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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Teletellme LLC

Serial No. 76506911

Myron Amer, P.C. for Teletellme LLC.

Michael Kazazian, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Hairston, Walters and Drost, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application was filed by Teletellme LLC to register the mark ANSWER5 for services ultimately identified as "providing multiple user dial-up and dedicated access to the Internet in response to telephone requests from individuals requesting this access."[1]

The examining attorney refused registration on the ground that applicant failed to submit acceptable specimens

[1] Application Serial No. 76506911, filed March 31, 2003, alleging dates of first use of December 28, 2002.

showing actual use of the mark with the services recited in the application.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs, but an oral hearing was not requested.

Applicant has submitted as a specimen an informational brochure which its uses to promote its services. The examining attorney contends that the brochure does not show use of the mark ANSWER5 in connection with the multiple user dial-up and dedicated Internet access services identified in the application. According to the examining attorney, multiple user dial-up and dedicated Internet access services are in the nature of telecommunications services that are provided by Internet service providers. The examining attorney maintains that as used on the specimen, ANSWER5 identifies “an information provider service,” rather than the type of Internet access services provided by an Internet service provider.

Applicant, in urging reversal of the refusal, requests that the Board take a flexible approach, as it did in In re Metriplex Inc., 23 USPQ2d 1315 (TTAB 1992), and accept applicant’s specimens.

Trademark Rule 2.56(a) provides, in part, that an application alleging use must include one specimen showing

the mark as used on or in connection with the sale or advertising of the services in commerce. Trademark Rule 2.56(b) further specifies that a "service mark specimen must show the mark as actually used in the sale or advertising of the services." Section 45 of the Trademark Act provides, in part, that a service mark is used in commerce "when it is used or displayed in the sale or advertising of services and the services are rendered in commerce . . .."

To be an acceptable specimen of use of the mark in the sale or advertising of the identified services, there must be a direct association between the mark sought to be registered and the services specified in the application and there must be sufficient reference to the services in the specimens to create this association. In re Monograms America Inc., 51 USPQ2d 1317 (TTAB 1999). It is not enough that the term alleged to constitute the mark merely be used in sales or advertising material, there must also be a direct association between the term and the services resulting from the particular use or display of the mark. In re Johnson Controls Inc., 33 USPQ2 1318 (TTAB 1994); and Peopleware Systems, Inc. v. Peopleware, Inc., 226 USPQ 320 (TTAB 1985). The mark must be used in such a manner that it would be readily perceived as identifying the source of

such services. In re Advertising & Marketing Development, Inc., 821 F.2d 614, 2 USPQ2d 2010 (Fed. Cir. 1987); In re Adair, 45 USPQ2d 1211 (TTAB 1997); and In re Metrotech, 33 USPQ2d 1049 (Com'r Pats. 1993). See TMEP §1301.04 (3d ed. rev. 2003).

The determination of whether applicant's specimen shows the mark ANSWER5 in connection with the sale or advertising of the recited services necessarily requires a consideration of the specimen. As previously noted, applicant has submitted an informational brochure as its specimen. ANSWER5 is used in the following manner in applicant's brochure:

> Call TOLL-FREE 888—ANSWER5 that's TOLL-FREE 888-ANSWER5
>
> Have you had your ANSWER5 moment today?
>
> How Does It Work?
>
> Our more than formally trained Personal Internet Agents are standing by at PC terminals waiting for a member to call. Each PIA has a college degree and most have graduate degrees or advanced credits in such areas as healthcare, finance, engineering, and technology. They have been individually trained on in-depth delivery of the services ANSWER5 currently offers: email dictation, transcription and delivery; lightning quick info searches providing basic need-to-know information such as flight arrivals, stock quotes, addresses, phone numbers, directions, and recipes as well as impulse information such as horoscopes, the front page of foreign or local newspapers, lyrics to a song, or a final answer

> to a raging debate; and in-depth research on topics ranging from the Crimean War to cloning.
>
> ANSWER5 has appeal to anyone who wants to use the Internet and doesn't have traditional access.
>
> Member rates
>
> The fee for membership is $19.99 per month. That rate will be frozen for the first year. As a member, each call will cost $.99 for the first five minutes of research and reporting of the results.

We find that the brochure does not show use of the mark ANSWER5 for the multiple user dial-up and dedicated Internet access services recited in the application. Rather, ANSWER5 is used in such a manner on the specimen that it would be perceived as identifying an email and search service for persons without access to the Internet. In this regard, applicant states in its brochure that ANSWER5 "has appeal to anyone who wants to use the Internet and doesn't have traditional access." As the examining attorney has pointed out, "providing multiple user dial-up and dedicated access to the Internet" is a term of art for an Internet service provider. See TMEP Section 1402.11(a). This term is not appropriate for what is essentially a research service.

The Board has taken a flexible approach to accepting service mark specimens. The Board accepted

a computer screen display which featured applicant's mark but did not make any reference whatsoever to the services for which applicant sought to register the mark. However, in that case, "applicant explained in its declaration [that] the specimens show the mark as it appears on a computer terminal in the course of applicant's rendering of" its services, namely the transmission of data to subscribers. Metriplex, 23 USPQ2d at 1316. However, in the present case, there is nothing in the record to indicate that applicant renders the services recited in the application. Rather, after reviewing applicant's specimen, it appears that applicant is not actually rendering multiple user dial-up and dedicated Internet access services. Instead, applicant appears to be conducting Internet searches and sending emails for others, in response to their requests made via telephone. As indicated in the brochure, applicant's "Personal Internet Agents" conduct searches of a proprietary electronic database that "allow most member requests with ANSWER5 to be answered live, dynamically, and within 5 minutes." Thus, this appears to be a case where applicant initially (and subsequently) failed to accurately describe its services. Moreover, further

amendment to the recitation of services to accurately describe the services would not have been allowed because it would have substituted a different type of service.

In sum, we find that the specimen of record does not show use of the mark ANSWER5 for “providing multiple user dial-up and dedicated access to the Internet in response to telephone requests from individuals requesting this access.”

Decision: The refusal to register is affirmed.