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Hearing:
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Strategic Weather Services, L.P.*

Serial Nos. 75/254,836; 75/254,837; 75/254,838; 75/254,839;
75/254,840; 75/254,841; 75/254,842; 75/254,844; 75/254,845;
75/254,846; 75/254,847; 75/254,848; 75/254,849; 75/254,850;
75/388,875; and 75/388,880

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Before *Seeherman, Holtzman and Rogers*, Administrative
Trademark Judges.

Opinion by *Rogers*, Administrative Trademark Judge:

By the 16 applications involved herein, applicant
seeks registration of the following marks, for the
identified services.¹ Each application is based on
applicant's allegation of a bona fide intention to use the
mark in commerce.

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75/388,875; and 75/388,880**

BIKEWEATHER, Serial No. 75/254,836, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of biking.*"

BOATINGWEATHER, Serial No. 75/254,837, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of boating.*"

CAMPINGWEATHER, Serial No. 75/254,838, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of camping.*"

GOLFWEATHER, Serial No. 75/254,839, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of golf.*"

FISHINGWEATHER, Serial No. 75/254,840, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of fishing.*"

HIKINGWEATHER, Serial No. 75/254,841, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of hiking.*"

¹ Because the major portion of each identification is identical, the variable terms have been set forth in italics.

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75/254,846; 75/254,847; 75/254,848; 75/254,849; 75/254,850;
75/388,875; and 75/388,880**

HUNTINGWEATHER, Serial No. 75/254,842, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of hunting.*"

PARTYWEATHER, Serial No. 75/254,844, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of a party.*"

SAILINGWEATHER, Serial No. 75/254,845, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of sailing.*"

SKIWEATHER, Serial No. 75/254,846, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of skiing.*"

TENNISWEATHER, Serial No. 75/254,847, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of tennis.*"

TRAVELWEATHER, Serial No. 75/254,848, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of planning travel.*"

VACATIONWEATHER, Serial No. 75/254,849, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network,

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television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of a vacation.*"

WEDDINGWEATHER, Serial No. 75/254,850, filed March 10, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *focused around the event of a wedding.*"

INSURANCEWEATHER, Serial No. 75/388,875, filed November 12, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *relating to insurance.*"

AGRICULTURALWEATHER, Serial No. 75/388,880, filed November 12, 1997; services identified as "weather information and planning service provided via a global computer network, television, cable, and telephone, offering weather maps, data, information, and graphics *relating to agriculture.*"

In each application, registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, as proposed to be used in connection with applicant's services, each mark is merely descriptive of the identified services. When the Examining Attorney made each refusal final, applicant appealed. Briefs have been filed in each case. The cases were consolidated, at the request of applicant, for a single oral hearing.

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The Examining Attorney's argument in support of each refusal is substantially the same.² Specifically, in regard to consumer perception of each mark, the Examining Attorney argues that the applicant offers weather information services which are relevant to those individuals interested in the activity or type of event which, in each mark, is the term coupled with "weather"; that each mark defines a feature of applicant's services, namely, weather forecasting for individuals with a specific interest; that applicant's coupling of the term weather with the term for an event or activity does not result in a composite term with its own unique or incongruous meaning; that prospective users of applicant's services, when viewing each mark, will immediately know that activity- or event-specific weather information services are being offered; and that it is immaterial whether applicant proposes to use the mark only for services targeted to particular industries. The Examining Attorney also argues that other "weather information services presently, or will most

² Because both the Examining Attorney and applicant view these cases as presenting similar issues, it is understandable that office actions, responses and even briefs would be similar. However, we are dismayed at the occasional sloppiness of both the Examining Attorney and the applicant. Each has included arguments or evidence in some files that are clearly directed to marks in other files.

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likely use the [particular, composite] term, or variation thereof, in connection with similar services"; that evidence retrieved from the Internet supports this argument; that the absence of each composite term from the dictionary is not dispositive; that merely because the applicant may be the first or only user of these composite terms, it is not entitled to their exclusive use; and that consumers searching the Internet for services like applicant's would have need to use the terms forming applicant's composites.

Applicant, in contrast, views the absence of the composite terms from dictionaries as significant; argues that each composite is a unitary mark which is either incongruous or ambiguous; notes that each of its marks is not the separate activity- or event- specific term and the term weather, with a space between them, but a composite without a space which thereby creates a visually distinctive mark; that prospective consumers considering the mark would think of many possible goods or services; that its composite terms can be held descriptive only if applicant's services were the first or only meaning a prospective consumer would ascribe to each composite, considered by itself and before considering it "in light

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of" the services; and that applicant, in any event, is "not simply a weather forecaster" but, rather, provides customized information to different industries and focuses on extremely long-range weather forecasting (i.e., over the course of many years). Applicant also notes the Examining Attorney's reports that no conflicting marks were found during searches of the register and argues that this supports applicant's position because it is clear that applicant is not in any way inhibiting competition; and that, in any event, applicant's registration of the composites would not prevent others from using the individual terms which form the composites. Finally, applicant also argues that the Examining Attorney, in assessing each mark, has improperly dissected it, and has erred by failing to resolve doubt in favor of applicant and allow each mark for publication in the Official Gazette.

