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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Christian Happenings Acquisition Corp., Ltd.

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Serial No. 77926930

Juan Jose Perez, Sarah C. Perez, and Joshua D. Rockwell of Perez & Morris LLC for applicant.

Andrea Koyner Nadelman, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

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Before Kuhlke, Ritchie, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

On February 3, 2010, applicant Christian Happenings Acquisition Corp., Ltd. filed application Serial No. 77926930 to register on the Principal Register the mark ITICKETS (in standard character form) for the following services in International Class 41:

Arranging for ticket reservations for shows and other entertainment events; Entertainment ticket agency services; On-line admission ticket agency services for entertainment, educational, sporting and cultural events; On-line entertainment ticket agency services; Providing an Internet website portal featuring links to musical artist websites and music performance ticket information;

Ticket agency services for entertainment events; Ticket reservation and booking services for entertainment, sporting and cultural events.

Applicant claimed May 31, 1998 as the first date of use of its mark anywhere and in commerce.

Prosecution History

In the first Office action issued May 10, 2010, the examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive of the identified services and advised applicant that its mark appeared to be generic. On November 9, 2010, applicant responded by arguing that the examining attorney had not met her burden to show that the mark is merely descriptive. In the alternative, applicant claimed that its mark had acquired distinctiveness due to substantially exclusive and continuous use in commerce for at least five years pursuant to Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f).

A second Office action issued December 13, 2010, maintaining the descriptiveness refusal and also refusing registration on the ground of genericness under Section 2(e)(1), and therefore finding applicant's claim of acquired distinctiveness under Section 2(f) insufficient to overcome the refusal. Applicant responded on June 13, 2011 with additional arguments and evidence in support of registration with regard to the Section 2(e)(1) refusals and its alternative claim of acquired distinctiveness. A final Office action issued July 25, 2011 refusing registration on the ground that applicant's mark is generic and its evidence of acquired distinctiveness insufficient.

Applicant timely appealed. Both the applicant and the examining attorney filed briefs, and applicant filed a reply brief.

For the reasons set forth below, we affirm the refusal to register.

Genericness

When a proposed mark is refused registration as generic, the examining attorney has the burden of proving genericness by “clear evidence.” *In re Hotels.com, L.P.*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of services in question. *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Women’s Publ’g Co.*, 23 USPQ2d 1876, 1877 (TTAB 1992).

Our primary reviewing court has set forth a two-step inquiry to determine whether a mark is generic: First, what is the genus (category or class) 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.*, 228 USPQ at 530. Evidence of the public’s understanding of a term may be obtained from any competent source, including listings in dictionaries, purchaser testimony, consumer surveys, trade journals, newspapers, and other publications. *Merrill Lynch*, 4 USPQ2d at 1143; *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

With respect to the first part of the *Marvin Ginn* inquiry, the genus in this case is defined by the services identified in the application. *See In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007); *Magic Wand, Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) (a proper genericness inquiry focuses on the description of services set forth in the application or certificate of registration). We focus our inquiry on the identified services:

Arranging for ticket reservations for shows and other entertainment events; Entertainment ticket agency services; On-line admission ticket agency services for entertainment, educational, sporting and cultural events; On-line entertainment ticket agency services; Providing an Internet website portal featuring links to musical artist websites and music performance ticket information; Ticket agency services for entertainment events; Ticket reservation and booking services for entertainment, sporting and cultural events.

It is clear from applicant's identification that all of the services for which it seeks to register the term ITICKETS pertain to tickets; most are for ticket agency, booking, and reservation services, while one ("Providing an Internet website portal featuring links to musical artist websites and music performance ticket information") is for ticket information services. It is also apparent from applicant's identification that some of its ticket services are provided online and/or through an Internet website portal. Therefore, we find the characterization of online ticket agency services and Internet ticket information services to be the genus of the subset of applicant's services most relevant to our decision. *See In re Tennis Indus. Ass'n*, 102 USPQ2d 1671, 1674 (TTAB 2012) (finding that "the genus of services at issue is adequately defined by applicant's identification of services") (citing *In re*

Trek 2000 Int'l Ltd., 97 USPQ2d 1106, 1112 (TTAB 2010)); *In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1081-82 (TTAB 2010). We note that “online” is defined as “connected by computer to one or more other computers or networks, as through a commercial electronic information service or the Internet”¹ and “of or relating to the internet: online shopping.”² Thus, the references to “online” and the “Internet” in the genus are interchangeable.

