

5/29/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 11
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re WyldFyre Technologies, Inc.

Serial No. 75/659,987

Jason E. Lavender of Foley & Lardner for WyldFyre
Technologies, Inc.

Kevon L. Chisolm, Trademark Examining Attorney, Law Office
103 (Dan Vavonese, Acting Managing Attorney).

Before Hairston, Walters and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On March 15, 1999, WyldFyre Technologies, Inc.
(applicant) filed a trademark application to register the
mark REALTYLINK (typed drawing) for goods and services
identified as:

"Computer software used to obtain real estate products
and services electronically in connection with
managing the real estate closing process" in
International Class 9, and

"real estate services, namely services to facilitate
and monitor the real estate closing process and the

ordering and delivery of real estate products and services for others" in International Class 36.¹

The Examining Attorney refused to register the mark on the ground that the mark, when applied to the goods and services, is merely descriptive. 15 U.S.C. § 1052(e)(1). After the Examining Attorney made the refusal final, applicant filed a notice of appeal. Both applicant and the Examining Attorney have filed briefs, but applicant did not request an oral hearing.

We affirm the Examining Attorney's refusal to register.

The Examining Attorney's position is that the mark "is merely descriptive of applicant's goods and services because it identifies a feature, function and purpose of the goods and services; they are used for connecting to the global computer network to obtain real estate products and services." Brief, p. 3. The Examining Attorney relies on dictionary definitions that define "realty" as "real estate" and "link" in data management as "a pointer embedded within a record that refers to data or the

¹ Serial No. 75/659,987. Applicant originally claimed a date of first use and first use in commerce of April 3, 1993. However, on March 14, 2000, applicant amended the application to request registration under Section 1(b) of the Trademark Act alleging a bona fide intent to use the mark in commerce. See "Trademark Law Treaty Implementation Act Changes," 64 FR 48899 (September 8, 1999); Exam Guide No. 3-99 (October 30, 1999), § III.C.5.

location of data in another record." In addition, the Examining Attorney submitted evidence from LEXIS/NEXIS articles showing numerous uses of the term "real estate links"; from third-party registrations in which the terms "realty" and "link" have been disclaimed; and from applicant's website showing how applicant describes its goods and services. The Examining Attorney, therefore, concluded that the term REALTYLINK was merely descriptive for applicant's goods and services.

In response to this refusal, applicant argues that its mark "fails to convey an immediate idea of the qualities or characteristics of the goods and services provided by Applicant and at the same time requires imagination, thought and perception to identify the nature of the goods and services conveyed by the Applicant's Mark." Brief, p. 3. While applicant admits that "consumers can reasonably conclude that the Applicant is involved in real estate" and that it is "involved in assisting buyers in finding a home and assisting homeowners in listing their homes for sale," they "would fail to capture the true essence and purpose of Applicant's business." Brief, pp. 4-5. Furthermore, the main purpose of its services, applicant asserts, is not the ordering of real estate services, but rather the management of the entire real estate transaction process. Therefore,

applicant contends that its mark does not immediately convey the nature of the goods and services, and it is not merely descriptive.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). A term may be held descriptive even if it only describes one of the qualities or properties of the goods or services. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 588 F.2d at 814, 200 USPQ at 218.

The Examining Attorney's evidence demonstrates that the term REALTYLINK is descriptive of a significant feature of applicant's goods and services. "Realty" is another term for real estate.² Applicant admits that consumers can reasonably conclude that applicant is involved in real estate. Applicant's Appeal Brief, p. 4. A "link" in computer science is "an identifying term attached to an

² *The American Heritage Dictionary of the English Language, Third Edition* (1992).

element in a system to facilitate connection to other identified elements.”³ Applicant admits that the term “establishes a connection between the real estate industry and an inter-data reference point.” Applicant’s Appeal Brief, p. 4. Applicant further admits that its REALTYLINK goods and services can be used to order real estate services (e.g., termite inspections) and goods (e.g., title and loan documents). In effect, applicant is linking professionals in the real estate industry to other professionals in the real estate industry who provide related goods and services. Applicant’s literature is even more specific:

With direct access to affiliates, you can order the following products and services: Property Profiles, Title & Escrow Documents, Buyer Pre-Qualification, Loan Documents, Property Valuations and Appraisals, Flood reports, Home Warranty Insurance, Homeowner’s Insurance, Property Inspections [and] Property Repairs.

