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Mailed: December 17, 2002
Paper No. 13
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Extra Chance Blackjack, LLC

Serial No. 76/012,889

Jodi-Ann McLane of Salter & Michaelson for Extra Chance
Blackjack, LLC.

Andrew L. Rhim, Trademark Examining Attorney, Law Office
107 (Thomas Lamone, Managing Attorney).

Before Simms, Chapman and Drost, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

On March 29, 2000, Extra Chance Blackjack, LLC (a
Massachusetts limited liability company) filed an
application to register the mark EXTRA CHANCE BLACKJACK on
the Principal Register for services amended to read
"providing a side bet in the card game commonly known as
'Blackjack' or '21' or 'Twenty-One'" in International Class
41. The application is based on applicant's assertion of a

bona fide intention to use the mark in commerce.

The Examining Attorney refused registration on the ground that applicant's mark, EXTRA CHANCE BLACKJACK, is merely descriptive of applicant's services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

When the refusal was made final, applicant appealed to this Board. Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

Applicant argues that because the phrase EXTRA CHANCE BLACKJACK could be used to describe a variety of goods/services within the gaming industry, "for example, a slot machine blackjack game, a video blackjack game, a scratch ticket for a lottery game, etc." (brief, pp. 2-3), it would require thought and perception in order to reach a conclusion regarding applicant's services; and that therefore, the phrase is suggestive, not merely descriptive.

The Examining Attorney contends that the words, "extra," "chance," and "blackjack" are common English words, with readily understood meanings; that the specific nature of applicant's gambling services is to provide the consumer with an additional opportunity to win money, making this phrase, EXTRA CHANCE BLACKJACK, descriptive of a significant characteristic or feature of applicant's

services; that no imagination, thought or perception is required to reach the conclusion that applicant provides an "extra chance" to win in the game of "blackjack"; and that applicant's argument that the words could relate to other things, such as a slot machine blackjack game, a video blackjack game or a scratch ticket in a lottery game is immaterial in light of applicant's identified services.

In support of the descriptiveness refusal, the Examining Attorney has made of record the following definitions from The American Heritage Dictionary (Third Edition 1992):

- (1) "extra adjective 1. more than or beyond what is usual, normal, expected, or necessary....,"
- (2) "chance noun 4. a favorable set of circumstances; an opportunity: a chance to escape. 5. a risk or hazard; a gamble....," and
- (3) "blackjack noun 3. Games. A card game in which the object is to accumulate cards with a higher count than that of the dealer but not exceeding 21...."

The Examining Attorney also submitted photocopies of materials retrieved from the Nexis database to show that card-playing consumers understand that there are many opportunities, beyond the basic way to win money gambling generally, and in particular, the game of blackjack offers

various "side bets" which can be made such as "insurance," "doubling-down," and "splitting pairs." Some specific examples of the generalized information stories are reproduced below:

Headline: Resolutions Gamblers Can Take a Chance On

...Stay away from longshot bets with bad odds, such as one-way and hard-way bets in craps; keno tickets; and most of the new gimmick side bets in blackjack. "Milwaukee Journal Sentinel," January 14, 2001;

Headline: Marketing Is Hot Topic for Gamblers

...That intimidating dice game's raucous table action and betting schemes scare off most people. That's why the industry was introduced this year to "Crops," a simplified version of craps. They also saw "Rainbow 21," which lets blackjack players lay side bets on fellow players' hands. "The Kansas City Star," October 15, 1996;

Headline: Do you ever out-think yourself at the blackjack table?

...stand, you'll lose unless the dealer breaks. And with a playable Ace showing, the dealer only breaks 17 times out of 100! So by losing his discipline, this player gave away seven extra chances to win the hand, and the four that came out next was one of those seven chances. "Chicago Daily Herald," June 29, 2001; and

Headline: Lottery Officials Back Off Changing Lotto Game

...Currently, players must correctly pick the numbers of all six balls drawn to win the top prize. Under one of the proposed changes, a seventh ball would be drawn to give players an extra chance to win runner-up prizes, when three, four or five numbers

are correctly picked. "The Houston Chronicle," September 22, 1999.

Finally, the Examining Attorney points to applicant's own identification of services from which it is clear that applicant is providing a side bet or extra chance to win money in a blackjack game.

The test for determining whether a mark is merely descriptive is whether the term or phrase immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.* 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used or is intended to be used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In*

re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991). 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). Rather, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990).

The dictionary listings for these three words establish their everyday commonly understood meanings in the English language. And the dictionary meanings coupled with the Nexis evidence show that the average consumer views the term "extra chance" as descriptive of casino games including blackjack, with optional wagers or side bets. The fact that the phrase "extra chance" may also be descriptive of other gambling activities does not detract from the fact that it describes the gambling activity set out in applicant's identification of services.

When we consider the phrase EXTRA CHANCE BLACKJACK as a whole, and in the context of applicant's services ("providing a side bet in the card game commonly known as 'Blackjack' or '21' or 'Twenty-One'"), the phrase immediately informs consumers that applicant's service

consists of a side bet or extra chance to win money on a hand of blackjack. That is, the purchasing public would immediately understand the main characteristic/feature of applicant's service--providing a side bet on blackjack.

The combination of these words does not create an incongruous or suggestive mark. Rather, applicant's mark, EXTRA CHANCE BLACKJACK, when used in connection with applicant's identified services, immediately describes, without need of conjecture or speculation, the main characteristic/feature of applicant's services, i.e., that an extra chance to win money during a hand of blackjack is available through the use of this side bet. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the phrase EXTRA CHANCE BLACKJACK as it pertains to applicant's services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996); and *In re Time Solutions, Inc.*, 33 USPQ2d 1156 (TTAB 1994).

Inasmuch as the phrase unquestionably projects a merely descriptive connotation, we believe that competitors have a competitive need to use this phrase. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994); and 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2001).

Decision: The refusal to register on the ground that the mark is merely descriptive under Section 2(e)(1) is affirmed.