

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

Hearing:
August 2, 2005

Mailed:
December 6, 2005
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re DNI Holdings Ltd.
(by assignment from Nortech Investments Ltd.)¹

Serial Nos. 76330663

Steven A. Gibson of Santoro Driggs Walch Kearney Johnson &
Thompson for DNI Holdings Ltd.

Michael P. Keating, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Quinn, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

DNI Holdings Ltd. seeks registration on the Principal Register, or in the alternative, on the Supplemental Register, of the mark **SPORTSBET INFO** (*standard character drawing*) for services recited in the application as follows:

"Provision of casino games on and through a global computer network wherein there are no actual monetary wagers; provision of contests and sweepstakes on and through a global computer network; providing a web site on and through a global computer network featuring

¹ This application was assigned from Nortech Investments Ltd., the original applicant at the time of filing, to DNI Holdings Ltd., a corporation of Antigua and Barbuda, as of August 2005. This assignment was recorded with the Assignment Division of the United States Patent and Trademark Office at Reel 3147, Frame 0465.

information in the fields of gaming, athletic competition and entertainment" in International Class 41.²

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon the ground that the proposed mark is generic for the identified services. In the alternative, the Trademark Examining Attorney contends that in the event this term should be found not to be generic for the identified services, it is certainly merely descriptive, and hence unregistrable on the Principal Register.

Applicant and the Trademark Examining Attorney have briefed this appeal,³ and at applicant's request, a hearing was held before this panel of the Board on August 2, 2005.

We affirm the refusal to register.

The record includes printouts of portions of online websites that offer a peak into the world of online

² Application Serial No. 76330650 was filed on October 25, 2001 based upon applicant's allegation of first use anywhere and first use in commerce at least as early as February 1, 2001.

³ Applicant's appeal brief (April 29, 2003) and the Trademark Examining Attorney's brief (March 1, 2004) are both directed to a previous final refusal based on the ground of mere descriptiveness (when the application sought registration on the Principal Register). Subsequent to the institution of the appeal, following applicant's request of March 18, 2004 for an amendment to the Supplemental Register, the ground for refusal in this case changed to genericness. While this refusal was eventually made final, the Trademark Examining Attorney did not prepare a supplemental brief dealing with the issue of genericness. Applicant, however, did submit a reply brief arguing that the term is not generic.

gambling, or, in applicant's parlance, "gaming." Along with poker tournaments and casino games, many of these gambling websites feature prominently their professional sportsbooks - providing information regarding betting and sports, and offering online wagering services. Through such sites, every Internet user has ready access to, *inter alia*, online sportsbook betting lines on a wide array of collegiate and professional sports.

As seen in this record, applicant, on its own website, identifies itself as follows:

"We are your gateway to the Internet's premier casino and sports wagering sites.

"With the help of our sponsor, SPORTSBETTING.COM, we give you the latest sports news, schedules, stats and more. Simply click on your favorite sport below.

"If you prefer you can check out the latest offshore sports betting odds on all major North American and many European sporting events."

The balance of applicant's website contains a section that provides definitions of common terms used in the gaming field; includes specific information on various sports, such as professional football, professional basketball, tennis, golf and horse racing, and the betting odds for those wishing to place a bet on a particular sporting event or athletic competition; and offers a "sports betting newsletter" that is available via electronic mail.

As to the involved designation, the Trademark Examining Attorney takes the position that inasmuch as a term such as "sportsbet" is a collapsed term (i.e., two words combined without a space between the words), and because the evidence of record demonstrates that each of the constituent words is generic, and because the separate words, when joined, form a combined term having a meaning identical to the meaning common usage would ascribe to those separate words when joined, the Office has established that the term "sportsbet" is generic when used in connection with these services. The Trademark Examining Attorney argues correctly that the absence of an entry for a compound term in the dictionary is not controlling on the question of registrability if the Office has demonstrated that the term has a well understood and recognized meaning. In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed Cir. 1987) [SCREENWIPE is generic when used in connection with cleaning wipes for television and computer screens].

