



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

The Boards of Appeal

**DECISION
of the First Board of Appeal
of 29 January 2014**

In Case R 1621/2013-1

Google Inc.

1600 Amphitheatre Parkway
Mountain View, California 94043
United States of America

Applicant / Appellant

represented by GRÜNECKER, KINKELDEY, STOCKMAIR &
SCHWANHÄUSSER, Leopoldstr. 4, DE-80802 München, Germany

APPEAL relating to Community trade mark application No 11 600 822

THE FIRST BOARD OF APPEAL

composed of Th. M. Margellos (Chairperson and Rapporteur), M. Bra (Member) and
C. Rusconi (Member)

Registrar: P. López Fernández de Corres

gives the following

Decision

Summary of the facts

- 1 By an application filed on 25 February 2013, Google Inc. ('the applicant') sought to register the word mark

PIXEL

for the following list of goods and services:

Class 9 – Computer software, computer operating software, computer browsing software, computer software for providing access to the Internet, computer hardware, computers, desktop computers, laptop computers, tablet computers, mobile phones, personal handheld computer devices;

Class 35 – Retail store services featuring computer software provided via the Internet and other computer and electronic communication networks; retail store services featuring computer software for use on handheld mobile digital electronic devices and other consumer electronics;

Class 42 – Computer design services; application service provider (ASP) services, namely, hosting computer software applications of others; technical support services; troubleshooting; providing a website featuring information relating to computer software.

- 2 By letter of 14 March 2013, the examiner issued a provisional partial refusal informing the applicant that the mark applied for is not eligible for registration pursuant to Article 7(1)(b) and 7(2) CTMR for part of the goods and services claimed. The examiner considered that the term 'PIXEL', taken as a whole, is devoid of any distinctive character and directly refers to the goods and services applied for, namely that they are or are related to devices equipped with a visual display unit that displays pictures measured in pixels.
- 3 On 14 May 2013, the applicant filed observations on the provisional grounds of refusal.
- 4 By decision of 20 June 2013 ('the contested decision') the examiner partially waived the objection in relation to some of the goods and services, and partially refused the CTM application, based on Article 7(1)(b) and Article 7(2) CTMR. The contested decision can be summarised as follows:
 - First, it has to be pointed out that the Office objected to the mark applied for only on the grounds of Article 7(1)(b) CTMR. The objection is not based on Article 7(1)(c) CTMR.
 - The term 'PIXEL' consists exclusively of a meaningful expression easily understood by the relevant public, who will not perceive it as a trade mark but as referring to the goods and services in question, indicating namely that they are, or are related to, devices equipped with a visual display unit that displays pictures measured in 'pixels'.

- Due to the reasons set out above, and pursuant to Article 7(1)(b) and 7(2) CTMR, the application for the Community trade mark ‘PIXEL’ is hereby rejected for the following goods and services:

Class 9 – Computer software, computer hardware, computers, desktop computers, laptop computers, tablet computers, mobile phones, personal handheld computer devices;

Class 42 – Computer design services.

- 5 On 20 August 2013, the applicant filed a notice of appeal against the contested decision followed by its statement of grounds on 21 October 2013.
- 6 The appeal was submitted to the examiner for revision pursuant to Article 61(2) CTMR and was remitted to the Boards of Appeal on 8 November 2013.

Grounds of appeal

- 7 The applicant requests that the Board annul the contested decision and allow the refused application to proceed to registration for all the contested goods and services. Its arguments can be summarized as follows:
 - The trade mark ‘PIXEL’ is being used by the applicant and consumers are immediately able to distinguish the goods or services bearing the mark ‘PIXEL’ from the goods or services of competing undertakings. Documents are annexed to the statement of grounds to prove that the public targeted uses the term ‘PIXEL’ to designate the applicant’s ‘PIXEL-devices’ themselves and for the services rendered by these devices since consumers concretely speak of ‘a PIXEL’ when referring to them.
 - The relevant consumer will display a high level of attention when purchasing the contested goods and services and will consider the term ‘PIXEL’ as a trade mark.
 - For the public concerned the amount of pixels is not an essential characteristic of the goods and services applied for.
 - If the examiner’s assessment were correct, hardly any technical terms which have a particular meaning would be eligible to be trade marks for computer hardware or computer software. Nowadays many technical objects and services are operated or controlled by computers.

