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**THIS DISPOSITION IS NOT
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OF THE TTAB**

Paper No. 14
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Boulevard Media, Inc.

Serial No. 75/832,237

Dana Robinson of Quirk & Tratos for Boulevard Media, Inc.

Virginia T. Isaacson, Trademark Examining Attorney, Law Office
110 (Chris A.F. Pedersen, Managing Attorney).

Before Hohein, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Boulevard Media, Inc. has filed an application to register the phrase "CASUAL SEX DATELINE" for "electronic voice messaging services, namely, recording, storing and subsequent transmission of voice messages by telephone and telephone telecommunications services."¹

¹ Ser. No. 75/832,237, filed on October 26, 1999, which alleges a date of first use anywhere and in commerce of November 26, 1998.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the phrase "CASUAL SEX DATELINE" is merely descriptive of them.

Applicant has appealed. Briefs have been filed,² but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a phrase or term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a phrase or term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the phrase or term describes a significant attribute or idea about them. Moreover, whether a phrase or term is merely descriptive is determined not in the abstract but in relation to the goods or services for which

registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the phrase or term would have to the average purchaser of the goods or services because of the manner of such use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[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).

Applicant, in its brief, contends that the phrase "CASUAL SEX DATELINE," when used in connection with voice messaging services, namely, the recording, storing and subsequent transmission of voice messages by telephone and with telephone telecommunications services, "is merely used to suggest the interpersonal relationships that may develop as a result of using Appellant's services" and, thus, is at most no more than suggestive rather than merely descriptive of such services.³ In particular, applicant argues among other things that (emphasis in original):

² As indicated in the Board's May 15, 2002 order, the reply brief filed by applicant on March 25, 2002 was untimely under Trademark Rule 2.142(b)(1) and accordingly has not been considered.

³ Applicant, for the first time in its brief, refers to a number of third-party registrations for marks which contain "the words 'CASUAL,' 'SEX,' 'DATELINE' or 'CASUAL DATELINE'" and contends that its "mark should not be singled out as merely descriptive when there are a host of third[-]party registrations that are as descriptive or more descriptive than Appellant's mark." The Board, however, does not take

Appellant's mark is not descriptive because the use of CASUAL SEX DATELINE in the appellant's mark does not actually describe the underlying service. Appellant's services are voice-messaging services whereby consumers record, store, and transmit messages among other subscribers. Appellant does not arrange dates, help individuals engage in sexual activity, or sell or provide "casual sex." The messages that are recorded can just as easily relate to hobbies, sports, politics, or movies. These are all topics that are important to ask in order to form interpersonal relationships with others. Although adult-oriented subjects may be recorded, it is impossible to engage in "sex" on the phone. At most, Appellant's mark is suggestive of the subsequent relations that may transpire.

Applicant also asserts that its "mark does not describe or [immediately] convey anything about the services

judicial notice of third-party registrations, see, e.g., In re Duofold Inc, 184 USPQ 638, 640 (TTAB 1974), and the evidentiary information set forth in applicant's brief concerning such registrations is untimely under Trademark Rule 2.142(d) and thus is not properly of record. Nevertheless, even if such information were to be considered, it would not aid applicant factually or legally. This is because, factually, there is no indication that the third-party registrations did not issue on either the Supplemental Register or on the Principal Register pursuant to the provisions of Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f) and, hence, the subject marks were not regarded as merely descriptive. Legally, and in any event, the presence of the third-party registrations would not be dispositive of the issue of mere descriptiveness herein inasmuch as a phrase or term which is merely descriptive is not made registrable simply because other similar marks appear on the register. See, e.g., In re Scholastic Testing Service, Inc., 196 USPQ 517 (TTAB 1977). Each case, instead, must be determined on its own merits. See, e.g., In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board or this court."]; In re Broyhill Furniture Industries Inc., 60 USPQ2d 1511, 1514 (TTAB 2001); and In re Pennzoil Products Co., 20 USQP2d 1753, 1758 (TTAB 1991).

actually provided" (emphasis in original) because, as it improperly argues in the abstract, "one cannot ascertain how Appellant's voice messaging service works, what equipment is used to operate ... [such] or its quality, or the quality of the message being recorded, stored, or transmitted by mere reference to the mark." Moreover, although acknowledging that the Examining Attorney has made of record evidence showing common or everyday use, "as found in movie reviews, articles, and billboards," of the terminology "CASUAL SEX," applicant insists that "[n]one of these examples reference[s] to voice messaging or telecommunication services" and that the Examining Attorney, therefore, has failed to meet her burden of establishing that the phrase "CASUAL SEX DATELINE" is merely descriptive of its services. Applicant nevertheless undercuts such contention by admitting, in its brief, that the record demonstrates that the fact that "the term 'casual sex' is found in so many different contexts and situations tends to show that it is not limited to a static description or usage" and thus could indeed immediately convey a merely descriptive significance when utilized in the context of applicant's services.

