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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dane, LLC

Serial No. 78125912

Kirk D. Houser of Eckert Seamans Cherin & Mellott, LLC for Dane, LLC.

Aretha C. Masterson, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Hanak, Holtzman, and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On May 2, 2002, Dane, LLC (applicant) applied to register the mark THE WEB BROWSER, in typed form, on the Principal Register for services ultimately identified as "computer services, namely, providing computer server

search engines, excluding a web browser, for obtaining data on a global computer network" in International Class 42.[1]

The examining attorney ultimately refused to register applicant's mark on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). The examining attorney argues that "a web browser is used to view text in a search engine. No great leaps or imagination are necessary to determine the descriptive nature of the applicant's mark as applied to search engine services." Examining Attorney's Brief at 7. Applicant, on the other hand, argues that its services "do not function like a web browser, do not use a web browser to locate files, and are not added to, associated with, or integrated into a web browser." Applicant's Brief at 2.

After the examining attorney made the refusal final, applicant appealed to this board.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett

[1] Serial No. 78125912 was based on a allegation of a bona fide intention to use the mark in commerce.

Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (A "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service").

To be merely descriptive, a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 200 USPQ at 218.

We begin our analysis with dictionary definitions of the terms "web browser" and "search engine." There is no dispute that "web browser" is a term of art regarding the Internet. The examining attorney included several definitions of "web browser" with her Office action (See Office action dated September 27, 2002):

(1) A program such as Mosaic, Netscape, Internet Explorer, and others that are used to view pages on the World Wide Web.

(2) A program used to view, download, upload, surf, or otherwise access documents (for example, Web pages) on the Internet. Netscape Navigator and

> Internet Explorer are well-known "Web Browsers" that enable you to view and interact with Web sites.
>
> Browsers read pages that are "marked up" or coded (usually in HTML but not always). These pages reside on servers. The browsers interpret the code into what we see rendered as a Web page. As well-designed software programs, browsers contain a variety of tools, including bookmarks and the back button, that make "surfing the Net" more enjoyable. You will need a browser to "get on the Web."

The examining attorney also included definitions of "search engine" (Id.) as:

> (1) A software program that searches a database and gathers and reports information that contains or is related to specified terms.
>
> A website whose primary function is providing a search engine for gathering and reporting information available on the Internet or a portion of the Internet.
>
> (2) A program on the Internet that allows users to search for files and information.
>
> (3) A program that searches documents for specified keywords and returns a list of documents where the keywords were found. Although search engine is really a general class of programs, the term is often used to specifically describe systems like Alta Vista and Excite that enable users to search for documents on the World Wide Web and USENET newsgroups.

Applicant has amended its identification of services to make it clear that its services are search engines, *excluding a web browser*, for obtaining data on a global computer network.

The examining attorney has included evidence that shows that search engines and web browsers are not unrelated Internet tools.

> Add Google's search-engine window to your Web browser so you can run a search at any time without going to a search page.
> *San Diego Union-Tribune*, June 24, 2002.

> I left out a helpful guide at Google's site to making that search engine the default in your Web browser.
> *Washington Post*, January 27, 2002.

> Another benefit of SVG is that the user can search for text in graphics. Search engines and the Find function in Web browsers tend to miss words or numbers in graphics because they are broken up into pixels in a bitmap image.
> *New York Times*, October 4, 2001.

> As Napster's fame spread, the Satellite program evolved into a similar peer-to-peer search engine that uses a Web browser to look for MP3 files, then sets up a computer-to-computer transfer.
> *San Francisco Chronicle*, March 4, 2001.

> My web browser starts up with a certain search engine associated with my service provider, but I'd like to have a different "home page."
> *Miami Herald*, October 2, 2000.

> A big automaker in Detroit is looking for a new supplier, (1) queries a UDDI search engine in the U.S. via a Web browser."
> *B to B*, September 11, 2000.

> Ultrsbrowser.com --- which is customizing Web browsers with search engines links to air travel sites, entertainment sites and other sites.
> *Atlanta Journal and Constitution*, December 6, 2000.

> She said CuteMX, which is part Web browser, part media player, and part search engine, wasn't forged with piracy in mind.
> *San Antonio Express-News*, July 29, 2000.

The examining attorney argues that "there is a relationship between a search engine and a web browser." Examining Attorney's Brief at 7. Applicant argues that a computer server, where its search engine services would be located, is typically at the Internet Service Provider and the web browser is located on the client PC, which "is far removed form Applicant's computer services." Applicant's Brief at 4. While this may be true, the examining attorney notes that both "terms function together in the same computer environment." Examining Attorney's Brief at 7. Indeed, the printouts indicate that web browsers (Netscape Navigator and Internet Explorer) can be customized with search engine links, can start up with a search engine as its home page, and can have a search engine added to the web browser's page.

Web browsers and search engines are basic Internet tools. The web browser permits access to the Internet. The search engine provides a means to search for information on the Internet and then the web browser displays the retrieved information. Also, they both provide a means of searching or "browsing" the web. See OBH Inc. v. Spotlight Magazine Inc., 86 F. Supp.2d 176, 54 USPQ2d 1383, 1386 (W.D.N.Y. 2000)("Upon entering a domain name into the web browser, the corresponding web site will

quickly appear on the computer screen. Sometimes, however, a user will not know the domain name of the site he or she is looking for, whereupon he or she has two principal options: trying to guess the domain name or seeking the assistance of an Internet 'search engine'"); Heroes Inc. v. Heroes Foundation, 958 F. Supp. 1, 41 USPQ2d 1513, 1516 (D.D.C. 1996) ("It characterizes home pages as essentially passive, only appearing on a user's screen when a user summons them by means of a 'search engine' or 'web browser'"). The web browser can retrieve information by entering the web address and the search engine can retrieve similar information by searching for specific words. The term THE WEB BROWSER merely describes the fact that the search engine functions in association with or even on the web browser page.

Applicant argues that its mark "has a double entendre. Applicant is using the mark THE WEB BROWSER, not in the literal sense of software for a client personal computer, but rather in the more figurative sense of one looking over an intricate woven structure in order to decide what one wants to buy, borrow, or read." Applicant's Brief at 7. We find it unlikely that any significant number of prospective users would recognize this double entendre. The terms "web browser" and "search

engine" are intimately associated with each other. They can be found on the same web page and used to retrieve the same information either by a domain name search or a word search. Users of applicant's services are unlikely therefore to use the term figuratively.

One final point that applicant makes concerns the addition of the word "the" with "web browser." The addition of the definite article to the term "web browser" would not take away its obvious descriptive significance. Accord In re J.D. Searle & Co., 360 F.2d 650, 149 USPQ 619 (CCPA 1966) ("'the pill' not registrable under section 2(f)). In addition, applicant's web page shows that the word "THE" is displayed in type that is merely a fraction of the size of the words WEB BROWSER and it would be even less likely to have any trademark significance.

When we consider applicant's mark THE WEB BROWSER in the context of the identified search engine services, we conclude that the term would be merely descriptive of a search engine used on or in association with a web browser. Therefore, we find that applicant's term is merely descriptive of the services identified in the application.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed.