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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Instant Funding Solutions, LLC

Serial No. 78814885

Bernard L. Kleinke of Duckor Spradling Metzger & Wynne for
Instant Funding Solutions, LLC.

William Breckenfeld, Trademark Examining Attorney, Law
Office 116 (Michael Baird, Managing Attorney).

Before Grendel, Drost and Kuhlke, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Instant Funding Solutions, LLC, applicant herein,
seeks registration on the Principal Register of the mark
INSTANT-FUNDING-SOLUTIONS.COM (in standard character form)
for services recited in the application as "providing loans

secured by commercial paper, namely, providing retail establishment working capital loans," in Class 36.¹

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that it is merely descriptive of the recited services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

The evidence of record consists of various dictionary definitions submitted by applicant and by the Trademark Examining Attorney, various third-party registrations submitted by applicant and by the Trademark Examining Attorney, and a GOOGLE Internet search summary printout submitted by the Trademark Examining Attorney.² The appeal is fully briefed.

After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

¹ Serial No. 78814885, filed on February 14, 2006. The application is based on applicant's allegation of a bona fide intent to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² We sustain the Trademark Examining Attorney's objections to the mere listings of third-party registrations submitted by applicant. See *In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 n.2 (TTAB 1998); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1560 n.6 (TTAB 1996).

Trademark Act Section 2(e)(1) bars registration of a mark which, when used on or in connection with the applicant's goods or services, is merely descriptive of them. 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 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. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applying these principles to the evidence of record in the present case, we find as follows.

First, we find that the word INSTANT, as it appears in applicant's mark and as applied to the services recited in

applicant's application, is merely descriptive of the services. The dictionary evidence of record shows that "instant" is defined, inter alia, as an adjective meaning "occurring at once, immediate,"³ and as a noun meaning "a very short time."⁴ Purchasers encountering the word INSTANT in applicant's mark will immediately understand that applicant's loans may be obtained in an "instant," i.e., in "a very short time."

The record also shows that the word "instant" is commonly used in the lending industry in this descriptive sense to describe and refer to loans and financing which may be obtained quickly and easily. Specifically, the Trademark Examining Attorney has made of record a printout of a GOOGLE search results summary for "instant loan" (the first ten listings), which includes the following website summaries:⁵

³ The American Heritage Dictionary of the English Language (4th ed. 2000).

⁴ Compact Oxford English Dictionary.

⁵ Although some of the websites are referenced only in summary format, we find that there is sufficient information in the summary to understand the context of usage. See *In re Hotels.com L.P.*, 87 USPQ2d 1100 (TTAB 2008); cf. *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002) ("probative value of search engine summary results...will vary depending upon the facts of a particular case.").

- "Instant Cash Advance Loan ... Quick and Easy to Apply..." (www.MyCashNow.com);
- "Instant Cash Advance - Fast, Easy, Discreet..." (www.PayDayMax.com);
- "Instant Loan Approval. APPLY AND GET APPROVED WITHIN SECONDS..." (www.pscu.org);
- "The Apple Credit Account allows individuals to get instant financing on Apple computers, software, and accessories. Applying is quick and easy." (www.apple.com);
- "Instant Car Loan Approval ... It is true that a few national lenders have instant loan online approval..." (www.lotpro.com);
- "Instant Loans; No credit checks..." (www.internetpressoffice.com);
- "Instant Cash Loan - Information on cash advances..." (www.bizjournals.com);

We find that the dictionary evidence and the Internet evidence submitted by the Trademark Examining Attorney is sufficient to establish, prima facie, that INSTANT is merely descriptive as applied to applicant's services.

Applicant has made of record eight third-party Principal Register registrations of marks containing the word INSTANT for various Class 36 lending or banking services, in which the word INSTANT has not been disclaimed.⁶ These third-party registrations are some

⁶ These are:

evidence supporting applicant's contention that INSTANT is suggestive as applied to applicant's services. However, we find that this evidence is insufficient to rebut the Trademark Examining Attorney's prima facie showing of descriptiveness, especially the Internet evidence demonstrating how the term "instant" is actually used in the lending industry. Moreover, although consistency is one of the Office's goals, it is settled that we must make our determination regarding mere descriptiveness based on the record before us in the present case. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

1. RN 3206931: YOUR IDEAL STUDENT LOAN...SIMPLE. INSTANT. COMPLETE. (standard character form) for "financial services in the field of money lending."

