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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re PeopleSupport, Inc.

Serial No. 77064578

Doyle B. Johnson of Reed Smith LLP for PeopleSupport, Inc.

Evelyn Bradley, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Hairston, Zervas and Mermelstein, Administrative
Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On December 14, 2006, PeopleSupport, Inc. filed an application to register on the Principal Register the term EREP (in standard character form) as a trademark for the following services: "business management services, namely, operation of customer service centers for others provided via a global computer network, voice communications or

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email" in International Class 35.¹ The examining attorney finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's services, the mark EREP would be merely descriptive of such services.

After the examining attorney issued a final Office action, applicant filed an appeal. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *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 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358

¹ Application Serial No. 77064878, based on applicant's assertion of its bona fide intention to use the mark in commerce.

(TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

The examining attorney contends that the mark is composed of the elements "e" and "rep"; and that applicant "operates electronic customer service representative or sales representative centers featuring electronic representatives or 'ereps.'" See brief at unnumbered p. 2. She contends that the letter "e" is used as a prefix which "has become commonly recognized as a designation for goods and/or services that are electronic in nature or are sold or provided electronically." *Id.* The usage note for the definition of "virtual" in the online edition of *The American Heritage Dictionary of the English Language* (2008) located at credoreference.com supports the examining attorney's contention; it states, "the prefix[] e- ... [is] used in various ways to denote things, activities, and organizations that are realized or carried out chiefly in an electronic medium. ... The prefix e- is generally preferred when speaking of the commercial applications of the Web, as in e-commerce, e-cash, and e-business ..."²

² We take judicial notice of this dictionary definition of "virtual" which contains the usage note. The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002). See also *University of Notre Dame du Lac v. J. C. Gourmet Food Imports*

With regard to "rep," the examining attorney has submitted with her brief a definition from *Merriam-Webster's Online Dictionary* located at merriam-webster.com defining "rep" as "representative <sales reps>."³

The record also includes the following third-party uses of "erep" and "e-rep" in the context of Internet-based customer service assistance:

from gmatechnologies.net - "E-Reps are real live online customer service reps and sales consultants who provide customer services and generate leads for your business";

from hardcandy.com - "Company has an immediate opening for a Web Customer Service (eRep) position";

from proactivelivechat.com - "...in the event that an agent is not immediately available, the customer will be immediately notified of their position in queue. They can continue surfing the site until an eRep is available"; and

from urbandecay.com - "Company has an immediate opening for Web Customer Service (eRep) position."⁴

Co., Inc., 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

³ Inasmuch as this definition was not made of record in a timely manner but was first submitted with the examining attorney's brief, see Trademark Rule 2.141(d), we take judicial notice of this dictionary definition of "rep."

⁴ The webpages from careerjet.ph and orobpc.org.ph advertising positions for "Customer Service Representatives eRep" have limited probative value because they are from a Philippine website and advertise positions in the Philippines. Consumers in the United States would not likely consider these foreign websites.

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She has also submitted the following two excerpts demonstrating how applicant uses the term in advertisements:

trabaho.com - advertising positions for "eReps (Customer Service Representatives)" including "Travel eReps," "Technical Support eReps," "Bilingual eReps" and "Sales eReps," and discussing "General eRep Qualifications"; and

jobstreet.com - "TRAVEL eREP ... We strongly encourage walk-in applications for eRep positions."

We find that the examining attorney has established that "erep," without imagination or thought, identifies a customer service representative for an Internet based business. "Erep" in the context of applicant's services certainly would be perceived as a combination of the letter "e" and "rep," and these terms have the meaning the examining attorney says they have. Indeed, applicant has stated in its response to the first Office action that "EREP is suggestive of Electronic REPresentative," (capitalization in the original);⁵ and gmatechnologies.net defines an E-Rep on its website:

What is an E-Rep?

E-Reps are real live online customer service reps and sales consultants who provide customer services and generate leads for your business. An E-Rep is a college graduate, highly skilled

⁵ Applicant adds in its response to the Office action that "the industry term would be 'customer service representative and the like.'"

and professional individual trained to assist visitors on your websites using sales scripts devised by you. An E-Rep brings to life an otherwise static web site. Our E-Reps save 70% to 80% over in-house staffing.

The third party websites noted above as well as applicant's website use "erep" or "e-rep" consistent with such a meaning.⁶

In view of this evidence, we find that the examining attorney has established prima facie that the mark is merely descriptive of a feature of applicant's services. Applicant's services are identified as "business management services, namely, operation of customer service centers for others provided via a global computer network, voice communications or email." The "erep" clearly is the individual who works at the customer service center that communicates with customers "via a global computer network, voice communications or email."

We next consider whether applicant has rebutted the prima facie case established by the examining attorney. Once the USPTO sets forth a sufficient prima facie case, the burden shifts to the applicant to come forward with

⁶ Much of the evidence includes a hyphen in the term "e-rep." We know of no reason why consumers would consider the term with the hyphen any different from the term without a hyphen.

evidence to rebut the prima facie case. See *In re Gyulay*, 820 F.2d 1216 (Fed. Cir. 1987).

Applicant points to its evidence consisting of entries for "EREP" taken from *The Free Dictionary by Farlex* at acronyms.thefreedictionary.com, namely, "Emergency Response and Evacuation Plan," "Environmental Radiation and Emergency Preparedness" and "Earth Resources Experiment Package." As the examining attorney noted in her brief, we consider the question of descriptiveness not in the abstract but in relation to the services, the context in which the mark is used and its overall impact on consumers. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1878). In the context of applicant's services, the acronyms identified in *The Free Dictionary* would not attach; they simply do not make any sense. Also, to the extent that applicant argues that the mark is suggestive because the definition of "erep" offered by the examining attorney is not in *The Free Dictionary*, the fact that a term is not found in a dictionary is not controlling on the question of registrability if the term at issue is merely descriptive. See *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977).

Applicant has also argued:

The word EREP does not readily and immediately evoke an impression and understanding of Applicant's services as web-based customer service centers. Because the industry term for such services would be "customer service representative" and the like, the mark EREP and its literal meaning, namely "electronic representative," requires customers to use imagination, thought or perception to arrive at the nature of applicant's services as web-based customer service centers.

We disagree. First, certainly more than one term can be used to identify a feature of a particular service.

Second, the third party uses of EREP, noted above, which are consistent in meaning and are from a variety of sources with no apparent relationship, suggest that no imagination, thought or speculation is needed to discern the descriptive significance of the mark. Also, the meaning created by the combination of "e" and "rep" is sufficiently definite and unambiguous so that those who have not been exposed to the websites of record would be able to discern the descriptive significance of the mark, in the context of applicant's services.

Finally, applicant argues that "[e]ven if 'E' or 'REP' were by themselves deemed to be descriptive, the combination of these two terms results in a mark which is not descriptive." Brief at unnumbered p. 4. We disagree. There is nothing about the combination of the terms "e" and "rep" in applicant's mark which gives it a meaning other

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than that of its constituent parts. There is no incongruity or different meaning when these merely descriptive terms are combined to form the composite mark at issue here. We have no doubt that a prospective purchaser of applicant's services would immediately, and forthwith, understand that applicant's services feature an "erep," that is, a customer service representative for an Internet business.

After careful consideration, we find that applicant has not rebutted the prima facie case of mere descriptiveness established by the examining attorney and that applicant's mark, EREP, is merely descriptive of a feature of applicant's services. Registration is accordingly barred under Trademark Act § 2(e)(1).

Decision: The refusal to register is affirmed.