

**THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB**

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Bucher

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Worldwide Financial Service, Inc.

Serial No. 75832932

Andrew R. Basile of Young & Basile, P.C. for Worldwide  
Financial Service, Inc.

Alicia P. Collins, Trademark Examining Attorney, Law Office  
115 (Tomas Vlcek, Managing Attorney).

Before Seeherman, Bucher and Bottorff, Administrative  
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Worldwide Financial Service, Inc. seeks registration  
on the Principal Register of the mark CLICK OR CALL for  
services recited as "loan financing services, namely,  
mortgage lending services, secured or unsecured loan  
financing services and providing financial advice regarding  
loan financing, all provided via a global computer  
network," in International Class 36.<sup>1</sup>

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<sup>1</sup> Application Serial No. 75832932 was filed on October 27, 1999 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. A Notice of Allowance issued on January 2, 2001, and applicant filed a Statement of Use under 37 C.F.R. §2.88 on May 21, 2001, claiming use anywhere and in commerce at least as early as June 28, 2000.

This case is now before the Board on appeal from the final refusal to register, under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052, 1053 and 1127, based upon the ground that this matter does not function as a service mark for applicant's recited financial services.

Both applicant and the Trademark Examining Attorney have fully briefed the case. Applicant did not request an oral hearing before the Board.

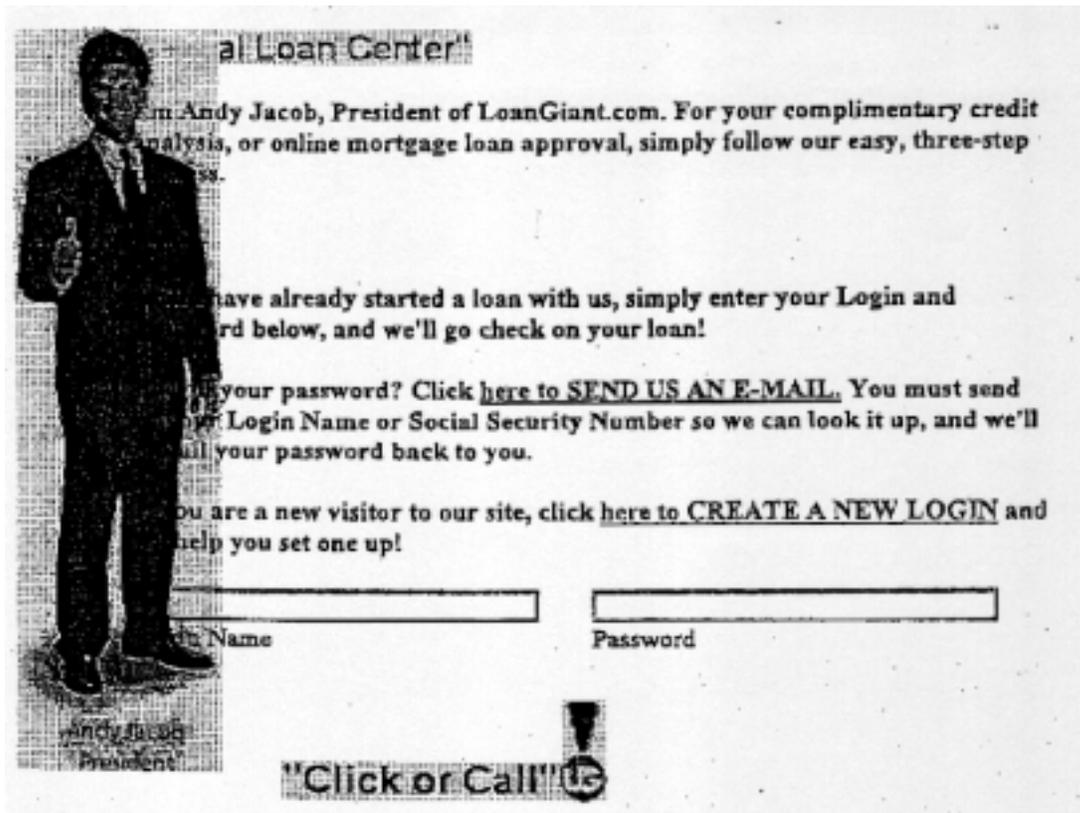
The Trademark Examining Attorney argues that CLICK OR CALL is merely an informational designation using common words employed in their ordinary meaning.