Furthermore, while noting that the Examining Attorney has "equated DATELINE with a 'date' or dating service for arranging casual sex," applicant argues that "the term DATELINE has a variety of meanings," such as "the name of a popular

television show," "a term used in newspaper and printing to indicate the date and place of a writing or issue" and "the imaginary line through the Pacific ... to demark the passing of one calendar day to another." Applicant urges, in view thereof, that as a whole the phrase "CASUAL SEX DATELINE" is not merely descriptive of its services because the term "DATELINE," while "suggestive of 'dating' in so much as it happens to incorporate the word 'date,' ... is not used as such a descriptor in common parlance." Applicant adds, nonetheless, that (emphasis in original):

Even if DATELINE is deemed descriptive of dating, Appellant does not provide such services. Rather, Appellant provides recorded voice messages for subscribers and is in no way a dating service. It does not facilitate the meeting of individuals or arrange encounters for individuals to engage in sexual activity. That the Examining Attorney asserts that such conduct will result after using Appellant's services is not relevant to the [descriptiveness of the] mark. The fact that the mark is suggestive of some activity after the fact proves Appellant's position.

Finally, applicant urges that although the phrase "CASUAL SEX DATELINE," when used in connection with its voice messaging and telecommunications services, "may conjure up some type of interpersonal relationship between people, it requires imagination to determine the exact nature of how Appellant's services provide this." Because such interpersonal

relationships could be provided through "a consumer video dating service, communications by letter or e-mail, or a pre-arranged singles event," applicant maintains that its "mark requires consumers to use their imagination to identify it with voice messaging and telecommunication services"

We concur with the Examining Attorney, however, that as stated in her brief, the phrase "CASUAL SEX DATELINE," when used in connection with applicant's "electronic voice messaging services, namely, recording, storing and subsequent transmission of voice messages by telephone and telephone telecommunications services," immediately describes, without speculation or conjecture, "the most notable characteristics of the services," namely, that the applicant's services constitute a telephone dateline which "involve[s] consumers listening to stored messages or recording messages about casual sex." As the Examining Attorney notes, the "NEXIS" articles and Internet website excerpts of record, representative samples of which are set forth below, demonstrate that "the industry usage of the words 'dateline' and 'casual sex' are descriptive" (emphasis added):

"College women are confused about the dating-mating game on campus, protesting that they basically have two options: 'hooking up' briefly with a guy for **casual sex** or just the opposite, ... virtually living in each other's laps, according to a

new 18-month study" -- Indianapolis Star,
July 31, 2001;

"[Her] motives are more elusive--as
time goes on, she sleeps with almost anyone,
having few reservations about **casual sex**
...." -- Washington Post, July 29, 2001;

"Promiscuous sex is unhealthy, said Dr.
Pinsky, adding that college women's
unhappiness over **casual sex** is 'what I've
been hearing over and over again.'" --
Washington Times, July 27, 2001;

"To those who feel that we are designed
to have one life-long sexual partner, ...
anything that makes **casual sex** more likely
is negative." -- Seattle Times, July 11,
2001;

"Still, this did not stop me from
having **casual sex**." -- Boston Globe, March
23, 2000 (article headlined: "SENSE ABOUT
SEX / ... SEX AT YOUNG AGE IS LATER
REGRETTED");

"Cybill (CBS). 'Littered with foul
language and sexual innuendo, it has
featured story lines about phone sex
Marriage is ridiculed and **casual sex**
condoned.'" -- Arkansas Democrat-Gazette,
June 17, 1997;

"The person accused of making the calls
admitted making 'one or two' calls to a **date**
line service." -- Milwaukee Journal
Sentinel, December 26, 1999;

"They feared she may have been abducted
by a man she met on the telephone **date line**
Live Links." -- Rocky Mountain News, October
30, 1999;

"A new twist on the telephone **date-**
line front. Amorous young Middle Eastern
males ... are forbidden to directly approach
members of the opposite sex in public.

But as amorous young men always do, they have found a way ..." -- Arkansas Democrat-Gazette, April 30, 1999;

"The once thriving bar scene of the 1970s and early '80s has been discredited as an inappropriate place to seek a mate, with safety being the primary concern.