Reasons

- 8 The appeal complies with Articles 58, 59 and 60 CTMR and Rule 48 CTMIR as amended. It is, therefore, admissible.
- 9 The appeal, however, is not well founded. The mark is caught by the grounds for refusal of Article 7(1)(b) CTMR and should not be allowed to proceed to publication for the goods and services in question. The examiner’s decision must be confirmed accordingly. The reasons are explained hereinafter.

Article 7(1)(b) CTMR

- 10 As provided in Article 7(1) CTMR, trade marks are not to be registered, under subparagraph (b) of this provision, if they are devoid of any distinctive character, and, under subparagraph (c) of the same provision, if they consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods.
- 11 Each of the grounds for refusal to register listed in Article 7(1) CTMR is independent of the others and requires a separate examination. Moreover, it is necessary to interpret those grounds for refusal in light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may, or even must, reflect different considerations, depending on the ground for refusal in question (see judgments of 29 April 2004, C-456/01 P and C-457/01 P, ‘Tabs’, paras 45 and 46; of 16 September 2004, C-329/02 P, ‘SAT.2’, para. 25; and of 15 September 2005, C-37/03 P, ‘BioID’, para. 59).
- 12 However, there is a clear overlap in scope between the grounds for refusal set out in subparagraphs (b) to (d) of that provision (cf., judgments of 12 February 2004, C-265/00, ‘Biomild’, para. 18; and of 12 February 2004, C-363/99, ‘Postkantoor’, para. 67). In particular, it is clear from case-law that a word mark which is descriptive of the characteristics of goods or services for the purposes of Article 7(1)(c) CTMR is, on that account, necessarily devoid of any distinctive character in relation to those goods or services within the meaning of Article 7(1)(b) of the same regulation (cf., judgments of 12 February 2004, C-265/00, ‘Biomild’, para. 19; and of 12 February 2004, C-363/99, ‘Postkantoor’, para. 86).
- 13 There is thus a measure of overlap between the scope of Article 7(1)(b) CTMR and the scope of Article 7(1)(c) of that regulation; Article 7(1)(b) CTMR nevertheless being distinguished from Article 7(1)(c) CTMR in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings (see judgment of 10 March 2011, C-51/10 P, ‘1000’, para. 47; and order of 26 April 2012, C-307/11 P, ‘Footwear’, para. 47).
- 14 According to Article 7(1)(b) CTMR, trade marks which are devoid of any distinctive character may not be registered. In addition, Article 7(2) of that regulation states that ‘[Article 7(1)] shall apply notwithstanding that the grounds of non-registrability obtain in only part of the [European Union]’.
- 15 In a case such as the present one, in which the contested decision refused registration of the trade mark applied for on the basis of an absolute ground for refusal provided for in Article 7(1)(b) CTMR, it is necessary to examine whether the examiner has shown that that mark is devoid of any distinctive character.
- 16 In this respect, it must be noted that the notion of general interest underlying Article 7(1)(b) CTMR is manifestly indissociable from the essential function of a

trade mark, which is to guarantee to the consumer or end-user the identity of the origin of the product or service bearing the mark by enabling him/her, without any possibility of confusion, to distinguish the product or service from others which have another origin (see judgments of 10 October 2006, T-302/03, ‘Map&Guide’, para. 36 and the case-law cited; and of 12 December 2007, T-117/06, ‘Suchen.de’, para. 24 and the case-law cited).

