

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Hearing:  
March 15, 2000

Paper No. 16  
HRW

8/31/00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re McDermott

\_\_\_\_\_  
Serial No. 75/358,638

Thomas P. Liniak of Liniak, Berenato, Longacre & White, LLC  
for H. Luke McDermott.

Craig D. Taylor, Managing Attorney, Law Office 111.

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Before Walters, Wendel and Bucher, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

H. Luke McDermott has filed an application to register  
the mark LEFTY for "card games."<sup>1</sup>

Registration has been finally refused on the ground  
that the mark is merely descriptive under Section 2(e)(1)  
of the Trademark Act. The refusal has been appealed and

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<sup>1</sup> Serial No. 75/358,638, filed September 17, 1997, claiming a  
first use date and a first use in commerce date of February 1996.

applicant and the Examining Attorney have filed briefs. Both participated in an oral hearing.

The Examining Attorney maintains that the term LEFTY merely describes both the class of intended purchasers and the subject matter of applicant's card games. As evidence thereof, the Examining Attorney relies upon a dictionary definition of "lefty" as a "left-handed person," promotional statements on the specimens, which appear to be packaging for the goods, referring to applicant's game as "an exciting card game designed for left handed play" and "a card game for lefties...but everyone can play" and statements on the instruction sheet (made of record by applicant) that "LEFTY is a card game designed with the left-hander in mind, but is just as fun for the right-handers as well," and that one should "be a LEFTY player and remember Lefties do it right!" He cites *In re Camel Manufacturing Co. Inc.*, 222 USPQ 1031 (TTAB 1984) as support for his position that the mark is merely descriptive in that LEFTY describes an appreciable number of the type of individuals to whom applicant's goods are directed, or, in other words, that left-handers comprise the bulk of the intended class of purchasers.

Applicant argues that the goods as identified are not limited to card games for left-handed players only and in

fact the game associated with the specimens can be enjoyed equally by both right-handed and left-handed players.

Applicant argues that the cards in its game have no physical characteristics that favor left-handed players; that the term "Lefty" refers to the name of a trump card in the game; that although the cards are printed to favor a reverse fan, this fan is not any easier for left-handers than right-handers; and that while slogans and statements on the packaging refer to left-handed play, it is clear that the game is also intended for right-handers. Thus, applicant argues that the term LEFTY does not merely describe the nature of the product or the intended class of purchasers.

Applicant further insists that it would be "commercial suicide" to focus only on left-handed players; that it is highly unlikely that all of those playing the game would be left-handed; and that there is no evidence to support any intention of applicant to sell the goods only to left-handers. Applicant insists that the Examining Attorney's reliance upon the *Camel Manufacturing* case is misplaced, since applicant's goods are not directed toward only one class of purchasers, namely, left-handed players. Instead, applicant claims that, just as in *Levi Strauss & Co. v. H.D. Lee Co.*, 130 USPQ 46 (TTAB 1961), wherein the mark LEE

WESTERNERS was found not to be merely descriptive since purchasers would not assume that the clothing involved was directed toward "westerners" as a class of purchasers, LEFTY is not merely descriptive since purchasers would not reasonably assume that applicant's card game is directed only to left-handed players.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic or feature of the goods with which it is being used. Whether or not a particular term is merely descriptive is not determined in the abstract, but rather in relation to the goods for which registration is sought, the context in which the mark is being used, and the significance the mark is likely to have, because of the manner in which it is used, to the average purchasers as he encounters the goods bearing the mark. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

Here applicant's card game totally revolves around the concept of left-handedness. Not only is the game touted as being "designed for left handed play," but the cards are printed to favor a reverse fan of the cards and the rules suggest left-handed play. The entire theme of applicant's card game is to emphasize or glorify left-handedness. The

"Lefty" cards provide a strategic advantage under the rules of the game; and the players are admonished to remember that it is the "Lefties [who] do it right." While right-handers obviously may play the game, the focus is on the left-handed player. With such a theme and mode of play, we fail to see how the term LEFTY can be viewed by purchasers as other than a direct reference to the subject matter of the card game, and thus it is merely descriptive thereof.

We also agree with the Examining Attorney that the term LEFTY is merely descriptive in that it describes an appreciable number of the type of individuals to whom the goods are directed. Although the identification of goods is not limited to left-handed purchasers or players, the game is touted as a "card game for lefties," even though "everyone can play." The attraction is obviously going to be greater for left-handed persons, or perhaps for right-handed persons purchasing the game for left-handed friends or family members.

We find the holding in the *Camel Manufacturing* case, that a mark is merely descriptive if an appreciable number of the party's goods are directed to the type of individuals described by the mark, to be applicable here. We are convinced that at least an appreciable number of applicant's games would be purchased by left-handed

persons, or as otherwise worded by the Examining Attorney, that an appreciable number of the purchasers of applicant's games would be left-handed.

Applicant argues that the general principle followed in *Camel Manufacturing* is not controlling here, but rather the circumstances more nearly parallel those in the *Levi Strauss* case. We disagree. There, the Board held the term WESTERNER not merely descriptive as used in the mark LEE WESTERNER for pants and jackets. The Board determined that purchasers would not assume, because of the inclusion of the term WESTERNER, that the clothes were intended for use only by Westerners, pointing to the fact that the so-called "western wear" of both parties was sold throughout the United States for use by all. Here, by contrast, both the promotional materials and rules for the card games of applicant, although capable of being played by all, emphasize left-handedness. In *Camel Manufacturing*, the term MOUNTAIN CAMPER was found to be merely descriptive in that a large number of the items sold in the applicant's catalogs were directed to those who were mountain campers. The situation is the same here, the term LEFTY is merely descriptive since applicant's card games are targeted to, or have a much greater appeal to, those individuals who are left-handed.

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Accordingly, we find the term LEFTY merely descriptive as used in connection with applicant's card games.

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

C. E. Walters

H. R. Wendel

D. E. Bucher

Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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