Clearly, applicant prominently promotes how its software links the real estate professional to providers of related real estate goods or services and its services utilize these links established by the software.

Furthermore, the Examining Attorney established that the highly similar term “real estate link” is widely used in the real estate industry.

³ Id.

Mr. Browning said CB plans to transform its web site by January into a web portal, which will provide access to a variety of real estate links and information that users can organize as they wish. *Crain's Cleveland Business*, November 15, 1999, p. M-2.

Among the thousands of real estate links provided at Virtualrelocation.com are state tax departments. *Kiplinger's Personal Finance Magazine*, April 1999, p. 56.

Web Site Offers One-Stop Realty Shopping:

We altered our approach to the top sites to feature geographic areas rather than a single list of the '10' best Web sites. With so many sites and such rapid growth and change, we no longer try to list every real estate link, only those which provide enough useful content. *Pittsburgh Post-Gazette*, August 30, 1998, p. H-9.

HOUSING Check out Third Age's real-estate links (www.thirdage.com/realestate). *Business Week*, July 20, 1998, p. 94.

ULI is a nationwide organization of developers that provides highly respected educational conferences, and now conveys information through over 1,000 real estate links that have been tagged with search words. *Real Estate Weekly*, June 24, 1998, p. 1.

A better route, however, is to begin your search directly with a catalog of real estate links, the best of which is the International Real Estate Directory. *Chicago Tribune*, January 30, 1997, p. C7.

You might want to advertise your site's address, or URL (Uniform Resource Locator) with any number of real estate link directories. *Journal of Property Management*, May 1996, p. 40.

Area Realtors find a home on the Net:

[Http://www.pwcweb.com/comm/realest/radke/](http://www.pwcweb.com/comm/realest/radke/) - Dan Radke, RE/MAX Olympic Realty - commercial and residential real estate link to Manassas and Prince William County. *Washington Times*, April 12, 1996, p. F1.

Check the real estate links if you're ready to sell.
Sunset, July 1, 1999, p. 129.

A review of all of the Examining Attorney's evidence clearly shows that the terms "realty," "real estate," and "link" are individually descriptive of applicant's goods and services. However, we must determine if the mark in its entirety is descriptive of the goods or services because when combined, the terms may not be merely descriptive. In this case, the evidence demonstrates that when the words are combined, they remain descriptive. The widespread use of the term "real estate links" supports the conclusion that when prospective purchasers encounter the term "REALTYLINK," which has the identical meaning as "real estate link," they would likewise believe that it is descriptive of applicant's goods and services.

While applicant argues that it would require "imagination, thought and perception to reach a conclusion as to the nature of the services" (Applicant's Appeal Brief, p. 3), the test of whether a mark is descriptive is not conducted in the abstract. We must consider descriptiveness in relation to the particular goods or services for which registration is sought. Abcor, 588 F.2d at 814, 200 USPQ at 218. Therefore, the question is whether the term REALTYLINK is descriptive for computer

software used to obtain real estate products and services electronically in connection with managing the real estate closing process and real estate services, namely services to facilitate and monitor the real estate closing process and the ordering and delivery of real estate products and services for others. Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959); Gyulay, 820 F.2d at 1217, 3 USPQ2d at 1009. While applicant argues that ordering real estate services and products is not the main purpose of applicant's software and services, it is clear that it is a significant feature of them. Indeed, applicant's identification of goods and services highlights the importance of this feature ("software used to obtain real estate products and services electronically" and services to facilitate "the ordering and delivery of real estate products and services"). Furthermore, applicant's literature identifies six features or functions of its software: "Open and Monitor Transactions," "Order Products and Services," "Order and Receive Documents," "Schedule Tasks and Meetings," "View and Update Project Calendars," and "Send and Receive Intelligent E-Mail." Applicant's

prominent discussion of the "Order Products and Services" and "Order and Receive Documents" features of its software demonstrates that the real estate or realty links of its goods and services are a significant feature. As such, the words, REALTY and LINK, are merely descriptive of applicant's services. The fact that applicant joins the words without a space does not change the commercial impression and does not change the descriptiveness of the terms. See Abcor, 200 USPQ at 218. Therefore, we conclude that when the terms are combined, they create a mark that is merely descriptive of the goods and services set forth in the application.

Decision: The Examining Attorney's refusal to register the mark REALTYLINK on the ground that it is merely descriptive of the involved goods and services is affirmed.