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Mailed: February 14, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TeleVentions, LLC

Serial No. 78309794

George W. Hoover of Blakely Sokoloff Taylor & Zafman for
TeleVentions, LLC.

Michael P. Keating, Trademark Examining Attorney, Law Office
101 (Ronald R. Sussman, Managing Attorney).

Before Seeherman, Hohein and Walters, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

TeleVentions, LLC has filed an application to register
the mark SHOW NAV, in standard character form, on the
Principal Register for, as amended, "digital video recorders
featuring viewer selection option of recorded program
segments," in International Class 9. The application was
filed on October 6, 2003, based upon an allegation of a bona
fide intention to use the mark in commerce. Applicant filed
its amendment to allege use and a specimen on February 9,
2004, alleging first use anywhere and in commerce as of

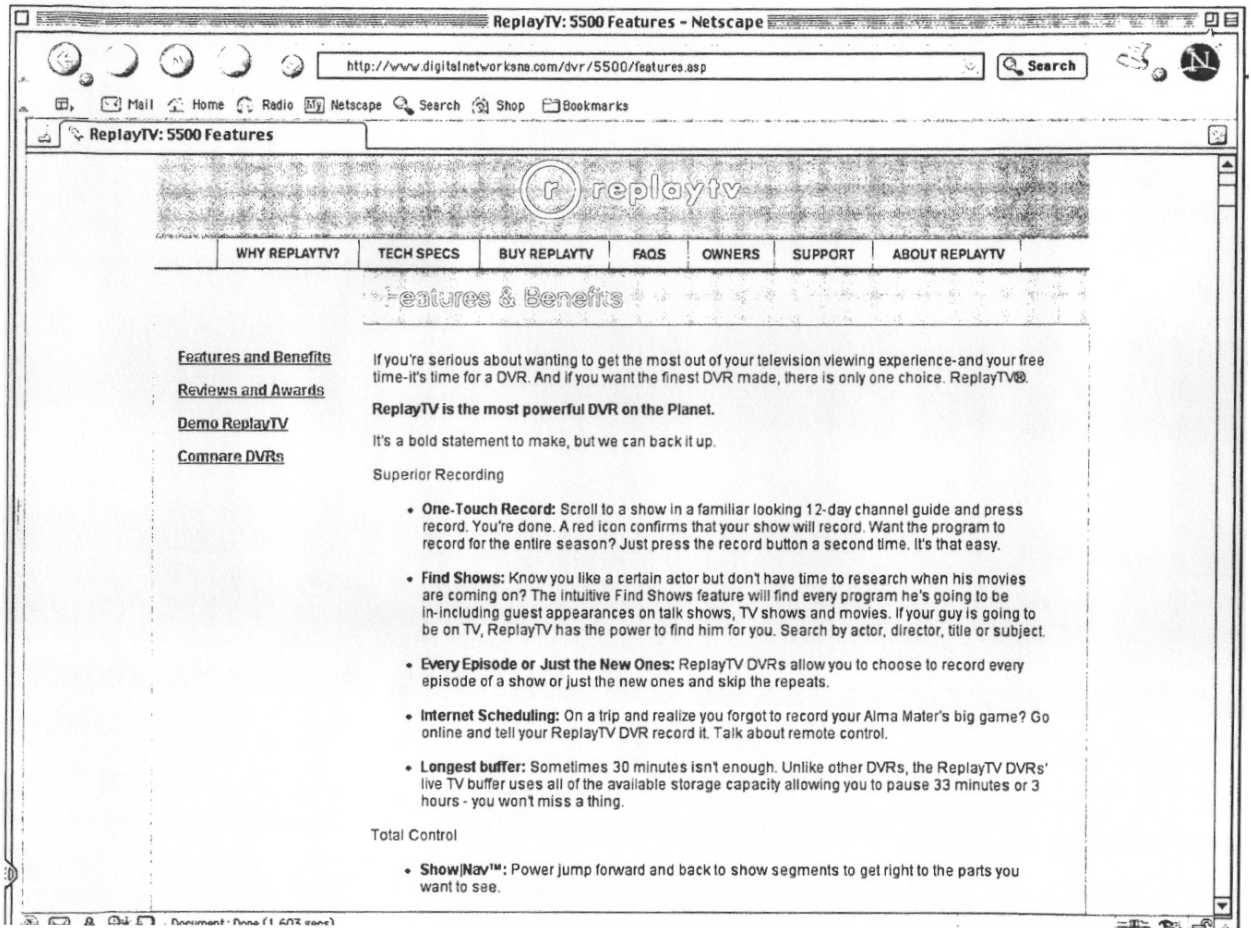
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October 2003. The amendment to allege use was accepted on April 19, 2004, although the examining attorney issued a refusal to register under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. 1051, 1052 and 1126, on the ground that the specimen is unacceptable as evidence of actual trademark use. This refusal was ultimately made final.

