

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Socrata, Inc.

Serial No. 86556587

Ellen M. Bierman of Lowe Graham Jones PLLC,
for Socrata, Inc.

Kathleen M. Vanston, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

Before Ritchie, Adlin and Lynch,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

Socrata, Inc. (“Applicant”) seeks registration on the Principal Register of the proposed mark OPEN PAYROLL in standard characters for “Computer services, namely, providing a web-based service featuring technology enabling government agencies to publish payroll data and for enabling end-users to access the published

payroll data of government agencies” in International Class 42.¹ Applicant has disclaimed “PAYROLL.”

The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Section 2(e)(1), 15 U.S.C. § 1052(e)(1), as merely descriptive of the identified services. After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board, and the appeal is fully briefed. We affirm the refusal to register.

Section 2(e)(1) of the Trademark Act precludes registration of a mark which, “when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is merely descriptive within the meaning of Section 2(e)(1) “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

We consider whether someone familiar with Applicant’s identified services will understand the mark to convey information about them, rather than whether someone presented only with the mark could guess what services Applicant provides. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200

¹ Application Serial No. 86556587 was filed on March 6, 2015, based on Applicant’s intent to use the proposed mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In fact, descriptiveness must be assessed “in relation to the [services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the [services] because of the manner of its use or intended use.” *Bayer Aktiengesellschaft*, 82 USPQ2d at 1831 (citing *Abcor Dev.*, 200 USPQ at 218). Thus, we consider descriptiveness from the standpoint of a consumer familiar with Applicant’s “Computer services, namely, providing a web-based service featuring technology enabling government agencies to publish payroll data and for enabling end-users to access the published payroll data of government agencies.”

The Examining Attorney’s evidence shows that the phrase “open payroll” is used to refer to transparency of salary information, including in the context of services like Applicant’s. For example:

- A posting on the website of the Pay Equity Coalition of Minnesota states that the goal of “a completely **open payroll** process is for everyone to know what everyone earns and why.”²
- A webpage of Macoupin County, Illinois welcomes online visitors to “Macoupin County **Open Payroll**,” which is part of an “**open** government initiative” and apparently allows “citizens to find information on how government employees are compensated.”³
- The website of the City of Port Angeles offers “**Open Payroll** Port Angeles,” described as part of its commitment to “opening its books” and establishing

² January 7, 2016 Office Action at 2 (womenpayequity.blogspot.com) (emphasis added).

³ *Id.* at 41 (payroll.macoupincountyil.gov) (emphasis added).

open data resources, which allows “stakeholders to find information on how City of Port Angeles employees are compensated.”⁴

- An online article from Entrepreneur titled “4 Ways Payroll Transparency Benefits Companies with Nothing to Hide” reports on “reasons for companies to consider making **payroll open** information.”⁵

OPEN is defined as “completely free from concealment: exposed to general view or knowledge” and “not restricted to a particular group or category of participants.”⁶

Additional evidence shows the descriptiveness of “open” in the context of government data transparency, which is the focus of Applicant’s computer services.

Examples in the record include:

- An online article on the White House website refers to the Administration’s **Open Data** initiative, “aimed at scaling up open data efforts” across various sectors, including “sharing best practices, examples, and software code to assist federal agencies with opening data.”⁷
- The website of opensource.com refers to “**open government**” as “one with high levels of transparency and mechanisms for public scrutiny and oversight in place,” and notes that public expectations of open government include making information “freely and readily available via the Internet.”⁸
- The website DATA.gov refers to itself as “[t]he home of the U.S. Government’s **open data**,” and offers access to Department of Labor payroll employment data, as well as payroll data for the State of Oklahoma.⁹
- The **Open Data** Handbook defines “**open data**” as “data that can be freely used, re-used and redistributed by anyone....”¹⁰

⁴ July 21, 2016 Office Action (openpayroll.cityofpa.us) (emphasis added). This website appears to make use of Applicant’s services, but uses the term OPEN PAYROLL descriptively.

⁵ *Id.* at 12-13 (entrepreneur.com) (emphasis added).

⁶ January 7, 2016 Office Action at 4-5 (merriam-webster.com).

