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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SimDesk Technologies, Inc.

Serial No. 78301340

Scott J. Stevens of Woodard, Emhardt, Moriarty, McNett &
Henry LLP for SimDesk Technologies, Inc.

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(Michael W. Baird, Managing Attorney).

Before Seeherman, Hairston and Kuhlke, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

SimDesk Technologies, Inc. has appealed from the final
refusal of the trademark examining attorney to register
SHARED RESOURCE LOCATOR as a trademark for "software for
locating stored electronic files and securely sharing them
among users and groups on a global computer network."¹

¹ Application Serial No. 78301340, filed September 17, 2003, and
asserting a bona fide intention to use the mark in commerce.

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified goods.

Applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The examining attorney contends that the mark is merely descriptive because "it clearly indicates to potential purchasers that the applicant's software is for locating electronically stored resources and sharing them among computer network users." (Brief, p. 3) In support of her position, the examining attorney submitted the following definitions from the Merriam-Webster Online Dictionary:

share: to partake of, use, experience, occupy, or enjoy with others

resource: a source of supply or support

locator: one that locates something

In addition, she submitted a definition of the term "**shared resource**" as "[a] hardware device, software program, or a segment of data capable of being utilized by more than one computer or people at once. A great example of a shared resource is a shared printer on a network."

(<http://www.computerhope.com/jargon/s/sharreso.htm>)

Applicant, however, contends that its mark is at most suggestive because the mark has two possible meanings, one meaning being a means for locating jointly-used electronic files ("shared resource" modifies "locator"), and the other meaning being a jointly-used or universal means for locating electronic files ("shared" modifies "resource locator"). Applicant argues that consumers are likely to associate the latter meaning with applicant's goods because computer users are familiar with the term "uniform resource locator" ("uniform" modifies "resource locator"). At the very least, according to applicant, consumers will be left to their own imagination or investigation to determine what attributes the mark suggests. Finally, applicant urges that we resolve any doubt on the question of mere descriptiveness in its favor.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act 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. See, e.g., *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, 217-18 (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. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used or intended to be used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use or intended use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corporation*, 226 USPQ 365, 366 (TTAB 1985).

Applying these principles in the present case, we find that the mark applicant seeks to register, SHARED RESOURCE LOCATOR, is merely descriptive of the goods identified in the application, "software for locating stored electronic files and securely sharing them among users and groups on a

global computer network." With respect to the individual terms in applicant's mark, each term has descriptive significance as applied to applicant's goods. The term "locator" has descriptive significance because applicant's goods are identified as "software for locating ..., ". Further, an electronic file is a type of resource, and applicant's software shares electronic files. Each of the words in applicant's mark has a readily-understood merely descriptive meaning as applied to the goods, and they are as merely descriptive when considered in the composite as they are when considered separately. Viewed in connection with applicant's goods, the mark immediately informs prospective purchasers of the purpose or function of the goods, namely, that applicant's software locates and shares resources, i.e., the software is a "shared resource locator."

We are not persuaded by applicant's arguments to the contrary in opposition to the mere descriptiveness refusal. Applicant misstates the test for mere descriptiveness by contending that because the mark has two possible meanings, it is not descriptive and purchasers would not be able to determine, simply by viewing the mark, what the goods are or what they do. In re American Greetings Corporation, supra, 226 USPQ at 366.

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In sum, we have no doubt that the term SHARED RESOURCE LOCATOR would be immediately recognized by prospective purchasers as a term that is merely descriptive of the purpose or function of applicant's identified goods.

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