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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Credit.com, Inc.

Serial No. 78718622

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Before Walters, Zervas and Kuhlke, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Credit.com, Inc. has filed an application to register the term CREDIT.COM (in standard character form) for services ultimately identified as "providing information in the field of personal finance via the Internet" in International Class 36.[1]

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[1] Application Serial No. 78718622, filed September 22, 2005, claiming first use anywhere and first use in commerce in August 1995.

Registration was originally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that "CREDIT.COM" is merely descriptive of applicant's services. In its request for reconsideration, applicant argued against the refusal based on descriptiveness but also requested amendment of the application to seek registration on the Supplemental Register. Thereafter, the examining attorney issued a new refusal under Section 23 of the Trademark Act, 15 U.S.C. §1091, on the basis that applicant's proposed mark is incapable of identifying applicant's services because it is the generic term for the recited services.

Applicant has appealed the examining attorney's final refusal to the Board. Both applicant and the examining attorney have filed briefs.

As a preliminary matter, in view of applicant's statements in its request to amend to the Supplemental Register and in its brief, we find that the questions of descriptiveness and acquired distinctiveness have been preserved for appeal. While TMEP §801.02(b) (4th ed. 2005) provides that an applicant may not seek registration on both the Principal and the Supplemental Registers in the same application, TMEP § 1212.02(c) clarifies that an applicant may submit an amendment (or request to amend) to

the Supplemental Register and continue to argue in the alternative that it is nonetheless entitled to registration on the Principal Register in an appeal. See also TBMP § 1215 (2d ed. rev. 2004). Accordingly, we must determine whether the proposed mark is generic and, if not, whether it is merely descriptive and if so, whether it has acquired distinctiveness.

Genericness

The Court of Appeals for the Federal Circuit, our primary reviewing court, has stated that "[t]he critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." *H. Marvin Ginn Corp. v. Int'l Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). *Ginn* explains that:

> Determining whether a mark is generic … involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?

Id. The Office bears the burden of establishing genericness based on clear evidence of generic use. *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999).

Genus of applicant's services and relevant public

We find that the genus of services at issue in this case is adequately defined by applicant's identification of services, namely, "providing information in the field of personal finance via the Internet." (Applicant agrees - see p. 2 of its brief.) Applicant's specimen of use, which is a printout from applicant's website, provides that "Credit.com takes pride in offering a wide variety of consumer credit products and services." Another of applicant's webpages submitted in response to the first Office action states, "Start improving your credit and taking control of your finances today. We'll show you how in three easy steps." Thus, applicant provides information regarding obtaining credit and improving credit ratings, which is within the identification of services.

The relevant public for the services

The specimen of use states "[s]erving the credit needs of millions of consumers since 1996," and the webpage submitted in response to the first Office action has links to "Starting Out," "Buying a Car," "Marriage & Family," "Buying a House" and "Planning for Retirement." The services and information are suited to the public at large. We therefore conclude that the relevant public for applicant's services is the general public.

The meaning of CREDIT.COM to the relevant public

Evidence of the relevant public's understanding of a term may be obtained from any competent source including consumer surveys, dictionary definitions, newspapers and other publications. See *In re Reed Elsevier Properties Inc.*, 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007). We have considered all the evidence of record bearing on purchaser perception of CREDIT.COM including the evidence applicant has submitted in support of its claim of acquired distinctiveness. See *In re Recorded Books Inc.*, 42 USPQ2d 1275 (TTAB 1997); and *In re The Paint Products Co.*, 8 USPQ2d 1863 (TTAB 1988).

The examining attorney has submitted definitions from various online dictionaries for "credit." One definition is from *The American Heritage Dictionary of the English Language* (4th ed. 2000) located at bartleby.com, defining "credit" as "[a]n arrangement for deferred payment of a loan or purchase: *a store that offers credit; bought my stereo on credit*." (Italics in original.) The genus of applicant's services involves personal financial information, which includes information on arrangements for deferring payment of a loan or purchase.

Also of record is a one-page listing of search results for "credit" on the Google search engine. The entry for

credit.com states, "Credit.com offers a variety of credit related products and services including credit reports and credit scores, credit cards, car loans, home loan and …." Further, the webpage submitted in response to the first Office action includes tabs for linking to "credit reports, personal loans, credit cards, dept help, home loans, auto loans, ID theft and security." Additionally, two questions asked in an online survey that visitors to applicant's website may answer are (i) "If you searched online for information about credit, what search terms did you use in your query?"; and (ii) "Did you choose Credit.com to learn more about credit related services and products?"