By contrast, applicant argues that it has demonstrated through two examples of use on its webpages that this is not an instructional prompt but rather functions as a source indicator. Applicant argues that this term is "suggestive of a characteristic of the services that sets them apart from other loan financing services," namely "that applicant's loans are easy to obtain, as well as suggesting that the customer can obtain loans in a variety of ways - over the internet or over the telephone."

The original specimen of record filed with the Statement of Use came from applicant's webpage entitled "corporate information and vision." The first line on the page consists entirely of the following wording:

**LoanGiant's "Virtual Loan Center" for the 21st Century - "Click or Call"<sup>SM2</sup>**

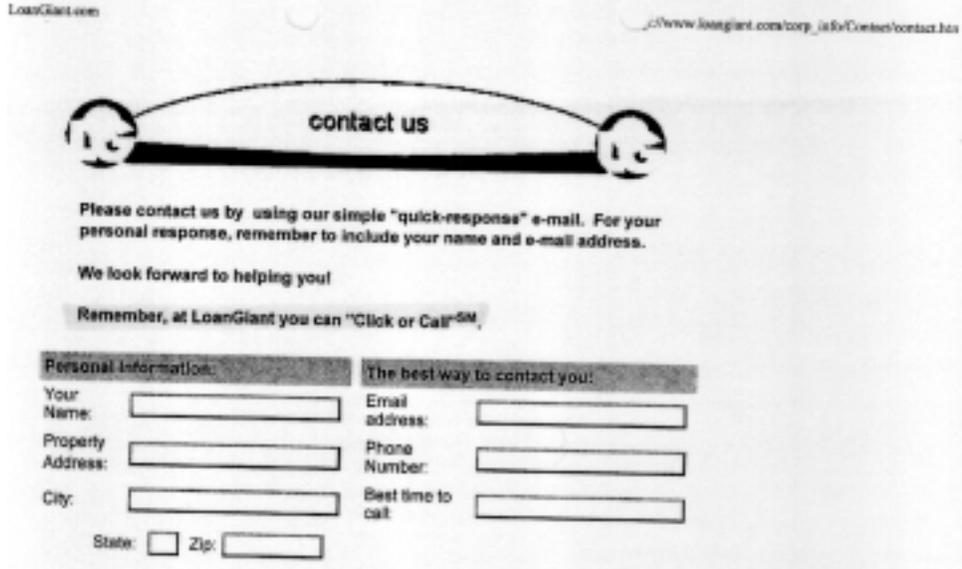
In response to the initial refusal to register, applicant submitted another usage of the term appearing in quotation marks, followed by a large exclamation point, where the dot of the exclamation point contains LoanGiant's corporate logo, the letters "LG":



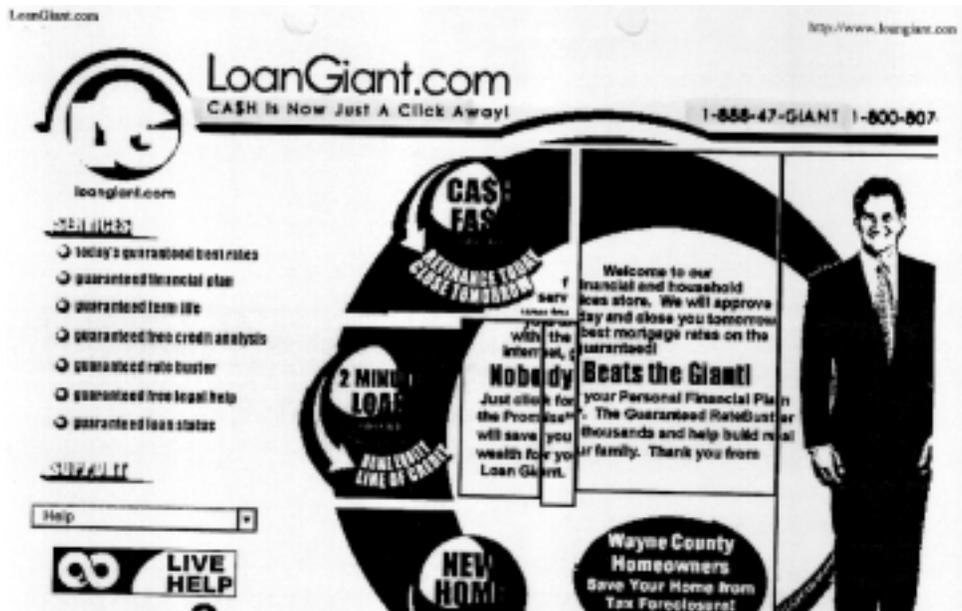
The Trademark Examining Attorney has placed additional excerpts from applicant's webpages into the record. For example, the customer is reminded that "... at LoanGiant you can just 'Click or Call'<sup>SM</sup>." :

