

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

Mailed: 10/24/08

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sourcefire, Inc.

Serial No. 78968186

Cynthia K. Nicholson of Posz Law Group for Sourcefire, Inc.

Michael Levy, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Quinn, Kuhlke and Bergsman, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Sourcefire, Inc. filed, on September 6, 2006, an
intent-to-use application to register the mark UNIFIED
THREAT INSPECTION (in standard character format) for
"computer software for use in computer network security,
intrusion prevention/detection, correlation, network
intelligence and analysis, all the foregoing being in
connection with computer network security."

The trademark examining attorney refused registration
under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

§1052(e)(1), on the ground that applicant's mark, if used in connection with applicant's goods, would be merely descriptive thereof.

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

The examining attorney maintains that the mark is merely descriptive of "unified threat management inspection software." Although the examining attorney concedes that the record does not include any examples of uses of "unified threat inspection," he argues that the individual components comprising the mark, specifically "unified threat" and "inspection" are merely descriptive in the network security field, and that the combination of these words remains descriptive, conveying information about the nature and function of applicant's software. The examining attorney points to uses of "unified threat" in combination with terms such as "products" and "solutions," as well as to uses of "unified threat management." The examining attorney also relies upon uses of "inspection" in connection with network security software. In support of the refusal the examining attorney introduced dictionary

definitions, and excerpts of various web pages, including some retrieved from applicant's website.¹

Applicant argues that the two-word combination "unified threat" has no meaning relative to the goods, and that the widely used combination "unified threat management," as relied upon by the examining attorney, is not necessarily probative to show that UNIFIED THREAT INSPECTION is merely descriptive. In support of its arguments, applicant submitted excerpts of web pages, the results of various searches of the USPTO's databases, and copies of two third-party patents.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use

¹Some of the websites are of foreign origin. Applicant has criticized the foreign websites because they "only show irrelevant use outside the United States." This criticism is ill founded. "Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (TTAB 2007). This does not mean that in all cases foreign websites will be relevant. However, in this case, we find that due to the nature of the software at issue, the foreign websites would be reviewed by consumers in the United States, and therefore help to form the commercial impression engendered by the mark. Nevertheless, the better practice would have been for the examining attorney who handled the examination (herein a different examining attorney from the examining attorney who wrote the appeal brief) to explain during examination why the foreign websites were relevant.

of the goods or services. *In re Bayer Aktiengesellschaft*, supra; and *In re Abcor Development*, 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; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. *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 on or in connection with the 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; contrary to the gist of a portion of applicant's argument, that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). 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).

The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of applicant's goods or services. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. See, e.g., *In re Tower Tech Inc.*, supra [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; and *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs].

Applicant is engaged in the development and sale of open source computer network security products. Applicant, described as an "intrusion detection/prevention software (IDS/IPS) developer," has been involved in the area of "unified threat management (UTM)," according to Michele

Perry, applicant's chief marketing officer.

(www.computerwire.com).

"Unified Threat Management refers to a stand-alone appliance or software package that combines a firewall, antivirus, spam and content filtering as well as intrusion detection." (www.pcmag.com)

Wikipedia describes the designation "unified threat management (UTM)," in relevant part, as

network firewalls that have many features in one box, including junk e-mail filtering, anti-virus capability, an intrusion detection (or prevention) system (IDS or IPS), and World Wide Web content filtering, along with the traditional activities of a firewall. These are application-layer firewalls that use proxies to process and forward all incoming traffic, though they can still frequently work in transparent mode that disguises this fact. However, if this uses too much processor time, the higher-level inspection can be disabled so that the firewall functions like a much simpler network address translation (NAT) gateway.

The term "Unified Threat," as reflected by the evidence of record, most often has been used in connection with the term "management," as in "Unified Threat Management." However, the record shows other uses such as "Unified Threat Products" and "Unified Threat Solutions" in connection with computer network security software.

Contrary to the gist of a portion of applicant's arguments, the deletion of the term "management" does not transform the words "unified threat" into an inherently distinctive term in the context of network security software.

Also of record are examples of uses of the term "inspection" in connection with software:

Inspection Software
High Detection Enhancement (HDE)
software
HDE inspection software increases
security for higher threats
(www.gesecurity.com)

Hifn Pattern Matching
accelerates...content inspection of
packets traveling through network.
Applications include unified threat
management appliances...and deep packet
inspection firewalls.
(www.thomasnet.com)

Finjan's SurfinGate, a gateway-level
content-inspection software solution...
(www.checkpoint.com)

The record includes information regarding unified threat management software that includes an inspection application utilized in computer network security. For example, the following excerpts are illustrative:

These third generation firewalls run on general purpose operating systems that have been specially modified and hardened against network and application layer attacks...These third generation firewalls are also know as Unified Threat Management (UTM) devices. The third generation firewall

is able to perform stateful filtering (like second generation hardware firewalls) and perform stateful application layer inspection. By perform[ing] stateful application layer inspection, the third generation firewall is able to fully inspect HTTP, FTP, POP3, SMTP, NNTP, instant messenger, peer to peer, VoIP and other application layer protocol communications. The third generation firewall UTM device performs the basic stateful filter that all firewalls perform today, and then provides the real protection required for 21st century networks by exposing the application layer protocols to deep inspection.
(www.everywherenetworks.com)

Long associated with smaller organizations, unified threat management (UTM) technology is now on the cusp of widespread adoption by large enterprises...UTM describes a suite of deep-packet inspection technologies that include threat prevention, anti-virus, anti-spyware, anti-spam and content filtering. It differs from a traditional firewall by its ability to inspect at the application, rather than network, layer.
(www.telecomasia.net)

UTM is the evolution of the traditional Firewall into a Swiss Army product that not only includes a firewall but also content inspection and filtering, spam filtering, intrusion detection and anti-virus...There is no doubt that enterprises require best-in-class security. From a UTM appliance this means a platform with high-speed content inspection supporting the following: firewall; high-quality email and web filtering; intrusion

detection and prevention; antivirus scanning; antispyware; spam filtering. (www.itsecurity.com)

This article explores the next-generation of Unified Threat Management (UTM) security systems--advancements that inspect Layers 3-7 to provide complete protection in a single, easily-managed multi-layered platform. (www.convergedigest.com)

Fortinet is the confirmed leader of [the] Unified Threat Management market...customers benefit from their ability to customize SSL VPN into one or more complete content inspection applications including antivirus, firewall, IPSec VPN, intrusion detection and prevention (IDP), content filtering, anti-spam and traffic filtering into a single Unified Threat Management security appliance. (www.fortinet.com)

As part of applicant's unified threat management software package, its product "provides packet decoding and inspection, allowing you to see which rule was activated by the attack." (www.scmagazine.com).

Based on the meanings of the individual components "unified threat" and "inspection" as they are understood in the computer network security field, we find that the combination UNIFIED THREAT INSPECTION is merely descriptive. The record establishes that the designation UNIFIED THREAT INSPECTION merely describes unified threat management software that includes an inspection

Ser No. 78968186

application. The individual merely descriptive components, "unified threat" and "inspection," retain their descriptive character when combined to form the composite UNIFIED THREAT INSPECTION. No imagination is required to discern the nature and purpose of the goods. The fact that applicant may be the first or only user of the merely descriptive designation is outweighed by the weight of the evidence of mere descriptiveness. *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985).

Decision: The refusal to register is affirmed.