It is clear from applicant's website that "credit" is the focus of the information about personal finances that applicant provides on its website. Because the term CREDIT names a key aspect of applicant's services, i.e., the aspect of applicant's personal financial services that concerns credit, the term is generic, at least for that aspect of applicant's services.

The addition of .COM to CREDIT does not make the combination registrable. The examining attorney has submitted (i) a definition of ".com" from *The American Heritage Dictionary of the English Language* (4th ed. 2000) which defines the term as "commercial organization (in

Internet addresses)," and (ii) an entry from wikipedia.org which defines ".com" as "a generic top-level domain (gTLD) used on the Internet's Domain Name System" used to designate commercial entities. See second Office action dated October 25, 2006. The Federal Circuit, our primarily reviewing court, has stated in *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) that the term ".COM," in itself, has no source-indicating significance. Also, the Board has stated that ".com" "signifies that the user of the domain name is a commercial entity, and that the goods or services offered by the entity involve use of the Internet." *In re Hotels.com L.P.*, 87 USPQ2d 1100, 1105 (TTAB 2008).

We point out too that there is nothing in the combination of CREDIT and .COM that results in any new or incongruous meaning, or a different commercial impression. CREDIT and .COM both have clear and readily understood meanings and the combination of CREDIT and .COM communicates just as clearly and directly that applicant operates a commercial website that provides its customers with information about credit.[2] The Federal Circuit has

[2] Applicant argues at p. 2 of its brief that consumers "would likely think [CREDIT.COM] would primarily refer to information about how to obtain credit cards." We are not persuaded by this argument. First, applicant has not offered any explanation for its argument. Second, because credit cards concern consumer

held that "the PTO has satisfied its evidentiary burden [on genericness] if … it produces evidence including dictionary definitions that the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound." *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987).

The examining attorney has also made of record printouts of several websites having "credit.com" in their web addresses. Such websites offer financial information pertaining to credit, which are the same services provided by applicant. See:

> ultimatecredit.com – "Ultimate Credit Solutions is dedicated to helping consumers find reliable solutions to their credit challenges by offering affordable solutions …";
>
> yourcredit.com – with information regarding mortgages, debt collection, credit reports, credit cards, and credit fraud;
>
> carcredit.com – regarding car loans and credit reports and "descriptions" regarding identify theft, bankruptcies and the Fair Credit Reporting Act; and
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> bad-credit.com – "We're your guide to consumer credit information."

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credit, the credit card services mentioned by applicant are a species of the genus "credit."

These websites as well as applicant's website demonstrate that consumers seeking information relating to credit, would immediately understand that CREDIT.COM identifies a website that provides such information. Additionally, the third-party websites demonstrate a competitive need for others to use "credit.com" as part of their own domain names and trademarks. Thus, the designation sought to be registered should not be subject to exclusive appropriation, but rather should remain free for others in the industry to use in connection with personal finance information services. See *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999).

In view of the foregoing, we find that the examining attorney has met the substantial burden of establishing that CREDIT.COM is generic and hence incapable of identifying and distinguishing the source of the identified services.

Applicant has made of record a copy of Registration No. 2918738 for the mark hotels.com for "providing information for others about transportation; travel agency services, namely, making reservations and bookings for transportation for others by means of telephone and the

global computer network," and maintains that if this mark could be registered on the Principal Register, applicant's proposed mark should also be registered at least on the Supplemental Register. That registration has no relevance to the present application; because the identification of services does not provide for services concerning hotels and are specifically directed to transportation, genericness and mere descriptiveness were unlikely issues in the prosecution of the underlying application. Cf., *In re Hotels.com, supra*, where the Board found HOTELS.COM (in typed form) generic for services identified as "providing information for others about temporary lodging; travel agency services, namely, making reservations and bookings for temporary lodging for others by means of telephone and the global computer network." Further, prior decisions of examining attorneys registering different marks are not binding on the Board. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). Applicant has also pointed out that "[t]he services listed in HOTEL.COM's registration are not exactly providing information about hotels, but the specimens filed clearly depict that usage, and the term 'travel agency services' is in the description." Brief at p. 3. What the specimens offer is not determinative on the question of genericness -

genericness is determined in view of the identification of goods or services in the application.

