

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Renaissance Energy, LLC

Serial No. 78084358

Garrett M. Weber of Lindquist & Vennum P.L.L.P. for
Renaissance Energy, LLC.

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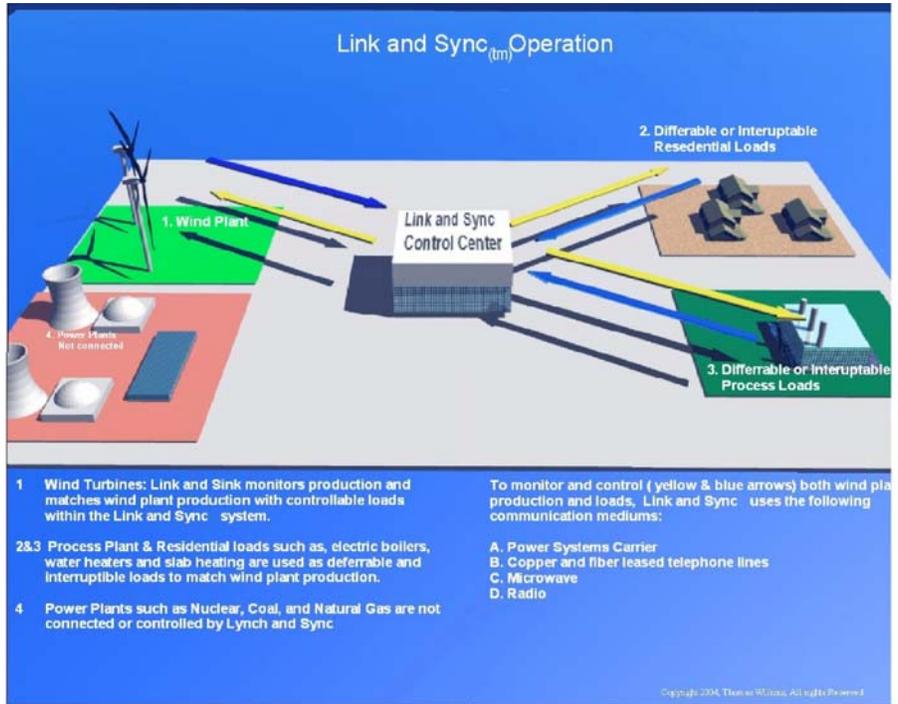
Before Drost, Taylor and Bergsman, Administrative Trademark
Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Renaissance Energy, LLC filed an intent-to-use
application for the mark LINK & SYNC, in standard character
form, for services ultimately identified as "energy usage
management, namely, monitoring of load and generation of
electricity."¹ On June 10, 2005, applicant filed a
Statement of Use, claiming March 16, 2004 as its date of
first use anywhere and first use in commerce. As its

¹ Application Serial No. 78084358, filed September 18, 2001.

specimen of use, applicant submitted the following excerpt from a sales presentation:



Registration was refused on the ground that LINK & SYNC fails to function as a service mark. Sections 1, 2, 3, and 45 of the Lanham Act, 15 U.S.C. §§1051, 1052, 1053 and 1127. The examining attorney contends that as displayed on the specimen, LINK AND SYNC merely identifies a process or system, and would not be perceived as a service mark. In addition, the examining attorney noted that the mark sought to be registered, LINK & SYNC, differed from the mark as shown on the specimen, LINK AND SYNC.

In response to the refusal, applicant submitted a substitute specimen comprising an excerpt from an Executive Summary from what appears to be a business plan or sales presentation. The substitute specimen references the "LINK & SYNC technology" and the "LINK & SYNC solution."

When the refusal was made final, applicant appealed. Both applicant and the examining attorney filed briefs. For the reasons set forth below, we reverse the refusal to register contingent upon the receipt of a substitute drawing displaying the mark as LINK AND SYNC.²

Section 1 of the Lanham Act, 15 U.S.C. §1051, provides that "The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established . . ."

Section 45 of the Lanham Act, 15 U.S.C. §1127, defines a service mark as "any word, name, symbol, or device, or any combination thereof . . . to identify and distinguish the services or one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown."

² Because an ampersand (&) is a symbol for the word "and," "Link and Sync" and "Link & Sync" are interchangeable. See *In re Finlay Fine Jewelry Corp.*, 41 USPQ2d 1152, 1154 (TTAB 1996) ("NY" and "New York" are interchangeable as having identical meaning). *Accord In re Strathmore Products, Inc.*, 136 USPQ 81, 82 (TTAB 1962) (GLISTEN and GLISS'N have the same meaning because GLISS'N is merely a contraction of the word GLISTEN).

While the Lanham Act does not define a service, the following criteria have evolved for determining what constitutes a service: (1) a service must be a real activity; (2) a service must be performed to the order of, or for the benefit of, someone other than the applicant; and (3) the activity performed must be qualitatively different from anything necessarily done in connection with the sale of the applicant's goods or the performance of another service. TMEP §1301.01(a) (4th ed. April 2005). See also *In re Canadian Pacific Limited*, 754 F.2d 992, 224 USPQ 971, 973 (Fed. Cir. 1985); *In re Betz Paperchem, Inc.*, 222 USPQ 89, 90 (TTAB 1984).

