

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE
TTAB

Mailed:
8 June 2004
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Casino Data Systems

Serial No. 76155359

Bernhard Kreton, Esq. for Casino Data Systems.

Angela M. Micheli, Trademark Examining Attorney, Law Office
108 (David E. Shallant, Managing Attorney).

Before Bucher, Holtzman, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On October 26, 2000, Casino Data Systems (applicant)
applied to register the mark JACKPOT BINGO, in typed form,
on the Principal Register for goods identified as "gaming
devices, namely, gaming machines and computer game software

therefor" in International Class 9.¹ Applicant has disclaimed the term "Bingo."

The examining attorney ultimately refused to register applicant's mark on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), of applicant's goods. According to the examining attorney, the "term JACKPOT BINGO is the name of a type of gambling game. The applicant will offer the potential consumer the ability to play jackpot bingo on its gaming machines." Examining Attorney's Brief at 2.

Applicant points out that, according to the examining attorney's own definition, "bingo" is a "game of chance played with cards having numbered squares corresponding to numbered balls drawn at random and won by covering five such squares in a row."² Applicant's Brief at 4. Applicant goes on to assert that an examination of its promotional material "reveals no cards and no balls; in short, nothing in the definition of bingo." Id.

After the examining attorney made the refusal final, applicant appealed to this board.

¹ Serial No. 76155359 is based on an allegation of a bona fide intention to use the mark in commerce.

² See YourDictionary.com definition submitted with the Office Action dated April 19, 2001.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (A "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service"). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 200 USPQ at 218.

When we analyze the evidence, we must keep in mind that the test is not whether prospective purchasers can guess what applicant's goods are after seeing applicant's mark alone. Abcor, 200 USPQ at 218 ("Appellant's abstract test is deficient - not only in denying consideration of evidence of the advertising materials directed to its goods, but in failing to require consideration of its mark 'when applied to the goods' as required by statute").

In this case, we start with the examining attorney's printouts that show that the term JACKPOT BINGO is a term in common usage to describe a gambling game.

Billy Atkins, director of the charitable bingo division at the Texas Lottery Commission, said other states with progressive **jackpot bingo**, most noticeably Michigan, have had great success in boosting business. *San Antonio Express-News*, January 6, 2002.

The cash **jackpot bingo**, which can reach payouts close to \$1000 by the end of the trip, was one of the most popular attractions with old and young alike. *Maine Sunday Telegram*, November 16, 2001.

The bright and meticulously maintained facility boasts 95,000 square feet of pure excitement, with 24-hour blackjack and poker, 2,000 of the latest slots and video poker machines, **jackpot bingo**, and more. *Successful Meetings*, November 2001.

A little creativity and an idea that came from a chance meeting may just do the trick, when Ponca Tribe premieres its **jackpot bingo** game every Tuesday. *Indian Country Today*, August 13, 2001.

The event will feature, food, music and games, including a \$10,000 **jackpot bingo** game. *Times-Picayune* (New Orleans), March 25, 2001.

There'll also be readings of favorite sauerkraut celebration memories by participants from over the years and **jackpot bingo**. *Bismarck Tribune*, October 10, 2000.

Although the bus was delayed picking them up, the Fun 'N' Games group had a wonderful time playing the slots, **jackpot bingos**, and even taking a try at skeet shooting. *Press Journal* (Vero Beach, FL), October 24, 1999.

[T]he ship's intercom boomed the commencement of a vegetable-carving demonstration to be followed by the daily **jackpot bingo** game. *Times-Picayune* (New Orleans), February 11, 1996.

The board took action following an audit that reported financial discrepancies in an account for progressive **jackpot bingo** games.

The Advocate (Baton Rouge, LA), July 25, 1995.

Jackpot bingo is considered gambling and must be conducted while the ship is in international waters.

St. Petersburg Times, May 3, 1994.

Clearly, this evidence shows that the term "Jackpot Bingo" is a term used to refer to a particular type of bingo featuring progressive jackpots.

Applicant claims that the examining attorney has apparently "distorted the meaning of the word 'bingo' to encompass more than is commonly understood." Applicant's Brief at 4. However, applicant's implication that the term "bingo" is only descriptive of games played with actual cards and numbered balls misses the point. While bingo may be traditionally played with cards and numbered balls, applicant's promotional literature makes it clear that applicant's gaming machines incorporate features of the traditional game and result in a slot machine version of the traditional game. Applicant's machine advertises "Line up five Jackpot [symbols] & win progressive," which is similar to the traditional bingo game that is won by covering five squares in a row.

Also, according to applicant's literature, applicant's goods have other indicia of the traditional game of bingo.

- Five reel video slot with added **bingo** bonus game
- Bonus round features "live" hopper with animated **bingo** balls "daubing" the **bingo** card

Therefore, the term "bingo," which applicant has disclaimed, describes the bingo features of applicant's goods.

Additionally, applicant's literature also makes it clear that the term "jackpots" is a significant feature of applicant's goods ("Two high hit frequency progressive jackpots").

Thus, both words (jackpot and bingo) individually have a descriptive meaning when applied to applicant's goods. The gaming machines feature jackpots and they involve a bingo-like game. While applicant argues that "these animations (available only after successfully playing the primary game shown in the promotional depiction) evoke familiar concepts, they do not describe a gaming machines." Applicant's Brief at 5 (emphasis in original). We disagree. The terms do describe a feature of applicant's goods, i.e., that its goods are based on the traditional game of bingo with a progressive jackpot feature. The combined term JACKPOT BINGO is also widely used to refer to a specific type of bingo game. Applicant's gaming machines

would be a gaming machine based on the often discussed "jackpot bingo" game.

Applicant also argues that "the buying consumers are casinos. It is hard to imagine a more discerning buyer." Applicant's Brief at 5. We do not see how this argument of counsel significantly changes the descriptiveness analysis. These purchasers, as applicant has described them, are even more likely than ordinary purchasers to be aware of the traditional "jackpot bingo" game. When these purchasers see applicant's promotional literature, they would immediately know that applicant's goods are simply gaming machines based on this game of bingo featuring progressive jackpots.

In response to applicant's other points, we note that even if applicant were the first or only gaming machine or computer game software producer to make a machine or software based on the traditional game of "Jackpot Bingo," that fact would not obliterate the descriptive significance of the term. In re Tekdyne Inc., 33 USPQ2d 1949, 1953 (TTAB 1994) ("The fact that applicant will, or intends to be, the first and/or only entity to use the term "MICRO-RETRACTOR" for surgical clamps is not dispositive where, as here, such term unequivocally projects a merely descriptive connotation"). Applicant also argues that the term

"Jackpot Bingo" has "never conjured up gaming machines." Applicant's Brief at 6. However, we must view the term in relationship with the goods, including applicant's promotional material. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987) ("We discern no error or inequity in the Board's use of appellant's catalog as evidence of what it contains"). Even if applicant's term in the abstract does not "conjure up" gaming machines, when the term is used on gaming machines having progressive jackpots and bingo features, the term would immediately describe a characteristic or feature of applicant's goods.

In this case, applicant's goods are gaming machines that have features from traditional bingo games ("bingo bonus game" and animated bingo balls and bingo cards) and progressive jackpots. "Jackpot Bingo" is also the name of a specific type of bingo gambling game. The evidence supports a conclusion that when prospective purchasers encounter the same term on applicant's goods they will immediately know that applicant's goods are bingo-like games with progressive jackpots. Therefore, applicant's term is merely descriptive of its goods.

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