

FSW

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

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: June 13, 2008

Cancellation No. 92047561

East West Bank

v.

BridgeLoan Investors, Inc.

**Before Hairston, Kuhlke and Ritchie de Larena,
Administrative Trademark Judges.**

By the Board:

Petitioner, East West Bank, has petitioned to cancel the mark BRIDGELoAN.COM for "financial services, namely commercial lending services,"¹ alleging *inter alia* that respondent's mark is generic. On February 1, 2008, petitioner filed a motion for summary judgment on its pleaded ground of genericness. The motion has been fully-briefed.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it

¹ Registration No. 2786815; issued November 25, 2003.

Cancellation No. 92047561

is entitled to summary judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986).

To prevail on its motion, petitioner must show the absence of genuine issues of material fact as to its standing to bring this action and as to its claim that the mark is generic. For the reasons stated below, we find that there are no genuine issues of material fact in dispute and that summary judgment is appropriate in this case.

Standing

A party may prove its standing to cancel a registration by showing that it has a "real interest" in the case, that is, a direct and personal stake in the outcome of the cancellation. See *Ritchie v. Simpson*, 50 USPQ2d 1023, 1026 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ 185, 189 (CCPA 1982). The claimed use of a term in a generic sense is sufficient to impart standing to a competitor in a petition to cancel a registration based on the ground of genericness.

To establish its position as a competitor of respondent and its interest in the allegedly generic term "bridge loan," petitioner claims that it uses and has applied to register the marks YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE

Cancellation No. 92047561

for "banking; cash management,"² and that the term "bridge loan" is "a generic term of financial services that has been used in that segment of the art [sic] industry of which the Petitioners [sic] are members, to describe interim or emergency financing through a short- or medium-term loan."

Petition to Cancel, para. 6. In support of its motion for summary judgment, petitioner submitted a declaration of its Senior Vice-president, Director of Marketing, who states that "[Petitioner] has used the term 'bridge loan' or 'temporary loan' since at least as early as 1996."

Petitioner also submitted a declaration from its attorney, authenticating copies of printouts from the USPTO TARR database showing that its applications for the marks YOUR FINANCIAL BRIDGE and BUSINESS BRIDGE have been published for opposition purposes, and pages from petitioner's website that show use of the mark YOUR FINANCIAL BRIDGE, and includes links to "Loans & Lines of Credit," "Express Home Loan" and "Auto Loans," as well as use of the terms "BusinessBridge" and "BusinessBridgePlus" as link terms from

² Serial No. 78897563 for the mark YOUR FINANCIAL BRIDGE, filed May 31, 2006, alleging January 1, 1997 as the date of first use of the mark in commerce; and Serial No. 78890654 for the mark BUSINESS BRIDGE, filed May 23, 2007, alleging May 15, 1997 as the date of first use of the mark in commerce.

its home page. Another page from its website headed "Business Bridge Cash Management" is further included.³

Respondent argues that petitioner has not proven the absence of genuine issues of material fact with respect to its standing because respondent's registration was not cited against petitioner's pending trademark applications, and therefore petitioner has not been damaged thereby. However, petitioner's standing is not dependent upon the status of its applications. Petitioner's standing is shown in its status as respondent's potential competitor, with a competitive need to use an allegedly generic term. The totality of the evidence, apart from the pending applications, support petitioner's allegation of standing. We find no genuine issues of material fact that petitioner has established its standing as a potential competitor of respondent in the financial services sector.

Petitioner's Claim that BRIDGELOAN.COM is Generic

A generic term is the common descriptive name of a class or genus of goods or services, and must be refused registration under the Trademark Act because it does not function as a trademark or service mark. By definition, a

³ While the website evidence cannot be read for the truth of petitioner's assertion that it is actually providing financial services, as perhaps suggested by the links but not confirmed by any declaration of use, we have considered the website print-outs for whatever probative value they may have as corroboration of petitioner's declarant's statement that petitioner has used the term "bridge loan" since 1996.

Cancellation No. 92047561

generic term identifies a type of goods or services and not the source of such goods or services. Our primary reviewing court has stated that:

[d]etermining 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 ... understood by the relevant public primarily to refer to that genus of goods or services?

H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986); see also, *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002) (BONDS.COM held generic for providing information regarding financial products and services).