The Trademark Examining Attorney argues that the two words (i.e., SPORTS and BET) are joined together and used generically on the Internet, for both sports wagering and for providing information regarding sports and betting. The Trademark Examining Attorney argues that the addition of the term "info," a shortened form or a variant of the generic

term, "information," does not create source-identifying significance when appended to the generic term, "sportsbet." The Trademark Examining Attorney also points out that applicant, in Reg. No. 2940405, disclaimed the terms SPORTSBET INFO apart from the special form mark as shown.⁴ Finally, even if the applied-for term is found to be not generic, the Trademark Examining Attorney argues that it is merely descriptive and, thus, is barred from registration on the Principal Register.

By contrast, applicant argues that even if it is true that applicant is providing services through its website wherein consumers are actually able to wager money on sports, applicant is not seeking registration for these services. In fact, it specifically limited the claimed services so as to *exclude* monetary wagering. As a result, applicant argues that the Trademark Examining Attorney's refusal to register its mark cannot stand inasmuch as the refusal is based upon genericness of the term for services *not claimed* by applicant.

⁴ Reg. No. 2940407 issued to Nortech Investments Ltd. for services recited as "broadcasting and netcasting services on and through a global computer network featuring sports events, contests, casino events, athletic events and entertainment events" on the Principal Register on April 12, 2005. According to the registration, applicant makes no claim to the terms SPORTSBET INFO apart from the mark as shown.



It has been repeatedly stated that "[d]etermining whether a mark is generic ... involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?" H. Marvin Ginn v. International Association of Fire Chiefs, Inc. 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). In a proceeding such as this, the genus of the services at issue is determined by focusing on the recital of services in the application itself. Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) ["Thus, a proper genericness inquiry focuses on the description of services set forth in [the application or] certificate of registration."].

Moreover, the burden rests with the Trademark Examining Attorney to establish that the mark sought to be registered is generic for the services. In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1997). The Office must be able to satisfy both elements of the test as set forth in the controlling precedent of Marvin Ginn, bearing in mind that "[a]ptness is insufficient to prove genericness." See In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed.

Cir. 1999). It is incumbent upon the Trademark Examining Attorney to make a "*substantial showing* ... that the matter is in fact generic." Indeed, this substantial showing "must be based on *clear evidence* of generic use." Merrill Lynch, 4 USPQ2d at 1143. Thus, it is beyond dispute that "a strong showing is required when the Office seeks to establish that a term is generic." In re K-T Zoe Furniture Inc., 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994). Furthermore, doubt on the issue of genericness is resolved in favor of the applicant. In re Waverly Inc., 27 USPQ2d 1620, 1624 (TTAB 1993).

Addressing the first part of the Marvin Ginn genericness inquiry, applicant argues that a proper genericness inquiry focuses on the description of services as recited in the application - not on whether or not, for example, applicant's website actually take sports wagers. However, even if, for the sake of argument, we were to accept this position, applicant's recitation of services includes providing a website "featuring information in the fields of gaming, athletic competition and entertainment." Hence, the class or category of services described in the application still clearly includes that of providing information regarding sports and betting. See In re CyberFinancial.Net Inc., 65 USPQ2d 1789 (TTAB 2002)

[BONDS.COM generic for identified information services related to investment securities even where applicant does not buy or sell bonds].

We turn then to the second part of the Marvin Ginn inquiry, namely, whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of services.

Not surprisingly, the Trademark Examining Attorney did not find the combined terms "sportsbet" or "sportsbet info" as single entries in a dictionary. Nonetheless, he argues that inasmuch as applicant is seeking registration of the designation SPORTSBET INFO for services including that of providing a website featuring information on gambling and betting on sports, the ordinary meanings of these words show them to be generic for the recited services. Specifically, as to the term "sportsbet," the Trademark Examining Attorney argues in his appeal brief that:

the words "sports" and "bet," when combined into a single term, refer to "an amount or object risked on a wager" on a competitive contest or "activity involving physical exertion and skill that is governed by a set of rules or customs," such as sporting events or athletic competition. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3rd ed. 1992). In addition, the term clearly has significance in the field in which applicant's services are rendered. As shown by the record herein, the term "sportsbet" is commonly understood and recognized to refer

to the act of betting on sporting events or athletic competitions, and providers of such services commonly use the term "sportsbet" to describe services and wagers of this nature. See, e.g., pages from www.sportsbet.com.au, www.sportsbet.co.za, and www.sportsbetbookmaker.com, attached to the Office Action of September 29, 2003. In addition, the results of a search of the GOOGLE® database attached to the Final Office Action of August 30, 2002 for the term "sportsbet" resulted in approximately 4300 hits ...

