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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Adamchik

Serial No. 76571862

Thomas Perkowski of Thomas Perkowski, Esq., P.C. for Andrei Adamchik.

Hannah Fisher, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Quinn, Kuhlke and Cataldo, Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Andrei Adamchik, an individual citizen of Belarus, has applied to register the mark OBJECTSTYLE in standard character form on the Principal Register for "providing web and e-mail hosting services to the open-source software development community."[1]

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[1] Application Serial No. 76571862, filed January 16, 2004, based on applicant's assertion of March 15, 2001 as the date of first use of the mark anywhere and in commerce in connection with the services.

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant’s mark is merely descriptive of a feature or quality of applicant’s services. In addition, the examining attorney required applicant to amend the identification and classification of the recited services, and provide an acceptable specimen of use in support of its services recited in International Class 38.

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

Applicant contends that his mark is suggestive and does not immediately convey to consumers the nature of the services. More specifically, applicant claims that his services under the OBJECTSTYLE mark include an Internet web site for hosting the development of open-source software by the open-source software development community, and also email services to such open-source software developers so that they can collaborate on such open-source software development projects. Applicant argues that in presenting her arguments in support of the descriptiveness refusal, the examining attorney has improperly dissected the OBJECTSTYLE mark rather than considering it as a whole; that the OBJECTSTYLE mark does not describe a

characteristic of the services; that, rather, the mark merely suggests characteristics thereof; and that applicant's use of his mark in connection with his services does not prevent others from using the component terms "OBJECT" and "STYLE" in the marketplace. With regard to the services identified by the mark, applicant asserts that the examining attorney has improperly classified and identified his services; that developers utilizing applicant's services "participate in the development of open-source software projects involving primarily the creation of Java frameworks (i.e. organized sets of Java classes) which are used to construct Java-based object-oriented systems…[that] can ultimately be used by others (e.g. graphic designers and artists) to create 'digital content' (e.g. graphics, music, natural human language works, etc.);" (applicant's brief, page 3) and that, essentially, the examining attorney's suggested amendments to the recitation of services are inaccurate.

The Examining Attorney maintains that the OBJECTSTYLE mark merely describes a feature or quality of the services. In particular, the examining attorney argues that "the wording 'object style' merely describes the focus of applicant's web site;" (examining attorney's brief, unnumbered page 8) that applicant's mark is "an abbreviated

version of the generic phrase ‘object-oriented style’ or ‘object-oriented programming style’ appearing in the evidence of record;” (examining attorney’s brief, unnumbered page 9) and that “[b]ecause the composite wording OBJECTSTYLE does not create a unitary mark with unique, nondescriptive meaning, it still is descriptive, especially for software developers, professionally familiar with technology terminology.” (Id.) The examining attorney further argues that “software developers using applicant’s web site are likely to perceive that OBJECTSTYLE pertains to their use of the site’s resources – that they are to be mindful of style, while manipulating objects in the site’s contents.” (examining attorney’s brief, unnumbered page 10) The examining attorney further maintains that applicant’s recitation of services in his original application identifies services falling into two International Classes. Specifically, the examining attorney contends that applicant’s e-mail services are classified in International Class 38 as telecommunications services provided via the Internet; and that applicant’s hosting digital content via the Internet on which open-source software developers can work is classified in Class 42. Thus, the examining attorney argues that applicant’s services are unacceptable as identified and classified in his original application.