- 17 It is apparent from case-law that, where registration of a Community trade mark has been sought in respect of all the goods falling within a category without distinguishing between those goods, the fact that the mark in question is devoid of any distinctive character solely in relation to certain goods falling within that category does not preclude a finding that the mark in question lacks distinctive character in relation to all the goods in that category (see, to that effect and by analogy, judgment of 15 September 2009, T-471/07, ‘Tame it’, para. 18 and the case-law there cited).
- 18 Again, according to settled case-law, distinctiveness can be assessed only by reference, first, to the goods or services in respect of which registration is sought and, second, to the relevant public’s perception of that sign (cf., judgment of 12 July 2012, C-311/11P, ‘Wir machen das Besondere einfach’, para. 24 and the case-law cited therein), which is constituted by average consumers of those goods or services (see judgment of 12 March 2008, T-128/07, ‘Delivering the essentials of life’, para. 21).
- 19 In the present case, the applicant disputes the examiner’s refusal of the Community trade mark ‘PIXEL’ for the goods and services ‘computer software, computer hardware, computers, desktop computers, laptop computers, tablet computers, mobile phones, personal handheld computer devices’ in Class 9, and ‘computer design services’ in Class 42 (hereinafter ‘the goods and services in question’).

The relevant public and its level of attentiveness

- 20 In the present case, it should be noted, first, that the examiner found – without being contradicted on that point by the applicant – that the goods and services are aimed at both the professional public, who will pay a higher than average level of attention, and at the general public who will be reasonably observant and circumspect. That analysis must be confirmed.
- 21 In the present case, the Board notes that the contested products and services could be addressed not only at professionals (‘computer design services’) but also at the public at large, who, taking into account the specialised nature of the products and services concerned, is deemed to be well informed, observant and circumspect (see, to that effect, judgment of 15 January 2013, T-451/11, ‘Gigabyte’, para. 39).
- 22 The list of goods and services concerned includes services intended for specialists or professionals (‘computer design services’), as well as goods intended for the average consumers (the goods in Class 9, ‘computer software, computer hardware, computers, desktop computers, laptop computers, tablet computers, mobile phones, personal handheld computer devices’), and not only for

professionals (see, to that effect, judgment of 29 September 2011, T-150/10, ‘Loopia’, para. 24). Therefore, it is appropriate to take as the relevant public all consumers (see, to that effect, judgment of 9 July 2003, T-234/01, ‘Orange und Grau’, para. 31 and the case-law cited).

- 23 On their awareness, it must be assumed that the awareness of the specialist public will be high (see judgments of 12 July 2012, C-311/11P, ‘Wir machen das Besondere einfach’, para. 48, and of 12 September 2012, T-566/10, ‘Erkat’, para. 43), whereas the awareness of the average consumer will be that of someone who is reasonably well-informed and reasonably observant and circumspect. Nevertheless, considering that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see judgment of 9 July 2003, T-234/01, ‘Orange und Grau’, para. 31) that former average consumer, taking into account the fact that the contested goods and services are not purchased on a regular basis, but only after in-depth consideration, and taking into account the relatively technical nature of the contested goods and services, will display a higher level of attention.
- 24 As the Court has held, the European consumer of information technology goods and services is more familiar with the use of English words than the average consumer (see judgments of 27 November 2007, T-434/05, ‘Activy Media Gateway’, para. 38, and of 25 May 2005, T-352/02, ‘PC Works’, para. 49). As the Court has held, English expressions are frequently used in the fields of electronics and telecommunications, under which the products and services in question are grouped, it is necessary to take into account in particular average English-speaking consumers, or those with a basic knowledge of English (cf., judgment of 19 November 2009, T-399/08, ‘Clearwifi’, para. 27).
- 25 Since the mark applied for is made up of an English term, its distinctiveness must be assessed, first of all, with respect to the English-speaking public. The Board considers that the public by reference to whom the absolute ground of refusal must be assessed consists of at least the public in the Member States in which English is the official language, i.e. Ireland, Malta and the United Kingdom. The Board will limit its assessment to these Member States and will refrain at this stage from considering the language knowledge of the relevant public and/or the common use of English components in the various other Member States.
- 26 It follows that the relevant public, by reference to whom the absolute ground for refusal must be assessed, is made up of English-speaking consumers with a higher (than average) level of attention.