In the case *sub judice*, there is no issue that applicant is rendering energy usage management. The examining attorney does not contest this. The examining attorney argues that the specimens do not show LINK AND SYNC or LINK & SYNC used as a service mark. The first specimen merely "diagrams the process of the 'Link and Sync Control Center'" and the substitute specimen references the "Link & Sync Technology." The examining attorney contends that in neither case, do the specimens show LINK & SYNC or LINK AND SYNC used to identify a service.

To determine whether LINK AND SYNC or LINK & SYNC function as service marks, we must examine the specimens.

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In re Hughes Aircraft Co., 222 USPQ 265, 264 (TTAB 1984);
In re Betz Paperchem, Inc., *supra*. In this regard, the CCPA developed the following approach for determining whether a term used as the name of a process also functions as a service mark:

The requirement [of the Lanham Act] that a mark must be "used in the sale or advertising of services" to be registered as a service mark is clear and specific. We think it is not met by evidence which only shows use of the mark as the name of a process and that the company is in the business of rendering services generally, even though the advertising of services appears in the same brochure in which the name of the process is used. The minimum requirement is some direct association between the offer of services and the mark sought to be registered therefore.

In re Universal Oil Products Company, 476 F.2d 653, 177 USPQ 456, 457 (CCPA 1973).

With reference to the original specimen (shown above), LINK AND SYNC is displayed as "Link and Sync _(tm) Operation" in a sales presentation. The word "Operation" means "the state of being operative or functional,"³ "a business,"⁴ or

³ American Heritage Dictionary of the English Language (4th ed. 2006). The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁴ Dictionary.com Unabridged (V 1.1) from the Random House Unabridged Dictionary (2006).

"a course or procedure of productive or industrial activity."⁵ The commercial impression created by the specimen is a "Link and Sync" activity or service. If we substituted the word "Services" for "Operation" (*i.e.*, "Link and Sync (tm) Services"), the commercial impression engendered by the mark would be the same (*i.e.*, Link and Sync Business or Link and Sync Activity"). In addition, because of the position, prominence, and size of "Link and Sync," it will be understood to be a service mark.

"Link and Sync" is directly associated with the energy management services as evidenced by the text in the lower right-hand side of the specimen. That text reads as follows:

To monitor and control . . . both wind plant production and loads, Link and Sync [services] uses the following communication mediums:

- A. Power Systems Carrier
- B. Copper and fiber leased telephone lines
- C. Microwave
- D. Radio

In view of the foregoing, we find that the original specimen shows service mark use of "Link and Sync." On the other hand, the Executive Summary submitted as a substitute

⁵ *Id.*

specimen does not evidence service mark use. In the Executive Summary, "Link & Sync" identifies the method or process for energy management as shown by the use of the term "Link & Sync technology." The relevant portion of the Executive Summary is set forth below (emphasis added):

The Company's core objective is to optimize the amount of generation that can be interconnected to the delivery system, that generation will be reliably scheduled and delivered to the target customer using the newly developed **Link & Sync** technology. Renaissance Energy developed **Link & Sync** technology.

By using **Link & Sync** technology, which is a certified and tested application, Renaissance Energy can reliably maintain linkage of dedicated generation to dedicated load . . .

Renaissance Energy's unique development and integration of **Link & Sync** technology brings to realization the core objectives with a minimal amount of added infrastructure. . . . With **Link & Sync** technology, Renaissance Energy provides its customers a competitive advantage in linking wind generation through the transmission and distribution system to the point of wind energy use.

By providing the **Link & Sync** solution for power producers, utilities, and most importantly consumers, Renaissance Energy makes wind generation appear dispatchable (sic). This dispatchability is at the core of the **Link & Sync** technology and will be a real breakthrough for the electrical and energy industry.

As used in the Executive Summary, clients and prospective clients would not perceive "Link & Sync" to be a service mark. The word "technology" means "a technological process, invention, method, or the like."⁶ When applicant uses the phrase "Link & Sync technology," it engenders the commercial impression of the "Link & Sync process." The same holds true with respect to the use of "Link & Sync solution." The word "solution" means "a particular instance or method of solving; an explanation or answer"⁷ or "the method or process of solving a problem."⁸ When applicant uses the phrase "Link & Sync solution," it, too, engenders the commercial impression of the "Link & Sync process." Accordingly, the Executive Summary is not an acceptable specimen of service mark use.

Decision: The refusal to register the mark is reversed contingent upon applicant filing a new drawing to amend the mark to conform to the mark shown in the original specimen (*i.e.*, LINK AND SYNC). Applicant is allowed thirty days from the mailing date of this decision to file an amended drawing which conforms to the mark as used on the specimen found to display acceptable service mark use.

⁶ Dictionary.com Unabridged (V 1.1) from the Random House Unabridged Dictionary (2006).

⁷ *Id.*

⁸ American Heritage Dictionary of the English Language (4th ed. 2006).