2. RN 3017602: ILO INSTANT LOAN OFFICER PROGRAM (and design; LOAN OFFICER and PROGRAM disclaimed) for "mortgage lending."

3. RN 2702210: INSTANT RAL (standard character form; RAL disclaimed) for "loan services."

4. RN 2445089: INSTANT ADVANTAGE (standard character form) for "credit card services."

5. RN 2117763: INSTANT CASH & CHECK (standard character form; CASH & CHECK disclaimed) for "banking services."

6. RN 2414371: INSTANT APPROVAL (standard character form) for "banking services."

7. RN 1896488: INSTANT ANSWER LOANS (standard character form; LOANS disclaimed) for "banking services."

8. RN 1114666: INSTANT TELLER (standard character form; TELLER disclaimed) for "banking services."

The remainder of the seventeen third-party INSTANT registrations submitted by applicant are not probative because they are for services other than the lending services at issue in this case, such as various types of insurance services, investment advisory services, and online news services.

Applicant also contends that INSTANT is suggestive and not merely descriptive of applicant's services because "[a]pplicant's services are not actually 'instant,' they are just faster than the typical money loaning services." (Applicant's brief at 6.) We are not persuaded. The evidence of record shows that "instant" is commonly used descriptively in the lending industry to refer to a loan application and approval process which is quick and easy, even if not technically instantaneous. Purchasers will immediately understand the word INSTANT to refer to and describe this desirable feature of applicant's lending services.

Carefully considering all of the evidence of record, we find that applicant has failed to rebut the Trademark Examining Attorney's prima facie showing that INSTANT is merely descriptive of the services recited in applicant's application.

Next, we find that the word FUNDING is merely descriptive of applicant's recited services. The record includes the following dictionary definition of "funding": "Providing capital to finance a project."⁷ Applicant's services are recited as "providing loans secured by

⁷ www.moneyglossary.com.

commercial paper, namely, providing retail establishment working capital loans." In providing working capital loans to retail establishments, applicant is providing funding to such establishments, within the above-noted definition of "funding." We therefore find that the word FUNDING, as it appears in applicant's mark and as applied to applicant's services, is merely descriptive of the services. We note that applicant has not argued to the contrary.

Next, we find that SOLUTIONS is merely descriptive of applicant's recited services.⁸

The Trademark Examining Attorney has made of record the following definition of "solution": "The answer to or disposition of a problem."⁹ It cannot be disputed that the need for working capital funding is a significant problem faced by a retail establishment. Without working capital, the retail establishment would not be able to cover the costs of doing business and thus would not be able to remain in business. It also cannot be disputed that, for a retail establishment, a common solution to the problem of

⁸ We find that the case of *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006), upon which the Trademark Examining Attorney relies, is inapposite here. The computer goods at issue in that case as to which the Board found the word SOLUTIONS to be merely descriptive are not related to the lending services at issue in the present case.

⁹ The American Heritage Dictionary of the English Language (4th ed. 2000).

obtaining working capital funding is to borrow it from a lender like applicant. Applicant essentially is providing a solution to the retail establishment's funding problem, i.e., its need for working capital. Purchasers encountering the word "solutions" in applicant's mark will immediately understand that the term refers to the funding solution applicant offers to retail establishments in need of working capital.

Applicant argues that SOLUTIONS is not merely descriptive of applicant's services because:

A loan is not a grant, and therefore it must be repaid and with interest. This interest can be quite costly, and if it is not repaid it can become a potential problem. Therefore, the solution lies not in the loan itself, but in what Applicant's client does with the loan. Thus, the term "SOLUTIONS" is only suggestive of Applicant's money loaning services.

(Applicant's brief at 6-7.) We find this argument to be unpersuasive. The problem in need of a solution is the retail establishment's present or immediate need for an infusion of working capital to enable it to pay its bills and conduct its business. It is the receipt of the loan funding itself that constitutes a solution to that problem; this is so even though the loan must be repaid at a later time. A loan of funds clearly is one solution to the

retail establishment's problem of obtaining working capital funding. It is irrelevant that there also might be other solutions to that funding problem available to the retail establishment, such as a gift or a grant which need not be repaid.