Distinctiveness: The relevant public's perception

- 27 As correctly stated by the contested decision, the term ‘PIXEL’ could be defined as ‘any of a number of very small picture elements that make up a picture, as on a visual display unit. A pixel is the smallest area on a computer screen which can be given a separate colour by the computer [...] a display screen that measures one million pixels’ (<http://www.collinsdictionary.com>). Therefore, the relevant consumer will not perceive it as unusual but rather as a meaningful expression.

Again, as explained by the contested decision ‘this term directly refers to the goods and services applied for, namely that they are or are related to devices equipped with a visual display unit that displays pictures measured in ‘PIXELS’.

- 28 The examiner’s approach in this regard must be upheld.
- 29 For the sake of completeness, and taking into account that, as is clear from case-law, the dictionaries in the language of the relevant public may, as a rule, be taken into consideration in that respect, both by the OHIM’s first-instance department and by the Boards of Appeal, even if they have not been put to the parties, because they are, *a priori*, well-known facts (see, judgment of 1 February 2005, T-57/03, ‘Hooligan’, para. 59), the Board will cite supplementary examples to illustrate the definition of the word ‘pixel’. Pixel: ‘Noun, Electronics, abbreviation of picture element a minute area of illumination on a display screen, one of many from which an image is composed’, (*Oxford Dictionaries, Oxford University Press, 2013* (<http://www.oxforddictionaries.com/es/definicion/ingles/pixel?q=PIXEL>)). PIXEL: ‘Each of the minute areas of uniform illumination of which the image on a television, computer screen, etc., is composed; (also) each of the minute individual elements in a digital image’ (*OED Oxford English Dictionary, Oxford University Press, 2013*).
- 30 It must be recalled that the Boards of Appeal can rely on matters of common knowledge, facts which are well known, that is, facts which are likely to be known by anyone or which may be learnt from generally accessible sources (see, *inter alia*, judgments of 17 October 2007, T-105/06, ‘WinDVD Creator’, para. 40, and of 20 April 2005, T-318/03, ‘Atomic Blitz’, para. 35). It is a matter of common knowledge that in the computing and IT fields of the contested products and services the term ‘pixel(s)’ can be used in the abstract, or as a unit of measurement, in particular when using pixels as a measurement of resolution, such as: 2400 pixels per inch, 640 pixels per line, or spaced 10 pixels apart, etc. In addition, it must be noted that, in computing, an image composed of pixels is known as a bitmapped image.
- 31 For that reason, the relevant public will, in relation to the products and services in question, directly associate the term ‘PIXEL’ to a unit of measurement of a digital image, or directly to digital images.
- 32 As regards the relationship between the semantic content of the sign ‘PIXEL’ and the goods and services concerned, in relation to the products in Class 9 applied for (‘computer hardware, computers, desktop computers, laptop computers, tablet computers, mobile phones, personal handheld computer devices’), ‘PIXEL’ taken as a whole, immediately informs consumers without further reflection that the goods applied for are or are equipped with, or connected to, a digital visual display unit that displays images composed of pixels. As stated by the contested decision, that link could also be established in relation to the ‘computer software and computer hardware’ applied for. For example, software for photo-editing usually refers to the amount of ‘pixels’ of the processed pictures. Computer hardware devices, such as visual display units or graphics

processing units, usually also refer to the amount of ‘pixels’ they are able to display.

