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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Geektech, Inc.

Serial No. 75/671,647

Kristi Adair Zintner of Fafinski Wallrich & Crema PLLC for
Geektech, Inc.

John D. Rodriguez, Trademark Examining Attorney, Law Office 112
(Janice O'Lear, Managing Attorney).

Before Simms, Cissel and Hohein, Administrative Trademark Judges.
Opinion by Hohein, Administrative Trademark Judge:

Geektech, Inc. has filed an application to register the
term "LIVETEEN.COM" as a service mark for, inter alia, "providing
websites on global computer networks featuring information in the
field of adult entertainment" in International Class 41.¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis

¹ Ser. No. 75/671,647, filed on March 31, 1999, which alleges a date of
first use anywhere and first use in commerce of September 12, 1997. As
amended, registration of such term as a service mark is also sought for
"electronic billboard advertising; dissemination of advertising for
others via an on-line electronic communications network; [and]
providing a web page of information related to advertising" in
International Class 35.

that, when used in connection with such services, the term "LIVETEEN.COM" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is

not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, by way of background, asserts in its brief that "LIVETEEN.COM is an entertainment website that features a variety of adult content material available for customers through many different medium." According to applicant:

This website features thousands of adult content pictures, thousands of adult content video transmissions, adult content e-mail communications, adult content chat rooms, [and] written and audio adult content genre stories for the customers['] view. What sets this website apart from other adult content websites is that this website features young adult women in its entertainment materials, rather than women of all ages.

Applicant argues, in view thereof, that "LIVETEEN.COM is entitled to registration on the Principal Register, [inasmuch] as it is suggestive as to what ... services a consumer may find within" its website. In particular, applicant insists that "[i]t takes a creative mind to determine that the Mark connotes an adult content entertainment website" because "[o]ne's initial reaction may lead one to believe that the content on the website deals with teenage issues, or is a live video feed produced by teens about teen issues." The term "LIVETEEN.COM," applicant further contends, is "so remote and subtle" in its connotation that "it is really not likely to be needed by competitive sellers to describe their goods [or services]." Such competitors, applicant argues, instead "generally use terms such as 'XXX,' 'NUDE,' 'FREE,' 'GIRLS,' 'SEX,' 'UNDERAGE,' 'SEXY', as well as other more explicit terms." Because these "other, more graphic and descriptive terms are available for their use," applicant

urges that the term "LIVETEEN.COM," while "suggesting perhaps [that] a darker side might lie within its web pages," is not merely descriptive of its adult content entertainment websites. Applicant asserts, moreover, that because there is no evidence that any third-parties utilize such term to describe similar goods or services, preferring instead "to use more explicit, derogative and descriptive words such as 'HOT,' 'YOUNG,' 'NUDE,' and 'XXX,'" the term "LIVETEEN.COM" must be considered as being suggestive rather than merely descriptive of its services.

Additionally, applicant maintains that, "when properly viewed as a whole, the Mark does not merely describe the content present on Applicant's adult content." Specifically, while noting that, according to the excerpts of record from The American Heritage Dictionary of the English Language (3d ed. 1992), "[t]he Office has defined 'teen' as a 'teenager' and 'live' as '... broadcast while actually being performed; not taped, filmed or recorded [... a live television program]," applicant contends that:

The sole function of the site is adult entertainment; the site has nothing to do with the literal meaning of the Mark, other than in a suggestive sense of the words. If the website content focused on, for example, teens living in today's society, perhaps a merely descriptive determination would be appropriate. If the website content focused on, for example, a live show featuring teenagers, perhaps a merely descriptive determination would be appropriate. It takes a stretch of the consumer's imagination to envision an adult entertainment website from the words "live" and "teen." At most, the Mark is suggestive of adult content entertainment.

We agree with the Examining Attorney, however, that when considered in its entirety, the combination of the words making up the term "LIVETEEN.COM" is merely descriptive of applicant's services of "providing websites on global computer networks featuring information in the field of adult entertainment" in International Class 41 because such term "immediately conveys to the average consumer of the services the content, subject matter and feature of the services." In particular, relying upon the definitions of record noted above as well as the specimens of use furnished by applicant, the Examining Attorney points out in his brief that:

[T]he applicant's services involve teens (i.e., teenagers) who are actually 'performing' on the website in real-time video, chat rooms and on email. Evidence of teens performing on the website in real-time are phrases such as "PREMIUM PICS AND LIVE VIDEO" as well as "LIVE TEEN VIDEO." Hence, the wording LIVETEEN.COM describes a feature of the applicant's services, namely that teens are performing live on the applicant's website.