In addition to the dictionary evidence showing the meaning of the word SOLUTION(S) itself, the Trademark Examining Attorney has made of record ten third-party registrations of marks which include SOLUTIONS for various types of Class 36 lending services, in which SOLUTION(S) is disclaimed or in which the mark is registered on the Supplemental Register.¹⁰

¹⁰ These are:

1. RN 2832459: H BUSINESS SOLUTIONS (and design); BUSINESS SOLUTIONS disclaimed;
2. RN 2922107: NORTH AMERICAN REAL ESTATE SOLUTIONS (and design); NORTH AMERICAN and REAL ESTATE SOLUTIONS disclaimed;
3. RN 2886252: NCMIC FINANCIAL SOLUTIONS (standard character form); FINANCIAL SOLUTIONS disclaimed;
4. RN 2880332: TRUSTMARK BANKING AND FINANCIAL SOLUTIONS (standard character form); BANKING AND FINANCIAL SOLUTIONS disclaimed;
5. RN 2907432: MEMBER BUSINESS SOLUTIONS (standard character form); registered on Supplemental Register;
6. RN 2964046: AIG BANK GREATRATE PLUS MORTGAGE SOLUTIONS (standard character form); BANK GREATRATE PLUS MORTGAGE SOLUTIONS disclaimed;
7. RN 2981160: COAST CAPITAL MORTGAGE GROUP, INC. FINANCIAL SOLUTIONS. FINANCIAL SUCCESS. (and design); CAPITAL MORTGAGE GROUP, INC., FINANCIAL SOLUTIONS, and FINANCIAL disclaimed;
8. RN 3091737: TAX REFUND SOLUTIONS (standard character form); registered on Supplemental Register;

We find that the Trademark Examining Attorney's dictionary and third-party registration evidence suffices to establish, prima facie, that SOLUTIONS is merely descriptive of applicant's services.

In response to the Trademark Examining Attorney's prima facie evidence, applicant has submitted eleven third-party Principal Register registrations of SOLUTION(S) marks for lending or banking services in which SOLUTION(S) has not been disclaimed.¹¹ These third-party registrations show

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9. RN 3113137: FEDERAL STUDENT LOAN SOLUTIONS (and design); FEDERAL STUDENT LOAN SOLUTIONS disclaimed; and
 10. RN 3143788: SPECIALIZED MORTGAGE SOLUTIONS (standard character form); registered on Supplemental Register, MORTGAGE disclaimed.

¹¹ These are:

1. RN 3206116: PERSONALIZED SERVICE, CREATIVE SOLUTIONS, SOUND ADVICE (standard character form) for "mortgage brokerage."
2. RN 3133113: SOLUTIONS FOR ANY CREDIT (standard character form) for, inter alia, "financial services, namely automobile consumer loan financing services."
3. RN 3196588: HOME POSSIBLE NEIGHBORHOOD SOLUTION (standard character form) for "financial and real estate services in the field of residential mortgage loans and mortgage-backed, mortgage related, debt and derivative securities."
4. RN 3166665: YOUR FINANCING SOLUTIONS PARTNER (standard character form) for "credit card services."
5. RN 3158310: FINANCIAL SOLUTIONS FROM YOUR PERSPECTIVE (standard character form) for "financial services, namely providing on-line stored value accounts in an electronic environment; consumer services, namely, providing consumer loans, signature loans, automobile loans, lines-of-credit, credit card services, recreational vehicle loans and brokerage services for the trading of stock options; mortgage lending services; checking account and share draft account services, savings and share account services, IRA (Individual Retirement Account) and share certificate services; and electronic payment, namely, electronic processing and transmission of bill payment data."

that the Office has been inconsistent in its treatment of SOLUTION(S) marks, and they constitute some evidence supporting applicant's contention that SOLUTIONS is suggestive as applied to applicant's services. However, we find that this evidence is insufficient to rebut the Trademark Examining Attorney's prima facie showing of dictionary and third-party registration evidence of the mere descriptiveness of SOLUTIONS. Additionally, and as noted above, although consistency is one of the Office's goals, it is settled that we must make our determination

6. RN 3157493: PROFESSIONAL SOLUTIONS FINANCIAL SERVICES (typed; FINANCIAL SERVICES disclaimed) for "financial services, namely, loan financing and lease-purchase loans."

7. RN 3153982: THE SOLID SOLUTION LOAN (typed; LOAN disclaimed) for "mortgage brokerage."

8. RN 3188593: SOLUTIONS FOR UGLY SITUATIONS (typed) for "real estate services, namely real estate acquisition, real estate brokerage services and loan financing."