Thus, the test for determining whether a term is generic is its primary significance to the relevant public. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, newspapers, magazines, dictionaries, catalogs, and other publications. See *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, *supra*, and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

With respect to the first part of the genericness inquiry, the class or category of services at issue here is

Cancellation No. 92047561

that of financial services, namely, commercial lending services, as recited in respondent's registration. In support of its position that the mark is generic for these services, petitioner has submitted copies of several dictionary definitions showing that a "bridge loan" is a short-term loan "used to finance an enterprise, investment, or government pending the receipt of other funds" (*Merriam-Webster Online Dictionary*), or "intended to provide or extend financing until a more permanent arrangement is made" (*The American Heritage Dictionary of the English Language, 4th Ed. 2006*). Petitioner also submitted copies of the specimen of use filed by respondent in connection with its registration, which appears to have been taken from respondent's website (copies of the website were also submitted), stating that respondent offers "Short Term Gap Financing on commercial property."

With respect to consumer perception, petitioner has submitted copies of news articles showing that the term is used in the financial industry and would be perceived by the relevant public, namely potential buyers of bridge loans, as a short-term loan. For example, petitioner has submitted a copy of an online article written in 2003 from FranchiseInc! entitled "*Securing a Bridge Loan, The ABCs on what a bridge loan is, why you should think about getting one and how to do it,*" and an online article from *Kiplinger's Personal*

Cancellation No. 92047561

Finance magazine, July 2007 entitled "*Building a Better Bridge Loan.*" Petitioner also submitted copies of three marks, one registered and two pending on the Principal Register, that use the term "bridge loan financing" or "bridge loan funds" as part of their recitation of services.

Based on this evidence, petitioner argues that there are no genuine issues of material fact that the mark BRIDGELOAN.COM is generic.

Respondent, on the other hand, argues that its mark "at most, merely suggests that it is a website and that respondent provides services relating to financial services." Respondent further contends that there is no clear meaning of BRIDGELOAN.COM that would indicate to a potential consumer the nature of the services with which it is used. Moreover, respondent notes that it is the owner of the mark BRIDGELOAN INVESTORS, which was registered on the Principal Register, and that respondent "was not required to disclaim exclusive rights to BRIDGE LOAN and was also not required to claim distinctiveness under Section 2(f)."

Respondent's reliance on its prior registration to raise a genuine issue of material fact is misplaced. The addition of the word "investors" in the mark imbues it with a connotation that, rather than primarily describe the genus of the services, may instead merely name the target audience. *Cf., Marvin Ginn, supra*, ("FIRE CHIEF" held not

Cancellation No. 92047561

generic for the title of a magazine directed to the field of fire fighting, where there was no evidence suggesting that the relevant portion of the public referred to a class of fire fighting publications as 'Fire Chief'). Moreover, our task in this matter is to determine, based on the record before us, whether the mark sought to be cancelled here is generic. As is often stated, each case must be decided on its own merits. *See. e.g., In re Cyberfinancial.Net*, 65 USPQ2d at page 1794; *see also In re DNI Holdings Ltd*, 77 USPQ2d 1435, 1439 (TTAB 2005) (SPORTSBETTING.COM in standard character drawing held generic despite prior registration for mark in stylized lettering format with design).

Nor does the fact that respondent's mark is a telescoped mark combining the two words "bridge" and "loan" with the top-level domain ".com" raise a genuine issue of material fact that the mark is not generic. We find that "bridge loan" is the equivalent of "bridgeloan" and that ".com" is an entity designator which lacks trademark significance. The separate words "bridge" and "loan" when joined to form a compound term, have the same meaning that common usage would ascribe to the two words used separately, and the ".com" portion does not create source-identifying significance when appended to this generic term. *See In re CyberFinancial.Net*, 65 USPQ2d at 1790; *see also In re DNI*

Cancellation No. 92047561

Holdings Ltd, 77 USPQ2d 1435, 1439 (TTAB 2005) ("sportsbetting" equivalent to "sports betting").

In view of the above, we find that there are no genuine issues of material fact that the mark BRIDGELoAN.COM is generic for "financial services, namely, commercial lending services." Accordingly, petitioner's motion for summary judgment is granted, the petition for cancellation is sustained and respondent's registration will be canceled in due course.

-oOo-