- 33 It follows that the semantic content of the sign ‘PIXEL’ enables the relevant public to establish immediately, and without reflection, a specific and direct relationship with the ‘computer software, computer hardware, computers, desktop computers, laptop computers, tablet computers, mobile phones, personal handheld computer devices’ which are or are equipped with, or connected to, a digital visual display unit or digital screen that displays digital images composed of pixels.
- 34 As regards the relationship between the semantic content of the sign ‘PIXEL’ and the services concerned ‘computer design services’ in Class 42, it must be noted that, as a broader category, the ‘design of computer hardware’, includes the design of visual display units or digital screens for which the term ‘pixel’ will be understood as a reference to a technical characteristic in the sense that the digital visual display units or digital screens display digital images composed of pixels.
- 35 Since the contested sign seeks registration for the non-differentiated category ‘computer software and computer hardware’ products as well as the non-differentiated category ‘computer design’ services, the assessment of the examiner must be upheld in so far as it relates to all those goods and services (see, to that effect, judgment of 10 October 2006, T-302/03, ‘Map&Guide’, para. 48 and case-law cited).
- 36 By claiming that the goods and services concerned by that application cover any theme, the applicant implicitly accepts that the ‘computer software and computer hardware’ products and the ‘computer design’ services may include some which are or are equipped with, or connected to, or in close connection to, a digital visual display unit or digital screen that displays digital images composed of pixels (see, to that effect, by analogy, judgment of 10 October 2006, T-302/03, ‘Map&Guide’, para. 49).
- 37 In addition, in the absence of any restriction in the list of goods and services from the applicant’s part, it must be recalled that, where an application is made to register a sign as a Community trade mark, without distinction, for an entire category of goods and services and that sign is non-distinctive of only some of the goods or services in that category, the ground for refusal referred to in Article 7(1)(b) CTMR nevertheless precludes registration of that sign for the whole of that category (see, by analogy, judgments of 21 September 2011, T-512/10, ‘Dynamic Support’, para. 15; and of 20 November 2007, T-458/05, ‘Tek’, para. 94, and the case-law cited).
- 38 It follows that in relation to the goods and services in question, the mark ‘PIXEL’ will be perceived by an average English-speaking consumer as a technical characteristic of those products or services.
- 39 In this sense, it should be borne in mind that a sign which fulfils functions other than that of a trade mark in the traditional sense is distinctive for the purposes of Article 7(1)(b) CTMR only if it can immediately be perceived as indicating the

commercial origin of the goods or services covered and, accordingly, it enables the relevant public to distinguish, without any possibility of confusion, the goods or services of the proprietor of the mark from goods or services of a different commercial origin (see, to that effect, judgment of 28 September 2010, T-388/09 ‘Design of two curves crossed at one point inserted on a pocket (Fig. Mark)’, para. 22).

- 40 Therefore, the relevant public will perceive the trade mark in question as providing details of a technical characteristic of the products or services which it designates and not as indicating the origin of those products and services. That finding is supported by the fact that, as the average consumer is no more than reasonably attentive, if the sign does not immediately indicate to him/her the origin of the goods or service designated, but merely gives him/her purely promotional, abstract or technical information, he/she will not take the time either to think about the sign’s various possible functions or to see it as a trade mark (see, by analogy, judgment of 12 December 2007, T-117/06, ‘Suchen.de’, para. 37).
- 41 Indeed, when, in the economic sector covered by the mark applied for, the relevant public perceives the sign as providing information on the nature of the products or services that it designates and not as indicating the origin of those goods or services in question, it must be concluded that the trade mark does not meet the conditions laid down in Article 7(1)(b) CTMR (see, to that effect, judgments of 10 December 2008, T-365/06, ‘Bateaux mouches’, para. 19; and of 19 May 2010, T-464/08, ‘Superleggera’, para. 18).
- 42 The message, conveyed by the sign at issue ‘PIXEL’, is so clearly expressed, in everyday language and without any hint of fantasy or resonance that it is hard to see what could cause the public to take in and remember it, as a sign intended to distinguish the commercial origin of the goods and services. When the sign is used with respect to the goods and services at issue in the IT and computing fields, the targeted public will merely perceive it as an expression with a technical meaning and not as a trade mark. This general and technical meaning in relation to the goods and services at issue eclipses any impression that the sign could indicate trade origin (see, by analogy, judgments of 8 May 2008, C-304/06 P, ‘Eurohypo’, para. 69; of 13 January 2011, C-92/10P, ‘Best Buy’, para. 51; and of 29 April 2010, T-586/08, ‘BioPietra’, para. 22 and case-law cited).
- 43 Nor do the other arguments put forward by the applicant make it possible to rebut the conclusion that the mark ‘PIXEL’ is devoid of any distinctive character in respect of all the goods and services in question.

