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**THIS DISPOSITION
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Paper No. 11
RLS/TLC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Calcar Advertising Inc.

Serial No. 75/359,413

Daniel M. Cavanagh of Christie Parker & Hale LLP for Calcar Advertising Inc.

Karla Perkins, Trademark Examining Attorney, Law Office 102 (Thomas Shaw, Managing Attorney).

Before Simms, Cissel and Hanak, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Calcar Advertising Inc. (applicant), a California corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark 911 DIGITAL REQUEST for the service of the electronic transmission of emergency service requests containing latitude and longitude information and personalized data to a global computer network.¹

¹ Application Serial No. 75/359,413, filed September 18, 1997, based upon applicant's allegation of a bona fide intention to use the mark in commerce.

The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's mark merely describes the feature, characteristic or function of applicant's electronic transmission of emergency requests. Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

We affirm.

We note initially that the Examining Attorney also required a disclaimer of the word "DIGITAL," which applicant submitted. However, in the next Office action, while continuing the refusal under Section 2(e)(1), the Examining Attorney stated that the disclaimer was "unnecessary." Accordingly, applicant withdrew the disclaimer. Thus, the issue of a disclaimer of part of the mark is not before us.

Relying upon excerpts from the Nexis computer search system as well as dictionary definitions,² the Examining Attorney argues that "911" is synonymous with emergency

² These dictionary definitions were submitted with the Examining Attorney's brief. The Examining Attorney requests that the Board take judicial notice of these definitions. We shall do so. See *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). One of these definitions of "911" indicates that it is a noun meaning "an emergency [US telephone code for emergencies, the equivalent of the UK 999]. The Cassell Dictionary of Slang (1998).

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service and that applicant's proposed service involves the transmission of emergency requests. Because applicant's service involves the transmission of emergency service requests in electronic or digital form, the Examining Attorney contends that applicant's mark literally means emergency digital requests. The Examining Attorney contends that no imagination is needed to determine from the proposed mark what the attributes of applicant's services are and that, even though one might not know from applicant's mark that applicant's service involve the transmission of data concerning latitude and longitude, applicant's mark is nevertheless merely descriptive. In this regard, the Examining Attorney contends that a mark need not describe every feature or aspect of a service in order for it to be merely descriptive.

Although much of the Examining Attorney's evidence from the Nexis database involves stories of people dialing (or pressing) the number 911, there are also the following excerpts, showing that 911 is used to refer to an emergency operation:

Cops showed up after Aracelis Pizarro made four calls to 911, reporting that her husband had put a gun to her head and hit her with a bag containing two 40-ounce beer bottles.

The New York Post, January 31, 2000

Firefighters were called to the man's trailer home in Virginia Township about 4:47 a.m. after receiving a 911 call that a trailer was on fire.

The Columbus Dispatch, January 30, 2000

When deputies arrived they found a crowd estimated at 150 people nearby. However, no one, including the anonymous person who alerted 911, was willing to come forward to tell deputies what happened...

Press Journal, January 23, 2000

It is applicant's position that, at most, its mark only suggests the nature and class of applicant's services. Initially, applicant argued that a consumer would automatically associate its mark with services related to getting emergency assistance by dialing 911, but that applicant's services are not related to the emergency service accessed by dialing 911. Subsequently, applicant argued that, by using its services, a user may simply press only one button on a cell phone or a laptop computer to send a signal to an emergency service that forwards the user's longitude and latitude and other information to an emergency service. Applicant states that its service does not actually electronically submit the emergency service request. Instead, the user initiates the transmission requesting assistance. Applicant argues that the mark does

not describe what the service actually is, but only how the user can make use of applicant's services. According to applicant, under the Examining Attorney's reasoning, the mark at most describes a single feature of its services. However, applicant maintains that the mark is not merely descriptive because it requires a degree of imagination or reasoning in order to determine from the mark precisely what characteristics applicant's services possess--the transmission of latitude and longitude information as well as other personal information. Applicant requests that we resolve any doubts on the issue of descriptiveness of its asserted mark 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 is merely descriptive of its services. Applicant's services involve the electronic or digital transmission of emergency requests. The asserted mark 911 DIGITAL REQUEST merely describes the fact that applicant's service involves the digital transmission of emergency requests. While it is true that applicant's mark does not describe all of the details of applicant's services, such as the fact that its service will transmit latitude and longitude information as well as other data, the mark is merely descriptive of the

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essential feature or characteristic of applicant's services. That is to say, the mark describes the feature that applicant's service involves the transmission of digital requests for emergency service.

The cases applicant has cited, such as those involving the marks DRIVING FORCE and AIR-CARE, are distinguishable. Those marks involved suggestive elements not possessed in applicant's mark.

Decision: The refusal of registration is affirmed.