The second part of the *Marvin Ginn* test is whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of goods or services. As noted above, the evidentiary burden of establishing that a term is generic rests with the Office and the showing must be based on clear evidence. *Merrill Lynch*, 4 USPQ2d at 1143. Because ITICKETS is a compound word, the evidentiary burden to establish genericness may be satisfied through dictionary definitions showing that the constituent terms – here, “I” and “TICKETS” – retain their meaning in common usage when joined together as a compound. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-12 (Fed. Cir. 1987).

Internet tickets and Internet ticket services are commonplace, as demonstrated by the record, and the public is routinely exposed to the phrase

¹ Random House Dictionary (2013), retrieved from dictionary.com. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

² Collins English Dictionary (10th ed. 2009), retrieved from dictionary.com.

“Internet ticket” in connection with ticket agency and information services.³ The examining attorney made of record a screenshot from www.acronymfinder.com demonstrating that “I” is a generic abbreviation for “Internet.”⁴ She also referenced the Computer Desktop Encyclopedia defining the prefix “I” as:

(1) (Lower case “I” internet) A large network made up of a number of smaller networks.

(2) (Upper case “I” Internet) The global network of networks (see definition #1 above), composed of hundreds of millions of computers in more than 100 countries. . . .⁵

“Ticket” is a generic term which may be defined as a noun meaning “a certificate or token showing that a fare or admission fee has been paid” and as the verb “to furnish or serve with a ticket.”⁶ These are the same types of tickets and ticket services referenced by the genus of applicant’s services.

We find that the prefix “I” and the word “ticket” retain these common meanings when telescoped into the compound word “ITICKET,” and that the public would readily understand ITICKET to refer to ticket services offered on the Internet. “In this instance, the terms remain as generic in the compound as individually, and the compound thus created is itself generic.” *In re Gould Paper*,

³ The examining attorney submitted a screenshot of a Google search that returned 400,000 results for the phrase “internet ticket,” as well as excerpts from more than two dozen websites returned in the search, all of which referenced Internet ticket sales (legitimate and fraudulent) or related services. Final Office action, July 25, 2011, at 2-103.

⁴ First Office action, May 10, 2010, at 4. *Cf. In re Zanova Inc.*, 59 USPQ2d 1300, 1304 (TTAB 2001) (finding that prospective purchasers “will readily accept ‘I’ as meaning ‘Internet’” in the context of applicant’s goods and holding ITOOL merely descriptive of the identified computer software and services).

⁵ Computer Desktop Encyclopedia (2010), cited in the final Office action, July 25, 2011. As noted *supra*, applicant has applied to register ITICKETS in standard character form.

⁶ Merriam-Webster Online Dictionary (2013), retrieved from m-w.com.

5 USPQ2d at 1112. This compound term immediately and unequivocally describes applicant's online ticket services. The genericness of the term is therefore established:

[I]f the compound word would plainly have no different meaning from its constituent words, and dictionaries, or other evidentiary sources, establish the meaning of those words to be generic, then the compound word too has been proved generic. No additional proof of the genericness of the compound word is required.

In re American Fertility Soc'y, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999).⁷ We find that there is clear evidence to support a holding that the relevant public, when it considers ITICKETS in conjunction with applicant's identified services, would readily understand the term to identify ticket agency and information services provided over the internet.

We have considered applicant's evidence and arguments that ITICKETS is not generic for its services, but we are not persuaded by them. Applicant points to the fact that ITICKETS does not appear in dictionaries and argues that the term is a unitary mark with "its own exclusive meaning and serves as a source identifier for Applicant's unique goods and services."⁸ We disagree. Applicant does not identify how the common constituent terms are transformed to gain a new meaning in the term ITICKETS when used in association with the applied-for Internet ticket services. Our primary reviewing court has emphasized that the test of genericness

⁷ We find the compound word ITICKETS comparable to the term E-TICKET, which we held generic for "computerized reservation and ticketing of transportation services" in *Continental Airlines, Inc. v. United Air Lines, Inc.*, 53 USPQ2d 1385 (TTAB 2000). Indeed, the reference to the Internet is even more direct here.