9. RN 3167192: HOMEOWNER SOLUTIONS (typed; HOMEOWNER disclaimed) for "real estate services, namely, foreclosure services, mortgage refinancing, real estate investment, mortgage lending and property management."

10. RN 3155862: ONE. COMPLETE. SOLUTION. (typed) for "financial services, namely originating loans, purchasing loans and servicing auto loans."

11. RN 31712188: INDIVIDUAL SOLUTIONS FROM INDEPENDENT ADVISORS (typed; INDIVIDUAL and INDEPENDENT ADVISORS disclaimed) for "comprehensive financial services in the nature of financial planning and investment, investment banking, asset management, and banking and trust services."

The remainder of the twenty-five third-party registrations of SOLUTION(S) marks submitted by applicant are not probative because they are for services unrelated to the lending services at issue in this case, such as insurance services and investment advisory services.

regarding mere descriptiveness based on the record before us in the present case. *In re Nett Designs Inc., supra.*

Considering all of the evidence of record, we find that SOLUTIONS is merely descriptive of applicant's services as recited in the application.

For the reasons discussed above, we find that INSTANT, FUNDING and SOLUTIONS, when considered separately, are merely descriptive of applicant's services.

Of course, our mere descriptiveness determination must be made on the basis of an evaluation of the mark as a whole. For the reasons discussed below, we find that the composite mark INSTANT-FUNDING-SOLUTIONS.COM, considered as a whole, is merely descriptive of applicant's services.

For the first time in its reply brief, applicant argues that its mark is suggestive and not merely descriptive because it is "a unitary slogan made up of an incongruous combination of terms." (Reply brief at 3.)

Applicant argues that

Applicant's mark is a unitary mark, wherein the term "INSTANT" is incongruous from the "FUNDING" and "SOLUTIONS" terms within the mark. The unitary mark "INSTANT-FUNDING-SOLUTIONS.COM" leads one to imagine an immediate solution to one's funding needs, such as a windfall of money or a forgiveness of money owed. However, Applicant provides neither of these services. Instead Applicant's services are "providing loans secured by commercial paper, namely, providing

retail establishment working capital loans," which includes loans of working capital that must be repaid with interest. These loans may be provided faster than many other loans, but they are not provided instantly.

(Reply brief at 9.) Applicant also contends that its mark is a unitary mark because it "contains terms that are physically connected by lines (hyphens) and are located together on one line." (Reply brief at 5.)

We are not persuaded. First, we note that the question of whether applicant's mark is "unitary" would need to be answered in this case only if the issue before us were whether any portion of the mark must be disclaimed. The Trademark Examining Attorney has not required a disclaimer but instead has refused registration on the ground that the mark as a whole is merely descriptive.

Second, we see nothing incongruous in the mark when it is considered as a whole. The mark immediately and directly informs purchasers that applicant offers working capital funding solutions and that those funding solutions are provided in an "instant," i.e., a very short time. Applicant's argument that the mark is incongruous because it "leads one to imagine an immediate solution to one's funding needs, such as a windfall of money or a forgiveness of money owed" is nothing but a restatement of applicant's

arguments (which we have already rejected) that the word INSTANT is not merely descriptive because applicant's loans technically are not instantaneous, and that the word SOLUTIONS is not merely descriptive because applicant's loans must be repaid.

In short, we find that INSTANT, FUNDING and SOLUTIONS, when considered separately, are merely descriptive of applicant's services, and we find that applicant's combining of these terms into the phrase INSTANT FUNDING SOLUTIONS does not create an incongruous or otherwise inherently distinctive composite mark.

Finally, we find that the top level domain designation ".COM" appearing at the end of applicant's mark is devoid of source-indicating significance, and that it does not negate the mere descriptiveness of the mark as a whole. See *In re Oppedahl & Larsen LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004). We further find that the presence of the hyphens between the words in applicant's mark does negate the mere descriptiveness of the mark. See *In re Vanilla Gorilla, L.P.*, 80 USPQ2d 1637 (TTAB 2006).

Having considered all of applicant's arguments and all of the evidence of record, we find that applicant's mark when considered as a whole is merely descriptive of applicant's services as they are recited in the

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application. We conclude that registration of applicant's mark therefore is barred by Trademark Act Section 2(e)(1).

Decision: The refusal to register is affirmed.