UNITED STATES: .MUSIC Application Hits Sour Note at TTAB

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The Trademark Trial and Appeal Board (TTAB) sustained the examining attorney's refusal to register the mark .MUSIC on the ground that it was merely descriptive. In re theDot Communications Network LLC, Serial Nos. 77622942, 77622944, 77622945, 77622947 and 77622948 (T.T.A.B. Nov. 22, 2011) (precedential).

The applicant filed five companion intent-to-use applications to register the mark .MUSIC for various goods and services, including domain name registration services, hosting services, digital video, audio and multimedia publishing, online retail services and downloadable MP3 files. The examining attorney found the punctuation in the mark to be nondistinctive and refused registration, claiming the mark was merely descriptive of the goods and services in the applications, the scope of which was broad enough to include music-related content and information.

In its appeal the applicant argued that the mark was arbitrary in relation to most of the goods and services and that top-level domain names can serve a single-source identifying function. The applicant also argued that prior practice allowed the registration of top-level domain names as marks, citing third-party registrations for DOTAM, DOTFM, DOT TRAVEL, .NU DOMAIN and DOTCOOP.

The TTAB noted that market conditions had changed since those top-level domain marks were registered and that the number of top-level domain names had expanded rapidly. Thus, it found that the registrations the applicant cited had very limited probative value. In addition, the TTAB noted the efforts being made by an unaffiliated party to secure the top-level domain name .music for use by the music industry and the publicity surrounding those efforts. The TTAB concluded that in the current marketing environment, consumers are likely to understand .MUSIC to be a top-level domain name associated with the field of music. Accordingly, it affirmed the denial of all five applications.

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