THIS OPINION
IS NOT A PRECEDENT OF
THE T.T.A.B.

Mailed: 4/24/08

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alliance For The Great Lakes

Serial No. 78777956

Christopher M. Dolan and Andrew J. Avsec of Brinks Hofer Gilson & Lione for Alliance For The Great Lakes.

Dezmona J. Mizelle-Howard, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Quinn, Bucher and Mermelstein, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Alliance For The Great Lakes filed an application to register the mark shown below

("GREAT LAKES" disclaimed) for "publications, namely, pamphlets, brochures, periodicals, and newsletters in the

field of conservation, the environment, water use, pollution, habitat restoration/rehabilitation, and public health" (International Class 16); and "educational services, namely, workshops, lectures, classes, educational events, dissemination and publication of content educating citizens regarding the restoration, rehabilitation, conservation, protection and preservation of the Great Lakes, public health, and fish and wildlife in the Great Lakes" (International Class 41).[1]

The trademark examining attorney refused registration due to applicant's failure to comply with a requirement to disclaim the word ALLIANCE apart from the mark. According to the examining attorney the term is merely descriptive of applicant's goods and services.

When the requirement was made final, applicant appealed. Applicant and the examining attorney filed briefs.

Applicant argues that the term "alliance" is not merely descriptive when used in connection with its goods and services. Applicant contends that the examining attorney's reliance on applicant's website is misplaced

[1] Application Serial No. 78777956, filed December 21, 2005, alleging first use anywhere and first use in commerce in April 2005. The application includes the following statements: "The curved lines that appear above the text portion of the mark are blue. The color blue is claimed as a feature of the mark."

inasmuch as uses of "Alliance" indicate who applicant is, not what applicant is. In support of its appeal, applicant submitted over 500 third-party registrations of marks that include, in part, the term ALLIANCE wherein the term was not disclaimed; and a declaration of Cameron Davis, applicant's president and chief executive officer.

The examining attorney maintains that the term ALLIANCE is merely descriptive and, therefore, must be disclaimed. The examining attorney states that the term "describes a feature of the goods and services, namely that the goods (publications) and services (educational services), feature information regarding the alliance and its correlation to the Great Lakes." (Brief, p. 3). More specifically, the examining attorney, relying on applicant's website, asserts that applicant is an association of people who agree to cooperate to achieve a common goal, namely, to save the Great Lakes, and that the common interest and affiliation of these individuals fall within the definition of "alliance." In support of the disclaimer requirement, the examining attorney submitted dictionary definitions of "alliance," and about twenty-five third-party registrations of marks incorporating the term ALLIANCE wherein the term is disclaimed.

An evidentiary matter requires our attention before turning to the merits of the appeal. The examining attorney, with her brief, submitted additional dictionary definitions of the term "alliance." The examining attorney also submitted for the first time other evidence, including additional excerpts from applicant's website, copies of registrations owned by applicant before it changed its name, and additional third-party registrations. Applicant, in its reply brief, objected to the new evidence on the basis of its untimely submission and, with respect to the new dictionary listings, on the further basis that they were retrieved from online resources.

Trademark Rule 2.142(d) provides that the evidentiary record in an application should be complete prior to the filing of an appeal. Additional evidence filed after an appeal normally will not be considered by the Board.

Accordingly, the additional excerpts from applicant's website, applicant's registrations that issued before its name change, and the additional third-party registrations, all submitted for the first time as attachments to the examining attorney's appeal brief, are untimely. Thus, we have not considered this evidence in reaching our decision.

Insofar as the additional dictionary listings are concerned, while the examining attorney has submitted them

for the first time with the appeal brief, dictionary definitions are subject to judicial notice. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). Further, the dictionaries relied upon by the examining attorney include online dictionaries which exist in printed format or have regular fixed online editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). Given that the additional definitions were retrieved from Microsoft's Encarta, Oxford English Dictionary, and Merriam-Webster, we find that these online definitions are proper subject matter for judicial notice. Accordingly, we have considered them in making our decision.