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The sole issue in this appeal is whether the specimen submitted by applicant on February 9, 2004 with its amendment to allege use is acceptable to show use of the mark in connection with the identified goods. Shown below is the specimen of record, which is a printout of a page from the website of applicant's licensee.

EXHIBIT 1



Applicant contends that the decision of the Board in *In re Dell*, 71 USPQ2d 1725 (TTAB 2004), is directly applicable and that its specimen is, essentially, a display associated with the goods. Applicant states that its specimen is acceptable because the website page describes various features of the Replay TV product, with one of the features being identified by the trademark SHOW NAV; that the "page invites customers to 'Buy Replay TV' with a selection on the button bar" (brief, p.2); and that it is immaterial that

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there is no photograph or other representation of the goods on the website page because the mark is unambiguously associated with the Replay TV product as one of several listed features and no other product is described on this page.

The examining attorney argues that *Dell* is inapposite because it presents an entirely different set of facts. He contends that the specimen is unacceptable because it does not show use of the proposed mark as a trademark; that the specimen features a digital video recorder identified as Replay TV Model 5500 and REPLAY TV is the trademark featured prominently on the page; that the proposed mark describes a feature of the REPLAY TV product rather than functioning as a trademark for the identified goods; that SHOW NAV is buried in text describing the features of the REPLAY TV product; that the specimen contains no photograph or other representation of the goods; and that, while the specimen contains a tab entitled "Buy Replay TV," "[c]onsumers cannot click the tab to purchase the SHOW NAV feature, but only to buy the digital video recorders themselves" (brief, p. 6).

While the law in the aforementioned *Dell* decision is directly applicable to the case now before us, the facts in this case lead us to a different conclusion. The applicant in *Dell* applied to register QUIETCASE as a trademark for "computer hardware; internal cases for computer hardware

being parts of computer work stations." The specimen submitted was a printout of a page taken from applicant's website describing and offering for sale a particular computer workstation that included, in the description of the product on the webpage, a reference to the QUIETCASE internal case. Following the reasoning in *In re Shipley Co.*, 230 USPQ 691 (TTAB 1986) and *Lands' End Inc. v. Manbeck*, 797 F.Supp. 511, 24 USPQ2d 1314 (E.D. Va. 1992), the Board concluded (*Dell* at 1727) that "a website page which displays a product, and provides a means of ordering the product, can constitute a 'display associated with the goods,' as long as the mark appears on the webpage in a manner in which the mark is associated with the goods" and "such uses are not merely advertising, because in addition to showing the goods and the features of the goods, they provide a link for ordering the goods."

Thus, *Dell* established that a website page such as applicant submitted herein may constitute a display associated with the goods. The Examining Attorney does not really argue otherwise. Rather, it is his position that, as used on the website page, SHOW NAV will not be perceived as a trademark for the identified goods.

The specimen in the case before us is very similar to the specimen described above in *Dell*. Nonetheless, in order for a website page to be acceptable as a specimen, it must

be clear therefrom that the mark in question identifies the goods specified in the application. In this case the problem arises not from the lack of a picture of the product or from the size or location of the term SHOW NAV on the specimen.¹ Instead, as shown on the specimen, SHOW NAV identifies a navigational feature of the product rather than functioning as a mark identifying the digital video recorders recited in the application. For this reason, we conclude that the examining attorney correctly rejected the specimen submitted in support of the application.

Decision: The refusal under Sections 1, 2 and 45 of the Act is affirmed.

¹ We do not address the validity of the examining attorney's additional arguments regarding the lack of a picture of the digital video recorder or the size and placement of SHOW NAV on the website page in view of our finding that SHOW NAV does not identify the recited goods.