<sup>2</sup> [http://www.loangiant.com/corp\\_info/content/c\\_info.html](http://www.loangiant.com/corp_info/content/c_info.html)

<sup>3</sup> <http://www.loangiant.com/application/login.html>



and that **“CA\$H Is Now Just A Click Away!”** :



The Trademark Examining Attorney has also submitted various entries from third-parties' websites as well as from LEXIS/NEXIS stories that use this same term in an informational manner.

Click, or call 1-800-Musicares

Click or call 1-800-656-hope

Click or call 1-800-621-4000 <sup>4</sup>

Headline: Info>>fast moves travel industry closer to its customers with human "click or call" travel information service<sup>5</sup>

Headline: Lowestpremium.com Delivers Complete Front-to-Back End Customer Service: Auto Insurance Shoppers Click or Call to Save Big on Rates <sup>6</sup>

IMAGINE YOUR AD HERE!  
It's just a click or a call away...<sup>7</sup>

Headline: To Fight Cabin Fever, Just Click or Call <sup>8</sup>

Headline: AFFORDABLE LOANS CAN BE JUST A CLICK OR CALL AWAY <sup>9</sup>

We agree with the Trademark Examining Attorney that we are faced with the question of whether the phrase CLICK OR CALL would be perceived as a source indicator or merely as an informational phrase or slogan. See In re Remington Products Inc., 3 USPQ2d 1714, 1715 (TTAB 1987).

It hardly requires a dictionary citation to show that over the past decade, the word "click" has taken on nearly universal significance in connection with the use of computers in general, and particularly when surfing the Internet. Nonetheless, we do take judicial notice of the meaning of this word in the field of "Computer Science":

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<sup>4</sup> <http://members.tripod.com/~keri-lynn1/global.htm>

<sup>5</sup> <http://www.infofast.co.uk/pressdisplay.asp?ID=5>

<sup>6</sup> <http://www.lowestpremium.com/online/about/article.asp?unum=2>

<sup>7</sup> <http://itsgone.com/forsale.htm>

<sup>8</sup> <http://www.emarketer.com>

"To press down and release a button on a pointing device in order to select an item on a display screen or activate a command or function."<sup>10</sup> The term "call" obviously means to place a telephone call.

The critical question in this case is whether the applied-for mark, as used on the specimen of record, will be recognized as an indication of origin for the particular services recited herein by applicant. Whether an asserted mark functions as a service mark depends upon how it is used and how potential purchasers would perceive it. In the Morganroth case, this Board cited to an earlier decision by the Court of Customs and Patent Appeals, to make this very point:

Even though a word, name, symbol, device, or a combination of words may be used in the sale or advertising of services or on or in connection with goods, it is not registrable unless it is used as a mark, namely, in a manner clearly calculated to project to purchasers or prospective purchasers encountering the notation in question in the applicable marketplace environment a single source or origin of the goods or services in question. This is necessarily so because, as stated in In re The Standard Oil Company, 125 USPQ 227 (CCPA 1960) at p. 229.

"The Trademark Act is not an act to register words but to register trademarks. Before there can be registrability, there must be a trademark

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<sup>9</sup> Chicago Tribune, January 16, 2000.

<sup>10</sup> The American Heritage® Dictionary of the English Language (Fourth Edition 2000).

(or a service mark) and, unless words have been so used, they cannot qualify for registration. Words are not registrable *merely* because they do not happen to be descriptive of the goods or services with which they are associated." [Emphasis in quoted matter].

See also *In re Illinois Bronze Powder & Paint Co.*, 188 USPQ 459 (TTAB 1975), wherein this proposition was expanded along with the thought that " ...it must be recognized that not all words, devices, symbols, and the like necessarily function as trademarks notwithstanding that they may have been adopted with the intent of doing so." And the use of the " " does not, *ipso facto*, make a trademark or service mark out of the term or expression in connection with which it is used. See: *In re Plymouth Cordage Company*, 122 USPQ 336 (TTAB 1959). Wishing does not make a trademark or service mark be. It must be used as such in order to lay a foundation for registration, and the only basis for determining such use is necessarily the specimens filed with the application in question.