⁷ January 7, 2016 Office Action at 23 (whitehouse.gov).

⁸ *Id.* at 25-26 (opensource.com).

⁹ *Id.* at 28, 31 (data.gov); July 21, 2016 Office Action at 19-20 (data.gov).

¹⁰ January 7, 2016 Office Action at 37 (opendatahandbook.org).

These examples and other evidence in the record clearly demonstrate the use of “open” to refer to making government information publicly available and easily accessible. Applicant’s use of OPEN PAYROLL to facilitate the public availability and accessibility of federal agency payroll information is consistent with these common and descriptive third-party uses.

“Payroll” is defined as “a list of the people who work for a company and the amount of money that the company has agreed to pay them” and “the total amount of money that a company pays to all of its employees.”¹¹ Besides using the term PAYROLL descriptively in its identification of services, Applicant has also conceded the descriptiveness of that term by disclaiming it. *See Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972) (when appellant disclaimed the term in applications for registrations of compound marks, it admitted the merely descriptive nature of the mark).

Applicant’s website states that its services allow user access to payroll data in a way that ensures “the highest degree of transparency.”¹² Its online announcement of the Open Payroll App refers to it as an “addition to our Financial Transparency Suite,” which can “accommodate a wide range of data disclosure policies.”¹³ Thus, this website evidence reflects the ordinary, descriptive sense of both terms. *See In re*

¹¹ January 7, 2016 Office Action at 17 (merriam-webster.com).

¹² January 7, 2016 Office Action at 39 (support.socrata.com).

¹³ July 21, 2016 Office Action at 2 (support.socrata.com).

Hunter Fan Co., 78 USPQ2d 1474, 1476 (TTAB 2006) (“applicant’s own use of the term ERGONOMIC ... highlights the descriptive nature of this term ...”).

The record disproves Applicant’s argument that the terms “open” and “payroll” have multiple potential relevant definitions, thereby causing consumers encountering the proposed mark “to think about which definitions apply.”¹⁴ The evidence shows that consumers would tend to come across “open” and “payroll” as common and descriptive terms in the context of Applicant’s services. As noted above, the record even reflects numerous third-party uses of the composite “open payroll” in connection with the same or very similar services. The Board rejected this same type of multiple meanings argument in *In re Tower Tech, Inc.* 64 USPQ2d 1314, 1316 (TTAB 2002), where the applicant for the mark SMARTTOWER countered a descriptiveness refusal by “arguing that the word ‘smart’ has many different meanings.” Given the nature of the goods at issue, the Board held that “Applicant’s argument that the relevant purchasers would think of other possible meanings ... would require considering the applied-for mark in a vacuum.” We consider descriptiveness in relation to the relevant services. *DuoProSS Meditech* 103 USPQ2d at 1757. In this case, the third-party evidence discussed above shows that “open” and even “open payroll” have recognized meanings in connection with the identified services, and Applicant points to no evidence indicating otherwise. . Thus, we find Applicant’s contentions unavailing. See *In re Franklin Cnty.*

¹⁴ 1 TTABVUE 9 (Applicant’s Brief).

Historical Soc’y, 104 USPQ2d 1085, 1087 (TTAB 2012) (“That a term may have other meanings in different contexts is not controlling”).

Similarly, the evidence refutes Applicant’s claim that the combination of words in its mark “results in an arbitrary unitary designation.”¹⁵ Where, as here, the individual components of a mark retain their descriptive meaning in relation to the goods and/or services, the combination results in a composite that is itself descriptive and not registrable. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016). Applicant provides no explanation how the arrangement of words in its mark would somehow change the meanings of the terms, and we find no altered significance from joining the words in the mark. To the contrary, as reflected in the record, others use the composite term “open payroll” to describe Applicant’s services and related goods and services.

Consumers would immediately understand OPEN PAYROLL, when used in connection with Applicant’s identified services, to merely describe and provide information about the subject matter of services – the web-based service enables the user to make government agency *payroll* data available and accessible – *i.e. open*.

Decision: The refusal to register Applicant’s mark OPEN PAYROLL as merely descriptive is affirmed.

¹⁵ *Id.* at 10.