On the argument that the amount of pixels is not an essential characteristic of the goods and services applied for

- 44 As the Court has held analyzing Article 7(1)(c) CTMR, it is irrelevant whether the characteristics of the goods or services which may be the subject of the description are commercially essential or merely ancillary (see, to that effect, judgments of 12 February 2004, C-363/99, ‘Postkantoor’, para. 102; of

24 April 2012, T-328/11, 'EcoPerfect', para. 41; and of 30 April 2013, T-61/12, 'Slim belly', para. 61). The same reasoning should be applied by analogy in the present case to the interpretation of Article 7(1)(b) CTMR, when it is clear from case-law, and as has been stated above, that a word mark which is descriptive of the characteristics of goods or services for the purposes of Article 7(1)(c) CTMR is, on that account, necessarily devoid of any distinctive character in relation to those goods or services within the meaning of Article 7(1)(b) of the same regulation (see judgment of 10 October 2006, T-302/03, 'Map&Guide', para. 34 and the case-law there cited).

45 That argument must therefore be rejected.

On the applicant's argument that hardly any technical terms, (such as 'PIXEL'), which have a particular meaning would be eligible as trade marks for 'computer hardware' or 'computer software'.

46 An approach such as that upheld by the examiner does not have the consequence, as argued by the applicant, of no longer permitting the registration of trade marks consisting of a 'technical term' for 'computer software' or for 'computer hardware' on the ground that it would always be possible to establish a relationship between the semantic content of the sign and the goods and services concerned. It is only in as far as that relationship is specific and direct, as in the present case, that Article 7(1)(b) CTMR prevents registration of such a sign (see, by analogy, in relation to Article 7(1)(c) CTMR, judgment of 10 October 2006, T-302/03, 'Map&Guide', paras 49 and 50).

47 That argument must, therefore, be rejected.

On the fact that the trade mark 'PIXEL' is being used by the applicant and on the fact that the public uses the term 'PIXEL' to designate the applicant's products and services.

48 First, on the argument that the mark at issue is already used as an indication of commercial origin, it must be noted that Article 7(1)(b) CTMR requires an analysis of a mark's distinctiveness to be carried out without reference to any actual use of that mark for the purposes of Article 7(3) CTMR (cf., judgments of 29 September 2009, T-139/08, 'Smiley', para. 38; of 5 April 2001, T-87/00, 'Easybank', para. 40; and of 23 November 2004, T-360/03, 'Käseschachtel', para. 29).

49 The applicant also claims that the 'trade mark 'PIXEL' is being used' so that the targeted public will establish a close link between the term 'PIXEL' and believe that the goods bearing the mark applied for are manufactured by the applicant.

50 While the applicant essentially claims by that argument that the mark applied for has acquired distinctive character through the use which has been made of it, it must be noted that it has neither proved, nor even claimed that the mark applied for has acquired distinctive character within the meaning of Article 7(3) CTMR.