We now turn to the substantive merits of the appeal. The examining attorney may require an applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 6 of the Trademark Act, 15 U.S.C. §1056. Merely descriptive or generic terms are unregistrable under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), and therefore are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is grounds for refusal of registration. *See In re Omaha National Corp.*, 819 F.2d

1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006).

A term is merely descriptive if it immediately describes the ingredients, qualities or characteristics of the goods and/or services or if it conveys information regarding a function, purpose, or use of the goods and/or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). We look at the mark in relation to the goods and/or services, and not in the abstract, when we consider whether the mark is descriptive. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1783 (Fed. Cir. 2003). It is well settled that to be "merely descriptive" a term need only describe a single significant quality or property of the goods and/or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Also of relevance in the present appeal is that a word in a trademark designating the legal character of an entity must be disclaimed because an entity designation has no source-indicating capacity. *See, e.g., In re Taylor & Francis [Publishers] Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) ["PRESS" as applied to printing or publishing establishment, "is in the nature of a generic entity designation which is incapable of serving a source-indicating function"]. The only exception to this practice

is where the entity designation is used in an arbitrary manner so that the term has trademark significance and a disclaimer would not be required. TMEP §1213.03(d) (5th ed. 2007).

The term "alliance" is defined, in pertinent part, as follows: "a close association of...groups, formed to advance common interests or causes; a connection based on...common interest; a bond or tie; close similarity in nature or type; the act of becoming allied or the condition of being allied." The American Heritage Dictionary of the English Language (3d ed. 1992). Not surprisingly, the other definitions set forth in the examining attorney's brief are very similar.

Mr. Davis submitted his declaration wherein he stated, in pertinent part, that applicant is a single, independent, not-for-profit corporation, and is not an association of groups or, in a literal sense, an "alliance"; and that the use of "Alliance" on applicant's website refers to "who we are, as opposed to what we are."

Applicant's website includes the following statements: "the Alliance is...working in partnership with other organizations, and mobilizing local efforts on behalf of the Great Lakes..."; "the Alliance...also works with the region's residents...we draw on many resources, working

with teachers, scientists, economists, legal specialists, government representatives, communities and individuals"; and "[g]overned by about 20 individuals from around the region, the Alliance also coordinates a network of community-based organizations from around the region, which gather annually to craft basin-wide solutions with a local emphasis." The website includes links to "Business Partners" and "Alliance Partner Network."

In spite of Mr. Davis' statements, applicant's website indicates that it partners with others in a common cause, that is, preservation of the Great Lakes region. Taking applicant's own statements that it works in partnership with others, and that it coordinates a network of organizations in pursuing solutions for the preservation of the Great Lakes, along with the dictionary definition of the term "alliance" as "a close association of...groups, formed to advance common interests or causes," we find that the term ALLIANCE immediately and directly conveys information with respect to the nature of the organization from which applicant's publications and educational services originate. The remaining terms GREAT LAKES clearly refer to the specific topics and scope of programs and resources offered by applicant in connection with its goods and educational services.

In finding that the term ALLIANCE is merely descriptive and must be disclaimed, we have considered the competing evidence of third-party registrations. Applicant submitted over 500 registrations of marks comprising, in part, ALLIANCE, but wherein the term ALLIANCE is not disclaimed. The registrations cover a wide variety of goods and/or services. The examining attorney countered with twenty-five registrations of marks comprising, in part, ALLIANCE, wherein the term is disclaimed.

While uniform treatment under the Trademark Act is an administrative goal, our task in this appeal is to determine, based on the record before us, whether a disclaimer of ALLIANCE is proper. Clearly the number of third-party registrations wherein a disclaimer was not required far exceeds those with a disclaimer. This fact alone, however, does not compel a different result herein. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the board or this court."]. As often stated, each case must stand on its own record. We are not privy to the file records of the third-party registration evidence. The present record, however,

includes statements appearing on applicant's website about the nature of applicant and its activities that are consistent with the dictionary definition of the term "alliance."

Decision: The requirement for a disclaimer of ALLIANCE is affirmed. However, if applicant submits the required disclaimer within 30 days of the mailing date of this decision, the decision will be set aside, and the application passed to publication. Trademark Rule 2.142(g).