It is well settled that a term is considered merely descriptive of services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-218

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(CCPA 1978); see also In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). In contrast, if a prospective consumer of the goods or services, when confronted with the mark used in connection therewith, must use imagination, thought or perception to reach a conclusion on the nature of the goods or services, then the mark is not properly refused registration as descriptive. *Gyulay, supra*, 3 USPQ2d at 1009.

It is not necessary that a term describe all of the attributes of the goods or services in order for it to be merely descriptive thereof; rather, it is sufficient if the term describes a significant feature, function, purpose or use of the goods or services. *Abcor, supra*, 200 USPQ at 217. Thus, the fact that applicant's marks do not indicate that its services will be targeted to specific industries and will involve only extremely long-range prediction of weather patterns does not help applicant avoid a finding of mere descriptiveness. Moreover, such restrictions are not included in the respective recitations of services.

Whether a term is merely descriptive is determined not in the abstract, but in relation to the services for which registration is sought, the context in which it is being used on or in connection with those services and the

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possible significance that the term would have to the average purchaser because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985). Thus, applicant errs in arguing that its marks can only be held descriptive if consumers, considering the marks in the abstract, would think first or only of applicant's services.

We find unpersuasive applicant's argument that each of its marks is visually distinctive because words that are normally separated by a space have been set forth as a composite. We find that each composite would readily be perceived as the two words joined together, not as something new or different.

Before turning to our consideration of the individual marks, some general comments regarding the Internet evidence submitted by the Examining Attorney are in order. In each case, the Examining Attorney argues that she has made of record evidence gathered during searches of the Internet that is sufficient to show descriptive use of the

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relevant mark. In all but a few cases, however, we agree with applicant that this plainly is not so.

Consider, for example, the WEDDINGWEATHER application. The Examining Attorney asserts "that a search of the term 'WEDDINGWEATHER' retrieves over 857260 sites." However, merely indicating the number of "hits" retrieved is of no probative value; we have no way of ascertaining what the sites show.

In many of the 16 applications before us, the Examining Attorney's Internet "evidence" consists solely of the "search results list" generated by a search of the Internet for the terms in each mark. Moreover, the vast majority of the "hits" on the search results list appear to feature only one of the two relevant terms used in each search.³ As for the web site pages which were made of record, we point out that merely because two words can be found somewhere in the same web site does not necessarily show that the combined words are merely descriptive.

With the foregoing settled propositions of law in mind, and having disposed of some of the common arguments

³ There may well be sites that feature both terms sought by a particular search, and they may even be featured in close proximity. Without copies of the web pages themselves, we are unable to draw a conclusion either way.

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in the involved files and briefs, we now consider the individual marks.

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PARTYWEATHER, VACATIONWEATHER, WEDDINGWEATHER

We find three of applicant's marks to possess a certain ambiguity, when considered in connection with the identified services, such that they are not merely descriptive. These are PARTYWEATHER, VACATIONWEATHER and WEDDINGWEATHER.

The only probative evidence the Examining Attorney has submitted with respect to these marks are dictionary definitions of "weather" and, respectively, "party," "vacation," and "wedding." Applicant's mating of these terms does not result in marks that take on different overall meanings. In other words, for example, "party" and "weather" retain their normal meanings when coupled to create PARTYWEATHER. Nonetheless, we find each of these three composites to be imbued with a degree of vagueness that precludes us from finding that they immediately describe the nature of applicant's services. We find it generally known and not subject to reasonable dispute that parties, vacations and weddings are year-round activities occurring indoors and out and in all kinds of weather. In short, there is no one type of weather best suited to these activities. Because of the vagueness of these terms the

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marks have a suggestive quality. Accordingly, we reverse each of these refusals of registration.

INSURANCEWEATHER

In the INSURANCEWEATHER application file, the evidence of record includes not only dictionary definitions of "insurance" and "weather," but the results of searches of the Internet by both the applicant and the Examining Attorney, and the results of a search of the NEXIS database by the Examining Attorney. As with the three marks we have already discussed, the Examining Attorney again misstates the import of the evidence. The Examining Attorney is plainly wrong when she argues that the Internet and NEXIS evidence reveals that "'Insurance Weather' is [a] recognizable industry term as such is used by competitors in the industry." The Internet and NEXIS search results do not include a single reference to "insuranceweather" or "insurance weather". What the evidence does establish is that "weather insurance" is a common form of insurance.

In part because of the common use of "weather insurance," we find applicant's composite INSURANCEWEATHER, which reverses the common phrase, creates an incongruity. Accordingly, we reverse this refusal of registration.

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TRAVELWEATHER, AGRICULTURALWEATHER

In contrast to the four marks and application files already discussed herein, there is evidence in the TRAVELWEATHER and AGRICULTURALWEATHER files that show descriptive use of the phrases "travel weather" and "agricultural weather."