We find that the record shows that "sports bet" is the equivalent of a "sports wager." We have no doubt but that joining the separate words "sports" and "bet" creates a term that, in context, would be generic for a service that permits one to wager on sporting events. As a matter of trademark law, "sports bet" is equivalent to "sportsbet," which in its combined form is not greater than the sum of its parts. See *In re Gould Paper, supra*; *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978) [GASBADGE at least descriptive for gas monitoring badges; three judges concurred in finding that term was the name of the goods]; *In re Planalytics Inc.*, 70 USPQ2d 1453 (TTAB 2004) [GASBUYER merely descriptive of "on-line risk management services in the field of pricing and purchasing decisions for natural gas"]; *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977) [BREADSPRED descriptive for jams and jellies that would be a spread for bread]; and *In re Perkin-*

Elmer Corp., 174 USPQ 57 (TTAB 1972) [LASERGAGE merely descriptive for interferometers utilizing lasers].

As recited above, the second part of the Marvin Ginn inquiry focuses on the perceptions and understandings of members of the "relevant public." In defining the relevant public whose understanding and perception of the term "sportsbet info" is critical to our analysis (see Magic Wand Inc., *supra* at 1553), we must include all persons having access to the Internet who might potentially wager on sports, or who might seek information prior to making such a wager.

The entire record shows that members of the relevant public see the terms "sports bet" or its variant, "sportsbet," used as a part of trade names as well as domain names⁵ within Internet websites. The Trademark Examining Attorney argues that based upon a Google search report

⁵ Trademark Examining Attorney provides website references to a number of third-party competitors incorporating the letter string "sportsbet" in combination with other words, alpha- numerics, names and symbols into their respective domain names:

<http://www.sportsbet.com.au/>
<https://www.sportsbet.co.za/Index.asp>
<http://www.sportsbetbookmaker.com>
<http://www.tabsportsbet.com.au>
<http://www.sportsbetgamblingsportsbook.com>
<http://www.21st-Century-sportsbet.com>
<http://www.globalsportsbet.com.au>
<http://www.1casinosportsbet.com>
<http://www.allprosportsbet.com>
<http://www.2ksportsbet.com>
<http://www.makeasportsbet.com>
<http://www.sportbet.com>

placed into the record, he has demonstrated that it is not at all unusual for other sportsbook entities competing with applicant to use the terms "sports bet" or "sportsbet" in a generic fashion on their web pages in describing their services. The Trademark Examining Attorney's Google search of the term "sportsbet" retrieved more than four thousand hits, of which he printed out for the record ten pages of the first one hundred summary hits.⁶

Moreover, we note that whether one looks closely at applicant's website or the websites of third-party competitors made of record, much of the discussion about a "sports bet" (or "sportsbet") focuses on the need to gather and analyze as much information as one can to become knowledgeable about the particular sport on which one is wagering. Hence, when it comes to sports bets, we find that the information piece of applicant's recited services is inextricably tied into the actual wager. Moreover, the record shows that the term "info" is a shortened, informal variant of the term "information," which in turn is defined as "news, facts, or knowledge." Cambridge Dictionary of American English, and The American Heritage Dictionary of

⁶ See Internet search of August 2002 for "sportsbet" using the Google search engine that found 4,300 hits, which results included summary hits of the first hundred hits. Interestingly, an identical Google search in November 2004 resulted in 232,000 hits.

the English Language (4th ed. 2000) (attached to Office Action of September 25, 2003). We agree with the Trademark Examining Attorney that the several dictionary entries in the record demonstrate that "info" will definitely be seen in this context as a shortened form of the term "information." Especially given the penchant for using shorthand expressions on the Internet, the term "info" is without a doubt generic for a website featuring information services.⁷ The term "info" is disclaimed in a variety of third-party registrations for services similar to those being offered by applicant.

Accordingly, when members of the relevant public (i.e., persons with Internet access who might wager on sports) see the terms "sports bet info" or "sportsbet info," they would view both of these interchangeable terms as generic for websites providing information about sports wagers.