*In re Morganroth*, 208 USPQ 284, 287 (TTAB 1980).

We find that the primary significance of the phrase CLICK OR CALL, as used by applicant in the specimens of record, and as likely to be perceived by purchasers and prospective purchasers, is merely that of an everyday, commonplace directive that one may obtain the services either through computer-based communications ("click") or by telephoning ("call"). See *In re Wakefern Food Corp.*, 222 USPQ 76 (TTAB 1984) [WHY PAY MORE! for supermarket services is not registrable because the slogan does not function as a service mark]. The evidence introduced by

the Trademark Examining Attorney herein establishes that the phrase "click or call" is used in an informational sense by service providers and purveyors of goods. Thus, rather than being regarded as an indicator of source, the phrase CLICK OR CALL will be regarded simply as a familiar directive, particularly when used in connection with the offering of goods or services online. See In re Volvo Cars of North America Inc., 46 USPQ2d 1455 (TTAB 1998) [the designation DRIVE SAFELY is likely to be perceived by purchasers and prospective purchasers of applicant's automobiles as nothing more than an everyday, commonplace safety admonition]. We find that as used by applicant, this expression would be perceived as informational, telling customers that applicant's financial services may be obtained via the Internet or telephone, and it would not be perceived by customers as a service mark.

As the applicant argued unsuccessfully in Volvo Cars, *supra* at 1456, applicant herein repeatedly points out that CLICK OR CALL is separated from the text in its webpages. As noted in the extended quotation above from Morganroth, the use of an informal service mark notification such as "SM" cannot, *ipso facto*, make a service mark out of the phrase in connection with which it is used.

Finally, we are convinced that given the nature of this phrase, it is imperative that it remain in the public domain, or such a registration would interfere with the rights of others in this and related industries:

Based on the record before us, our view is that the phrase DRIVE SAFELY should remain in the public domain. Contrary to the gist of some of applicant's arguments, to grant exclusive rights to applicant in this ordinary and commonly used safety admonition would interfere with the rights of others in the automobile industry to freely use the familiar phrase to promote safe driving and/or that purchasers can drive safely in their make of automobiles. In this connection, it has been noted that "as a matter of competitive policy, it should be close to impossible for one competitor to achieve exclusive rights" in common phrases or slogans. McCarthy on Trademarks and Unfair Competition, *supra*, Section 7:23 at p. 7-34. Furthermore, unlike some of the examples and cases relied upon by applicant, we find that the phrase DRIVE SAFELY is instead analogous to the slogans in the cases of In re Manco Inc., 24 USPQ2d 1938 (TTAB 1992) [finding slogan THINK GREEN for mailing and shipping items and weather-stripping does not function as a trademark], In re Remington Products Inc., *supra*, [holding slogan PROUDLY MADE IN USA for electric shavers and parts thereof would not be recognized as source indicator] and In re Tilcon Warren, Inc., 221 USPQ 87 (TTAB 1984) [finding slogan WATCH THAT CHILD for construction materials does not function as a trademark]. These slogans respectively expressed the ecological concerns of the expanding environmental movement, a preference for American-made products and a general concern for child safety. Thus, the slogans would not be regarded, due to their general informational nature, as signifying

the source or origin of the goods in connection with which they were used. In a similar vein, because applicant's phrase DRIVE SAFELY conveys the familiar safety admonition that expresses the concern of our society about the safe operation of motor vehicles, we believe that the commonplace meaning imparted by the phrase would be the primary meaning impressed upon the purchasing public. Consequently, purchasers and prospective purchasers would not recognize or regard the familiar phrase as denoting source. See: American Dairy Queen Corp. v. RTO, Inc., 16 USPQ2d 1077 (N.D. Ill. 1990) [the slogan WE TREAT YOU RIGHT viewed as too common and undistinctive to justify exclusive rights therein for fast food outlets.]

(Volvo Cars, *supra* at 1460-61)

Accordingly, we find that the phrase CLICK OR CALL, as used by applicant, does not function as a service mark.

*Decision:* The refusal to register under Sections 1, 2, 3 and 45 of the Lanham Act is hereby affirmed.