The examining attorney further maintains that applicant has failed to provide a specimen in support of his Class 38 services. In support of the refusal to register, the examining attorney has relied upon Internet dictionary and Internet computer technology encyclopedia entries for the word "object," and made of record articles retrieved from Internet web pages. Excerpts from these definitions and web pages follow (emphasis in originals):

> Object: Generally, any item that can be individually selected and manipulated. This can include shapes and pictures that appear on a display screen as well as less tangible software entities. In object-oriented programming, for example, an object is a self-contained entity that consists of both data and procedures to manipulate the data. (Webopedia Online Encyclopedia of Computer Technology www.pcwebopaedia.com)

> Object: <*object-oriented*> In object-oriented programming, an instance of the data structure and behaviour defined by the object's class. Each object has its own values for the instance variables of its class and can respond to the methods defined by its class. For example, an object of the "Point" class might have instance variables "x" and "y" and might respond to the "plot" method by drawing a dot on the screen at those coordinates. (FOLDOC Free On-Line Dictionary of Computing foldoc.doc.ic.ac.uk)

> Object-Oriented Style Rules: Consistency of style is important to software success. To help further this goal, ISE is making available for public use the basic style rules applied within ISE and recommended to other developers…To help

> software developers apply an effective and consistent style in their products, we are publishing here a general description of the style rules that ISE uses for its own development and that we strongly encourage others to use too…. (Eiffel Software homepage www.eiffel.com)

> Object Oriented Style: Widget sets are designed around an object oriented programming style. All widgets are associated with a particular *class.* For each widget class there is a set of fixed features and a set of configurable features. When a program creates a widget, it creates an *instance* of that widget…. (www.manualy.sk/XxwindowGuide/node57.html)

> Save a drawing object style as the default: This procedure applies the attributes you select to new drawing objects. 1. Select the object that has the attribute you want to use as the default. 2. On the **Drawing** toolbar, click **Draw**, then click **Set AutoShape Defaults.** (www.office.microsoft.com/assistance/preview)

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. *See* Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. *See also In re Abcor Development Corp*., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the

properties or functions of the goods and/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 feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. *See In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corp*., 226 USPQ 365 (TTAB 1985).

In the instant case, the evidence made of record by the examining attorney fails to support a finding that, as used in connection with applicant's services, the term OBJECTSTYLE would immediately describe, without conjecture or speculation, a significant characteristic or feature of the services. Specifically, and as noted above, the examining attorney submits two definitions of “object” in relation to computer software development. From these definitions, it appears that an “object” identifies an instance of data structure and behavior defined by its class, or any item that can be individually selected and manipulated in a programming environment. From these definitions, it appears that the term “object” may suggest

the type of data manipulation that occurs in computer software development. However, these definitions fail to demonstrate that either the term “object” or the applied-for mark, OBJECTSTYLE, merely describes applicant’s services. The only example of use of the term “object style,” or a variation thereof, in the examining attorney’s evidence occurs in an Internet web page instructing a user in a method to “Save a drawing object style as the default.” However, it is not clear from this evidence whether the term “object style” is used as a term of art, or merely in syntax. In any event, this single example of use of “object style” in instructions for working with drawing objects and graphics fails to demonstrate that OBJECTSTYLE merely describes a function, feature or characteristic of the recited services. Finally, the examining attorney’s evidence includes two instances of use of the term “object oriented style” in support of her contention that the term is generic and that the mark OBJECTSTYLE is a merely descriptive abbreviation thereof. We note that the examining attorney does not indicate the goods or services for which “object oriented style” assertedly is a generic indicator. In addition, we note that this evidence fails to indicate that OBJECTSTYLE is an abbreviation for “object oriented style” or any other term.

Finally, this evidence fails to demonstrate that the applied-for mark has any recognized meaning in the software development field. In short, we find that the evidence made of record by the examining attorney in this case falls short of supporting a finding that the mark OBJECTSTYLE merely describes a function, feature or characteristic of the services.