Meanwhile singles ads in newspapers, dating services and telephone **datelines** have filled the void." -- Chicago Daily Herald, March 9, 1998;

"That was in 1994 when it acquired the National Association of Information Services, which represented the 900-number telephone industry - the companies behind all those phone-sex ads, psychic hotlines and **date lines**." -- Washington Times, December 29, 1997;

"**Casual Sex-Dateline.com** Indianapolis (317) [phone no.] Use FREE code 9746 First 30 minutes Free

18+ **Casual Dateline**-Absolutely Adult 89¢/min."

....
GET SEX TONIGHT!! Instant live phone connections with Indy men and women looking to hook up for **casual sex**. Enter code 2181 317-[phone no.]" -- <http://www.nuvo...html?&category=955>, August 7, 2001;

"San Francisco's **Casual Sex Dateline** Local People are On Line Now! 1-900-[phone no.] 1.99/min 18+" -- <http://www.spectator...casualx.html>, August 7, 2001;

"USA #1 **Casual Sex Dateline!** Ready Babes 1-900-[phone no.]" -- <http://www.shepherd...904.html>, August 7, 2001;

"Dating Services
CASUAL SEX DATELINE ... Just call 503-[phone no.]

....

Casual Sex Dateline.com Women call free
Portland 503-[phone no.]" -- [http://-
www.wweek ... Dating%Set](http://www.wweek...Dating%Set), August 7, 2001;
and

Casual Sex Dateline - Enough said! Now
call 1-900--[phone no.]. \$2.49/minute." --
[http://www.csindy ... adultservices.html](http://www.csindy...adultservices.html),
August 7, 2001.

We recognize that it is possible for a combination of
merely descriptive terms to result in a nondescriptive phrase or
designation. However, as stated by the Board in, for example,
In re Medical Disposables Co., 25 USPQ2d 1801, 1804 (TTAB 1992),
in order for such to be the case:

[T]he mere act of combining does not in
itself render the resulting composite a
registrable trademark. Rather, it must be
shown that in combination the
descriptiveness of the individual words
[and/or term] has been diminished, [such]
that the combination creates a term so
incongruous or unusual as to possess no
definitive meaning or significance other
than that of an identifying mark for the
goods [or services]. See In re Calspan
Technology Products, Inc., 197 USPQ 647
(TTAB 1977).

As the evidence set forth above makes plain, combining the
descriptive terms "CASUAL SEX" and "DATELINE" to form the phrase
"CASUAL SEX DATELINE" does not create a composite which is so
incongruous or unusual, or which otherwise possesses a new
meaning different from its constituent terms, as to possess no
definitive meaning or significance other than that of an
identifying mark for applicant's services. Instead, as

succinctly noted by the Examining Attorney in her brief, the record clearly indicates that such phrase unambiguously conveys that "the salient feature of the applicant's services is that they provide voice messaging services for interested individuals to store and listen to messages about casual sex"; that is, they constitute what is commonly known in the phone-sex industry as a "dateline" with the subject matter thereof being "casual sex."

As the Examining Attorney further tellingly observes in her brief:

[A] review of the specimens submitted by the applicant shows that the forum in which the applicant advertises ... [its] "casual sex dateline" is classified under the column "phone entertainment" and is surrounded by other adult entertainment advertisements. It is clear that the applicant is not advertising in a hobby[, sports, political or movie] magazine, but is targeting individuals who seek adult entertainment in a "casual sex dateline."

In particular, we note that besides applicant's ad for its "CASUAL SEX DATELINE," which touts "[l]ive connections with thousands of single local men and women every day," another of the numerous "PHONE SEX" advertisements offers callers the prospects of "CASUAL SEX WITH DENVER GIRLS," while a third ad invites callers to "Denver's hottest dateline!" to "[r]ecord your personal ad FREE!" and to "[l]isten to 100's of ads FREE!"

It is therefore plain, when viewed in the context of applicant's electronic voice messaging services and telephone

telecommunications services, that as maintained by the Examining Attorney:

The phrase CASUAL SEX DATELINE ... [merely] describes a feature of the applicant's services. The totality of the evidence supports this view. Moreover, present and prospective customers of applicant's services would require no imagination, cogitation or gathering of further information to perceive the merely descriptive significance of the phrase CASUAL SEX DATELINE.

Consequently, irrespective of applicant's assertions that while, through the use of its services, "adult-oriented subjects may be recorded, it is impossible to engage in 'sex' on the phone" and that, "[a]t most, Appellant's mark is suggestive of the subsequent relations that may transpire," there is simply no doubt that the phrase "CASUAL SEX DATELINE" conveys forthwith that applicant's service is a telephone dateline by which its customers record, store and transmit voice messages on the subject of casual sex. As such it is merely descriptive of applicant's services within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.