Descriptiveness and Acquired Distinctiveness

We now address applicant's alternative claim that if the designation is merely descriptive, it has acquired distinctiveness. (Applicant has acknowledged that the designation is merely descriptive at p. 5 of its brief.) Of course, implicit in our holding that the evidence before us establishes that CREDIT.COM is generic for applicant's services is a holding that CREDIT.COM is at least merely descriptive of applicant's services under Section 2(e)(1). "The generic name of a thing is in fact the ultimate in descriptiveness." *H. Marvin Ginn Corp., supra,* at 530.

As to acquired distinctiveness, applicant has the burden to establish a prima facie case of acquired distinctiveness. See *Yamaha International Corp. v. Hoshino Gakki Co., Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001 (Fed. Cir. 1988).

Applicant claimed acquired distinctiveness based on five years of use in its initial application. After the examining attorney found its claim insufficient to establish acquired distinctiveness, applicant supplemented its claim with approximately twenty declarations, most of which are substantially the same, with the declarants

stating that they believe "CREDIT.COM is a brand name for the personal finance services and education programs offered only by Credit.com…." Further, applicant's attorney represented in his response to the first Office action that:

> applicant has been using the designation for 16 years exclusively and continually;
>
> applicant has spent "millions of dollars investing in this brand";
>
> "applicant spends approximately $300,000 per month advertising its services, products and educational materials";
>
> applicant has defended its name against another company who attempted to keep it from using its name or URL," at the cost of $50,000;
>
> applicant "spen[t] approximately $275,297 (e.g., $184,827 in 2005, and $90,470 in 2006) for general marketing of its services and products"; and
>
> applicant spend $34,287 in 2005 and $52,489 in 2006 on search engine optimization fees.

See response to first Office action at p. 3. We are not able to determine from applicant's attorney's information how much applicant has spent in advertising the specific services identified in the identification of services, how long it has been spending $300,000 per month on advertising, or where applicant ranks among search engine results (and for what search queries). Also, applicant has not discussed how its <u>defense</u> of "its name" fosters an

association in the minds of the consuming public of CREDIT.COM with applicant or even how the cost of such a proceeding is relevant at all to establishing "credit.com" as a source indicator.

Applicant's attorney also stated that applicant conducted a "survey" with 75 participants, identified the questions in the "survey" and identified how participants answered for certain questions. There are numerous problems with the "survey" which limits its probative value. For example, applicant did not identify when or how it was conducted. There is no information as to whether participants were screened, and if so, how they were screened to establish that they understood the questions. Further, applicant did not identify who the respondents were and whether they responded to all of the questions. Also, applicant has not indicated what percentage of respondents thought CREDIT.COM was "a generic term for all things having to do with credit and credit info,"[3] or if this percentage was higher than the percentage of respondents who indicated that they "feel" CREDIT.COM

[3] Applicant noted that 42 percent of respondents marked the answer "Identifies a company that offers credit education" in response to the question "When you think of the name CREDIT.COM, do you feel it?"

"[i]dentifies a company that offers credit education." See question no. 4.

The greater the degree of descriptiveness, the greater the evidentiary burden on the user to establish acquired distinctiveness. *See Yamaha Int'l Corp., supra.* The sufficiency of the evidence offered to prove secondary meaning should be evaluated in light of the nature of the designation. Highly descriptive terms, for example, are less likely to be perceived as trademarks and more likely to be useful to competitors than are less descriptive terms. More substantial evidence of secondary meaning thus will ordinarily be required to establish their distinctiveness.

Applicant's evidence and its attorney's statements fall far short of establishing that purchasers of applicant's services recognize CREDIT.COM as a distinctive source indicator for such services. Accordingly, even if the designation CREDIT.COM were found to be not generic, but merely descriptive, given the highly descriptive nature of the designation CREDIT.COM, substantially more evidence than what applicant has submitted is needed for us to find that CREDIT.COM has become distinctive of applicant's services.

Decision: The refusal under Section 23 of the Trademark Act on the ground that the proposed mark is generic is affirmed; the refusal under Section 2(e)(1) of the Trademark Act on the ground that the proposed mark is at least merely descriptive and the Section 2(f) showing is insufficient are likewise affirmed.