We turn next to the examining attorney's requirement that applicant submit an acceptable identification of services. In order to be eligible for registration, an application must specify the particular goods or services on or in connection with which the applicant uses, or has a bona fide intention to use, the mark in commerce. *See* Sections 1(a)(2) and 1(b)(2) of the Trademark Act; 15 U.S.C. §§1051(a)(2) and 1051(b)(2). *See also* Trademark Rule 2.32(a)(6). The identification of goods or services must be specific, definite, clear, accurate and concise. *See In re Societe Generale des Eaux Minerales de Vittel S.A.,* 1 USPQ2d 1296 (TTAB 1986), *rev'd on other grounds*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); and *Procter & Gamble Co. v. Economics Laboratory, Inc.,* 175 USPQ 505 (TTAB 1972), *modified without opinion*, 498 F.2d 1406, 181 USPQ 722 (C.C.P.A. 1974). In addition, an application based upon Section 1(a) of the Trademark Act seeking

registration of a mark for multiple classes of goods and services must contain the following: the class numbers for which registration is sought; the goods or services appropriately classified in each class; the dates of first use of the mark anywhere and in commerce for each class of goods and/or services; one specimen supporting use of the mark in each class of goods and/or services; and a filing fee for each class. *See* TMEP §1403.01 (4th ed. rev. 2005).

As noted above, applicant's recitation of services reads as follows: "providing web and e-mail hosting services to the open-source software development community." Applicant further explains in his brief that he provides an Internet web site for hosting the development of open-source software as well as e-mail services to facilitate communication among open-source software developers. Electronic mail, or e-mail, services are classified with telecommunications services in International Class 38. *See International Classification of Goods and Services for the Purposes of the Registration of Marks Under the Nice Agreement-Part I* (8th ed. 2002), published by the World Intellectual Property Organization. *See also* TMEP §1401.02(a). In addition, while there appears to be some disagreement between applicant and the examining attorney regarding the precise nature of

applicants' remaining services, it is settled that, for instance, providing an Internet web site for hosting the development of open-source software for others or, in the alternative, Internet web site hosting services, are classified with computer, scientific and legal services in International Class 42. *See Id.*

In consequence thereof, applicant's recitation of services in unacceptable because, at a minimum, it identifies services that fall into two International Classes. We further note that applicant submitted a filing fee with his application sufficient for a single International Class of goods or services. Finally, the record in this case indicates that the examining attorney explained the shortcomings of applicant's identification of services in her first and final Office actions. The record further indicates that applicant failed to submit either an amendment to his identification of services or an additional filing fee for each class of services identified in his application.

We find, therefore, that the identification of services submitted by applicant with his involved application is unacceptable; and that, in addition, applicant failed to submit either an amended identification

of services or an additional filing fee for each class of services recited in his application.

Finally, we turn to the examining attorney's requirement that applicant submit an acceptable specimen to support use of his mark in connection with the services recited in International Class 38. Turning to the specimen submitted by applicant with the original application, we note that the specimen displays the applied-for mark and indicates use thereof in connection with the services identified in International Class 42. The only reference to electronic mail in the specimen is a statement that "If you have any question, comments or ideas, drop a line to andrus@objectstyle.org." Thus, it appears from the specimen of record that visitors to applicant's web site may communicate with applicant regarding matters pertaining to applicant's Class 42 services. However, nowhere in applicant's proffered specimen is there any indication or even suggestion that applicant provides "e-mail hosting services to the open-source software development community" to facilitate communication among open-source software developers. We find, therefore, that applicant's specimen fails to support applicant's assertion that he is using his

mark in connection with the services identified in Class 38.[2] *See* Trademark Rules 2.34(a)(1)(iv) and 2.86(a)(3).

Decision: The examining attorney's refusal to register is reversed on the ground of mere descriptiveness; and affirmed on the requirements that applicant submit an acceptable amendment to the recitation of services and submit an acceptable specimen to support use of the mark in connection with the Class 38 services.

[2] We note that applicant submitted a substitute specimen with his response to the examining attorney's first Office action. However, applicant failed to submit a verified statement that the substitute specimen "was in use in commerce at least as early as the filing date of the application" in a notarized affidavit or signed declaration in accordance with Trademark Rules 2.20, 2.59(a) and 2.71(c). Accordingly, we have not considered applicant's proposed substitute specimen in this decision. Nonetheless, we note that upon cursory examination, the proposed substitute specimen fails to support use of the mark in connection with the services identified in International Class 38.