of the word "global" as meaning "Of, pertaining to, or involving the entire earth: WORLDWIDE" and of the word "network" as meaning "A chain of interconnected broadcasting stations, usu. sharing a large proportion of their programs <a TV network>." Webster's II New Riverside

¹ Application Serial Nos. 75/196,905 and 75/196,406, both filed November 12, 1996, based upon applicant's allegations of a bona fide intention to use the marks in commerce.

University Dictionary (1994 edition). The Examining Attorney argues that, whether applicant's mark is interpreted as providing weather information by means of a communications network accessible on a global basis, or as indicating that applicant's weather information services concern weather conditions from around the world, either meaning is merely descriptive of applicant's services. The Examining Attorney contends that no thought, imagination or perception is required to determine the nature of applicant's services. Rather, the Examining Attorney argues that the significance of applicant's mark is readily apparent because the mark clearly indicates that applicant provides either global weather information by means of a communications network or that applicant provides weather information by means of a communications network accessible on a global basis. Such an asserted mark, according to the Examining Attorney, is not a source identifier.

The Examining Attorney has submitted articles from the Nexis computer search system. However, because almost all of these articles are from foreign publications or from newswire services, we have given very little weight to this

evidence. See *In re Urbano*, 51 USPQ2d 1776, 1778 fn. 3 (TTAB 1999).²

Applicant, a private weather company specializing in long-range weather forecasting, contends that, while an argument may be made that the components of its mark are merely descriptive, the mark as a whole is not. Rather, applicant contends that the entire phrase is "unique and arbitrary" (Response, filed August 27, 1998, p.5) or that it is a suggestive phrase because imagination, thought and perception is required in order to determine the nature of applicant's services. According to applicant, consumers do not immediately know the nature of applicant's services. Applicant contends that mental pause is necessary in order to understand the nature of applicant's services. Among other reasons for this contention is applicant's argument that its asserted mark is subject to several interpretations--i.e., that applicant is an organization of meteorological offices from around the world, or that applicant operates a network of worldwide broadcast

² We note that in the second Office action, the Examining Attorney issued a requirement for a disclaimer of the word "NETWORK" apart from the mark as shown. This requirement was reiterated in the final refusal but was not repeated in the Examining Attorney's denial of applicant's request for reconsideration. Nor was the requirement for a disclaimer mentioned in the Examining Attorney's appeal brief, other than in summarizing the factual history of this case. See TMEP §§1106.09

stations, or that applicant's weather information services are accessed globally. Applicant contends that "[its] service is a 'network' only in a fanciful, broad sense that it is available thought [sic] the Internet, which is sometimes likened to a 'network'." Response, filed August 27, 1998, p.6. Applicant asserts that it does not own a network of television stations. Finally, applicant argues that there is no evidence of third-party use of its mark and that registration to applicant will not impair competitors. Any doubt concerning mere descriptiveness should be resolved, according to applicant, in its favor.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's asserted mark THE GLOBAL WEATHER NETWORK is merely descriptive of applicant's weather information services. Of course, the Board may look at the individual components of an asserted mark and discuss their descriptive connotations in the context of determining the mere descriptiveness of an entire phrase. See *In re Hester Industries, Inc.*, 230 USPQ 797 (TTAB 1996). We believe that the public, upon seeing applicant's asserted mark, and considering it in its entirety in connection with

and 1501.02. Accordingly, we agree with applicant that this requirement must be considered to have been withdrawn.

applicant's services, is immediately apprised of the nature of applicant's services. The services are available around the world (i.e., globally) because they are provided via an interactive Web site,³ and the Web site features a "network" or linked collection of sources of weather information. No imagination or thought is necessary to determine the nature of applicant's services.

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It is the Examining Attorney's position that this asserted mark is a phrase which merely describes, in a laudatory sense, a feature or characteristic of applicant's weather information services. Because the asserted mark attributes only quality or excellence to applicant's services, it does not function as a source identifier,

³ We take judicial notice of the following dictionary definition, which illustrates that "Web," in the context in which it is used by applicant in its identification of services, is a shorthand reference for the "World Wide Web."

Web See *World Wide Web*.
The Computer Glossary The Complete Illustrated Dictionary 462 (8th ed. 1998)

World Wide Web The largest collection of online information in the World. The Web is an Internet facility that has become synonymous with the Interent [sic]. Its foundation is the HTML document, which contains links (URLs) to other documents on the same Web server or on servers anywhere in the world. The Web uses the HTTP protocol to download Web pages to a browser...
...[T]he Web is turning into "the" worldwide information system for education, research, entertainment and commerce.
The Computer Glossary The Complete Illustrated Dictionary 470 (8th ed. 1998)

according to the Examining Attorney. No imagination or thought is needed in order to discern the nature of applicant's services. Rather, the Examining Attorney argues, the asserted mark indicates nothing but the superior quality of applicant's services.

The Examining Attorney has relied upon dictionary definitions and articles from the Nexis computer database showing some use of the phrase "best weather forecast(s)." To the extent that these articles appeared in foreign publications, they have been discounted. See *Urbano*, supra.

Applicant, on the other hand, argues that the asserted mark is a "unique and unitary phrase" (Request for Reconsideration, filed August 27, 1998, p.3, and applicant's appeal brief, p.13) and that it is suggestive because imagination, thought and perception is required in order to determine the nature of applicant's services. Applicant argues that its asserted mark is not in the dictionary and that it is not in common parlance for weather informational services. According to applicant, no third parties are using this expression and competitors are not inhibited by applicant's use or registration. Applicant also argues that the standard for evaluating the registrability of slogans is "slightly different" from that

for evaluating conventional trademarks if the slogan is displayed separate and apart from other matter. Applicant concludes that the asserted mark is not merely descriptive of applicant's services of providing specialized, long-range weather reports for use in specific industries.

We have carefully considered applicant's arguments but believe that the asserted mark is merely descriptive of applicant's services in a laudatory way. First, applicant has cited no specific authority indicating that slogans should be evaluated differently from other trademarks. The cases that applicant cited, such as *In re Hallicrafters Company*, 153 USPQ 376 (TTAB 1967) (QUALITY THROUGH CRAFTSMANSHIP held to function as a trademark) and *In re Sottile*, 156 USPQ 655 (TTAB 1968) (YOUR FINANCIAL SECURITY IS OUR BUSINESS held suggestive and not merely descriptive) are distinguishable from the asserted mark.

Marks which are merely laudatory and descriptive of the merit of a product or service are regarded as being merely descriptive. 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §11:17 (4th ed. 1996). Here, the phrase THE BEST WEATHER FORECAST ON EARTH is highly descriptive of a feature of applicant's services. What the Court of Appeals for the Federal Circuit recently stated in *In re Boston Beer Co. LP*, 53 USPQ2d 1056 (1999),

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involving the asserted mark THE BEST BEER IN AMERICA, is
equally applicable to this case:

As in this case, a phrase or slogan can be so highly laudatory and descriptive as to be incapable of acquiring distinctiveness as a trademark. The proposed mark is a common, laudatory advertising phrase which is merely descriptive of Boston Beer's goods. Indeed, it is so highly laudatory and descriptive of the qualities of its product that the slogan does not and could not function as a trademark to distinguish Boston Beer's goods and serve as an indication of origin.

See also In re Wilewood, Inc., 201 USPQ 400 (TTAB 1978)
(AMERICA'S BEST POPCORN! and AMERICA'S FAVORITE POPCORN!)

Decision: The refusal to register in both cases is affirmed.

R. L. Simms

T. J. Quinn

G. F. Rogers
Administrative Trademark
Judges, Trademark Trial
and Appeal Board