Likewise, we observe, the specimens of use submitted by applicant also tout "LIVETEEN.COM" as a website for, *inter alia*, "Amateur TEEN Submissions," "LIVE Video Feeds," "Teen Gallery" and "OVER 1000 TEEN VIDEO FEEDS EXCLUSIVE TO THIS SITE!"

Viewed in such context, we concur with the Examining Attorney that "the mark LIVETEEN.COM is merely descriptive of the content, subject matter and feature of the applicant's services, namely that the applicant's website features and contains live teens." Such term, rather than being "so remote and subtle" as contended by applicant, clearly and immediately informs customers

for its services that they will be able to see, hear and otherwise communicate live with teenagers online. Nothing in such term is ambiguous, incongruous or otherwise requires the use of imagination or the gathering of further information in order for purchasers and potential customers of applicant's services to readily understand that the "young adult women" featured in the "adult content pictures, ... video transmissions, ... e-mail transmissions, ... chat rooms, and ... genre stories" on its website are live teens. Moreover, that competitors of applicant may choose to describe the same or similar services by other, more graphic terms does not mean that the term "LIVETEEN.COM" is not merely descriptive of applicant's services. See, e.g., Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc., 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962). It is also pointed out that even if applicant may be the first or sole user of such term, that would not entitle it to registration thereof where, as here, the term projects only a merely descriptive significance in the context of applicant's services. See, e.g., In re National Shooting Sports Foundation, Inc., 219 USPQ 1081, 1020 (TTAB 1983). In this case, however, there is no evidence of any competitor's use of the term "LIVETEEN.COM" simply because, contrary to applicant's assertion, the record does not contain any evidence of third-party use of such term. Plainly, the absence of evidence with respect thereto is not evidence of absence of use of "LIVETEEN.COM" by applicant's competitors.

Finally, although applicant does not argue otherwise, the Examining Attorney is correct that the term ".COM," which

serves as a top-level domain name in the context of applicant's services, lacks "any source-indicating significance."² See, e.g., 555-1212.com Inc. v. Communication House International Inc., 157 F. Supp. 2d 1084, 59 USPQ2d 1453, 1457-59 (N.D. Cal. 2001) [term "555-1212.com" is merely descriptive of "providing databases featuring telephone and directory information accessible via electronic communication networks" because, "[m]uch like the telephone number '411' for local calls, '555-1212' is the number one would dial (after an area code) to seek out telephone and directory information services outside of one's local area code" and, thus, "[t]o the average consumer, '555-1212.com' would indicate a commercial web site on the Internet which provides similar telephone and directory information"]; and 1 J. McCarthy, McCarthy on Trademarks & Unfair Competition §7:17.1 (4th ed. 2002) at 7-28.1 ["a top level domain ['(TLD)'] indicator [such as '.com'] has no source indicating significance and cannot serve any trademark [or service mark] purpose" and "[t]he same is true of other non-distinctive modifiers used in domain names, such as 'http://www" and "html"; consequently, because "the TLD '.com' functions in the world of cyberspace much

² We judicially notice in this regard that the Microsoft Press Computer Dictionary (3d ed. 1997) defines ".com" in pertinent part as connoting "1. In the Internet's Domain Name System, the top-level domain that identifies addresses operated by commercial organizations. The domain name .com appears as a suffix at the end of the address." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and Marcal Paper Mills, Inc. v. American Can Co., 212 USPQ 852, 860 (TTAB 1981) at n. 7.

like the generic indicators 'Inc.,' 'Co.,' or 'Ltd.' placed after the name of a company," "[a] top level domain indicator like '.com' does not turn an otherwise unregistrable designation into a distinctive, registrable trademark [or service mark]". As a result, the merely descriptive significance of the words "live" and "teen" to form the term "LIVETEEN" is not lost or diminished by the combination thereof with the designation ".COM" to form the term "LIVETEEN.COM." The designation ".COM," being a top level domain name, would instead be regarded as indicating a commercial website by the actual and potential customers of applicant's adult entertainment website services and, therefore, is lacking in service mark significance. See, e.g., In re Martin Container Inc., 65 USPQ2d 1058, 1060 (TTAB 2002) ["CONTAINER.COM" for services of buying, selling and renting metal shipping containers "would immediately indicate a commercial web site on the Internet which provides containers"].

Accordingly, when used in connection with applicant's services of "providing websites on global computer networks featuring information in the field of adult entertainment," the term "LIVETEEN.COM" in its entirety immediately describes, without conjecture or speculation, that a significant content, feature, or subject matter of such services is the live presentation of teenagers. Such term, therefore, is merely descriptive of applicant's services within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.