⁸ Applicant's Brief at 11.

is not only whether the public would itself *use* this term to name this genus of services, “but also whether the relevant public would *understand* the term to be generic.”⁹ The correct inquiry is whether the relevant public would understand, when hearing the term ITICKETS, that it refers to Internet ticket services. Moreover, the fact that a term is not listed in a dictionary is not controlling on the question of registrability. *See In re Gould Paper*, 5 USPQ2d at 1111-12 (holding SCREENWIPE generic for a wipe for television and computer screens based on evidence including dictionary listings of components SCREEN and WIPE); *see also In re Recorded Books Inc.*, 42 USPQ2d 1275, 1280 (TTAB 1997) (refusing registration of RECORDED BOOKS).

Applicant also argues that ITICKETS serves a “dual purpose” of identifying both its product and itself as the source of its services.¹⁰ Even if applicant is the first and only user of this generic designation, that is not dispositive on the issue of genericness. *See In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083-84 (TTAB 2010); *In re Nat’l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983).

Applicant argues that ITICKETS is not generic because it uses the term for ticket sales by telephone and other outlets – including phone, mail, and through alliances with local outlets such as Christian bookstores – in addition to the Internet.¹¹ However, it is well-settled that registration must be refused if the term

⁹ 1 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 12:57 (4th ed. 2012) (quoting *In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1685 (Fed. Cir. 2009)).

¹⁰ *See* Applicant’s Brief at 8; Reply Brief at 2.

¹¹ Applicant’s Brief at 4 (citing Novak Dec. at ¶ 19).

is a generic name for *any* services for which registration is sought. *Haas Outdoors Inc. v. Jordan Outdoor Enters. Ltd.*, 72 USPQ2d 1282, 1283 (TTAB 2004); *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

Applicant also submitted evidence that it uses the term ITICKETS for goods and services beyond the identification in its application, including (among others) for email and fax broadcasting and the selling of advertising space on its website and elsewhere. “It is clear that internet ticket sales is but a part of Applicant’s wide array of goods and services, including those provided in brick and mortar store locations.”¹² When determining registrability, however, we must make our decision on the basis of applicant’s services as they are identified in the application. *See, e.g., Octocom Syst. Inc. v. Houston Computers Svcs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *Magic Wand*, 19 USPQ2d at 1552. The application identifies only ticket services, some of which are specifically identified as being provided via the Internet. Unlike in *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1423 (Fed. Cir. 2005), there is no ambiguity in the term ITICKETS as applied to the genus of applicant’s services.

In addition, applicant argues that ITICKETS is suggestive, not merely descriptive, and that the examining attorney did not disprove that ITICKETS is a unique source identifier for applicant’s services. Applicant’s arguments and evidence on this point necessarily pertain to issues of descriptiveness and secondary

¹² Applicant’s Brief at 8; *see also id.* at 4 (citing Novak Dec. at ¶¶ 9-10); Reply Brief at 3 (“Applicant has three (3) lines of business, only one of which relates to ticket sales . . .”).

meaning, yet no amount of acquired distinctiveness can render a generic term a registrable mark. *See, e.g., In re American Academy of Facial Plastic & Reconstructive Surgery*, 64 USPQ2d 1748, 1756 (TTAB 2002).

Finally, applicant argues that registrations of similar I-formative marks currently exist on the Principal Register.¹³ Even though the marks in those registrations may “have some characteristics similar” to the mark herein, as the Federal Circuit has stated, “the PTO’s allowance of such prior registrations does not bind the Board or this court.” *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). It is well settled that each case must be decided on its own facts, based on the particular mark, the particular goods or services, and the particular record in each application.

Acquired Distinctiveness

Because we have found the term ITICKETS to be generic for applicant’s identified services and thus incapable of distinguishing applicant’s services from those of others, we need not address the sufficiency of the evidence supporting applicant’s Section 2(f) claim of acquired distinctiveness.

Decision: The refusal under Section 2(e)(1) of the Act on the ground that the proposed mark is generic for the services identified in the application is affirmed.

¹³ We consider the *list* of third-party registrations included in applicant’s response to the second Office action, submitted June 13, 2011, “for whatever limited probative value such evidence may have.” *In re Broyhill Furniture Indus. Inc.*, 60 USPQ2d 1511, 1513 n.3 (TTAB 2001). The examining attorney’s failure to advise applicant of the insufficiency of the list of registrations when it was proffered during examination constituted a waiver of any objection to consideration of that list. *In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012); *see also* Trademark Trial and Appeal Board Manual of Procedure (TBMP) §§ 1207.03 and 1208.02 (3d ed. rev. 1 2012).