In regard to the former, the Examining Attorney's search of the Internet reveals that Traveforecast.com offers site visitors "customized travel weather forecasts." Another site, cirrus.spl.umich.edu, includes a link to "Travel Cities Weather." While this latter site does not use the precise phrase "travel weather," it supports our conclusion that travel weather forecasts or travel weather reports are available to prospective travelers. Use of the phrase "travel weather" in conjunction with a weather information and planning service focusing on travel would immediately be perceived as a weather forecasting or weather reporting service for prospective travelers. Accordingly, we affirm the refusal of registration of TRAVELWEATHER.

Likewise, there is significant evidence of record, both from the Internet and the NEXIS database, of

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descriptive use of "agricultural weather." The phrase is used for Internet sites that provide "agricultural weather" reports or forecasts and by one producer of an "agricultural weather station" for recording meteorological data relevant to agriculture. The NEXIS evidence shows use of "agricultural weather" reports and "agricultural weather" centers. Use of the phrase "agricultural weather" in conjunction with a weather information and planning service relating to agriculture would immediately be perceived as a weather forecasting or weather reporting service for those involved in agriculture. Accordingly, we affirm the refusal of registration of AGRICULTURALWEATHER.

BOATINGWEATHER, SAILINGWEATHER, SKIWEATHER

The probative evidence of record in the BOATINGWEATHER, SAILINGWEATHER and SKIWEATHER applications consists solely of dictionary definitions.⁴ Nonetheless, we believe it generally known, and not subject to reasonable dispute, that boating, sailing and skiing are outdoor

⁴ The Internet evidence made of record in each file is not probative. We note that in two other application files, there is evidence of descriptive use of "ski weather" on the Internet and we cannot help but wonder why that evidence was not made of record in the SKIWEATHER file. However, because each application file must be assessed on the record created therein, we have not considered this evidence in our determination of the registrability of SKIWEATHER.

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activities that require certain weather conditions, and are to be avoided under certain adverse weather conditions. We find that consumers would readily understand, upon seeing the marks BOATINGWEATHER, SAILINGWEATHER or SKIWEATHER, for a weather information and planning service focusing on any one of these activities, that such service would provide critical weather information for the prospective boater, sailor or skier. These composites do not yield the sort of ambiguity we find in PARTYWEATHER, VACATIONWEATHER and WEDDINGWEATHER, nor do they yield the incongruity we find in INSURANCEWEATHER.

Accordingly, we affirm the refusals of registration of BOATINGWEATHER, SAILINGWEATHER and SKIWEATHER.

BIKEWEATHER, CAMPINGWEATHER, GOLFWEATHER, FISHINGWEATHER,
HIKINGWEATHER, HUNTINGWEATHER, and TENNISWEATHER

For the remaining seven applications, i.e., those for BIKEWEATHER, CAMPINGWEATHER, GOLFWEATHER, FISHINGWEATHER, HIKINGWEATHER, HUNTINGWEATHER, and TENNISWEATHER, the record does not support the refusals of registration. In regard to each of these marks, the Examining Attorney again overstates the significance of the evidence gathered from searches of the Internet. The hits in the search results lists almost invariably show only one of the two elements

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in the respective marks, and the printouts of particular web pages are only for web sites discussing the particular activity and which have a "link" to a weather website, or vice versa. Besides the dictionary definitions made of record in each of these files, the Internet evidence was all that was introduced. There were, apparently, no searches made of the NEXIS database.

We cannot conclude, on the records before us, that the terms BIKEWEATHER, CAMPINGWEATHER, GOLFWEATHER, FISHINGWEATHER, HIKINGWEATHER, HUNTINGWEATHER, and TENNISWEATHER directly convey a characteristic of applicant's weather information and planning service. Whether a mark is on one side or the other of the fine line between suggestiveness and mere descriptiveness is frequently a difficult question. See In re Recovery, Inc., 196 USPQ 830, 831 (TTAB 1977). In these cases, we find the marks on the suggestive side of the line.

Accordingly, the refusals of registration for BIKEWEATHER, CAMPINGWEATHER, GOLFWEATHER, FISHINGWEATHER, HIKINGWEATHER, HUNTINGWEATHER, and TENNISWEATHER are reversed.

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DECISION

For the reasons discussed herein, the refusals of registration for applications no. 75/254,844 for PARTYWEATHER, no. 75/254,849 for VACATIONWEATHER, no. 75/254,850 for WEDDINGWEATHER, no. 75/388,875 for INSURANCEWEATHER, no. 75/254,836 for BIKEWEATHER, no. 75/254,838 for CAMPINGWEATHER, no. 75/254,839 for GOLFWEATHER, no. 75/254,840 for FISHINGWEATHER, no. 75/254,841 for HIKINGWEATHER, no. 75/254,842 for HUNTINGWEATHER, and no. 75/254,847 for TENNISWEATHER are reversed; and the refusals of registration for applications no. 75/254,848 for TRAVELWEATHER, no. 75/388, 880 for AGRICULTURALWEATHER, no. 75/254,837 for BOATINGWEATHER, no. 75/254,845 for SAILINGWEATHER, and no. 75/254,846 for SKIWEATHER are affirmed.

E. J. Seeherman

T. E. Holtzman

G. F. Rogers

Administrative Trademark
Judges, Trademark Trial
and Appeal Board