- 51 As a preliminary remark, the Board notes that the applicant has not invoked Article 7(3) CTMR at any stage of the proceedings. The applicant neither indicated that the sign 'PIXEL' has been used extensively in the EU, nor that it may have acquired a sufficient level of distinctive character through use (in the sense of Article 7(3) CTMR) in the English-speaking part of the territory i.e. in Ireland, Malta and the United Kingdom. As is clear from case-law, the OHIM is not bound to examine facts showing that the mark claimed has become distinctive through use within the meaning of Article 7(3) CTMR unless the applicant has pleaded it (see, to that effect, judgments of 12 December 2002, T-247/01, 'Ecopy', para. 47; of 11 February 2010, T-289/08, 'Deutsche BKK', para. 25, and of 10 November 2004, T-402/02, 'Bonbonverpackung', para. 96).
- 52 Finally, it must be pointed out that if an applicant claims that a trade mark applied for is distinctive, despite the OHIM's analysis, it is for that applicant to provide specific and substantiated information to show that the trade mark applied for has either an intrinsic distinctive character or a distinctive character acquired by usage (cf., judgment of 25 October 2007, C-238/06P, 'Plastikflaschenform', para. 50). In the present case, the applicant has not proved the distinctiveness of the contested CTM.
- 53 That argument must, therefore, be rejected.
- 54 In view of all the above, it must be held that the examiner correctly considered the sign 'PIXEL' to be devoid of any distinctive character within the meaning of Article 7(1)(b) CTMR.

Non-reliance on the ground for refusal under Article 7(1)(c) CTMR

- 55 Given that the examiner did not base the provisional refusal or the contested decision on the absolute ground for refusal in Article 7(1)(c) CTMR, namely the descriptive character of the trade mark sought, and that the applicant claims only the partial annulment of the contested decision, the application of Article 7(1)(c) CTMR does not form part of the subject-matter of this dispute for the purposes of Articles 58 to 64 of that regulation or, therefore, of a review of the legality which the Boards of Appeal are required to undertake in this case (see, to that effect, by analogy, judgments of 20 May 2009, T-405/07 and T-406/07, 'P@yweb card / Payweb card', para. 93; and of 25 November 2008, T-325/07, 'Surfcad', para. 85 and the case-law cited).
- 56 Accordingly, the applicant's arguments relating to the possible non-descriptive character of the mark sought is irrelevant and it is not necessary for the Board to decide upon it (see, by analogy, judgment of 20 May 2009, T-405/07 and T-406/07, 'P@yweb card / Payweb card', para. 94).
- 57 *Ad abundantiam*, and for the sake of completeness, it must be noted that the term 'PIXEL' contains obvious and direct information on the nature and on technical characteristics of the products or services that it designates in the IT and computing fields, in the sense that they are equipped with, or connected to, or in close connection to, a digital visual display unit or digital screen that displays digital images composed of pixels.

- 58 A sign must be refused registration under Article 7(1)(c) CTMR if, as in the present case, at least one of its possible meanings designates a characteristic of the goods or services concerned (see, by analogy, judgments of 12 February 2004, C-363/99, 'Postkantoor', para. 97; and of 23 October 2003, C-191/01P, 'Doublemint', para. 32). In addition, it must be recalled that, as it has been stated above, it is clear from case-law that a word mark which is descriptive of the characteristics of goods or services for the purposes of Article 7(1)(c) CTMR is, on that account, necessarily devoid of any distinctive character in relation to those goods or services within the meaning of Article 7(1)(b) of the same regulation (cf., judgments of 12 February 2004, C-265/00, 'Biomild', para. 19; and of 12 February 2004, C-363/99, 'Postkantoor', para. 86).
- 59 In light of the foregoing, the application at hand could have also be rejected pursuant to Article 7(1)(c) CTMR in connection with 7(2) CTMR.
- 60 The appeal must, therefore, be dismissed in its entirety.

Order

On those grounds,

THE BOARD

hereby:

Dismisses the appeal.

Th. M. Margellos

M. Bra

C. Rusconi

Registrar:

P. López Fernández de Corres