⁷ Another possible interpretation of the term "info" in this composite mark is that of a new top-level domain name (TLD). Given that applicant filed on the same day for four different "biz" marks drawn similarly to its four companion "info" marks [Serial Nos. 76330657 - 663], one might assume that in 2001 applicant was desirous of Lanham Act protection for composite marks suspiciously similar to anticipated domain names (i.e., without the "dot") employing what were then newly-announced TLD's, e.g., << www.sportsbetting.info >> or << www.sportsbetting.biz >> . However, even if the record demonstrated that this were the dominant perception of the relevant public, under extant Board precedent, this would still not remove the genericness bar to registration herein. See In re DNI Holdings Ltd., ___ USPQ2d ___ (November __, 2005, TTAB) [SPORTSBETTING.COM generic for, *inter alia*, providing an Internet website featuring information regarding sports and betting].

The Trademark Examining Attorney did an Internet search during November 2004 for the combined term "sportsbet info" using the Google search engine that found 51 hits, which results placed into the record included summary hits of the first twenty hits. In most of these summaries, the term appeared nowhere in the summary. At least one referenced website belongs to applicant.⁸ In other cases where the combined term "sportsbet info" does appear in the summary, we find that these summary listings of term do not provide probative evidence that these terms actually appear in readable text in the pages referenced therein. This is true because it is not clear to us exactly how Google generates this summary text, but it appears likely that these occurrences may well be taken from metatags, embedded links (including links to applicant's websites) or other HTML sources for the associated web pages.

Despite the failure of the Trademark Examining Attorney to demonstrate usage by any third parties of the entire term "sportsbet info," we note that this is still a relatively new cyber-service.⁹ Moreover, in the ordinary course of interpreting the English-language construction of

⁸ <http://www.sportsbet-info.com/>

⁹ The more than fifty-fold increase in hits for the term "sportsbet" over a two-year period (i.e., from more than four thousand in 2002 to 232,000 in 2004) demonstrates the recent, explosive growth of wagering on sports via the Internet.

"sportsbet info," the term, "sportsbet" is a generic adjectival term clarifying exactly what type of information one can anticipate gleaning from this online service. The record shows that each of these constituent terms is generic, and together this compound term has a meaning identical to the meaning common usage would ascribe to those words as a whole. See In re Gould Paper, *supra*.

Specifically, we find that "sportsbet info" is generic for an online service that provides information on sports wagers. Hence, we find that the Office has established that the combined term "sportsbet info" is incapable of functioning as a mark for these services.

Having found the applied-for matter (the term "sportsbet info") generic for the third portion of the recitation of services in International Class 41 herein, namely, 'providing information regarding sports and betting,' we hold that registration is appropriately denied for the entire class of services if the term is generic for any of the services for which registration is sought. See In re Quik-Print Copy Shop, Inc., 616 F.2d 525, 205 USPQ 505, 507 (CCPA 1980). Accordingly, we do not find it necessary to discuss further whether the term "sportsbet info" is generic as used in connection with the first two

services recited in this application, e.g., casino games for fun, contests and sweepstakes, etc.

As to the arguments by the Trademark Examining Attorney that applicant has admitted to the fact that these individual components are not registrable by disclaiming them in an earlier registration, we recognize that §6 of the Lanham Act permits an applicant to disclaim matter voluntarily - regardless of whether the matter is registrable or unregistrable. See In re MCI Communications Corp., 21 USPQ2d 1534 (Comm'r Pats. 1991). Applicant's earlier statement that it made no claim to the exclusive right to use the terms SPORTSBET INFO apart from the composite mark as shown means that insofar as that particular registration is concerned, no rights are being asserted in the disclaimed component of the mark standing alone. It is clear that a disclaimer does not preclude registrant, as a matter of law, from later demonstrating in another application, for example, rights in the disclaimed matter if it can show that the disclaimed words have, with time and use, become distinctive of such goods or services. See Section 6(b) of the Trademark Act, 15 U.S.C. §1056(b); See also, In re K-T Zoe Furniture Inc., *supra* at 1789. However, it has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of

that term, as applied to the goods or services in connection with which it is used, and an acknowledgment of the lack of an exclusive right therein at the time of the disclaimer.

See Quaker State Oil Refining Corp. v. Quaker Oil Corp., 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972). See also, In re Interco Inc., 29 USPQ2d 2037, 2038 (TTAB 1993).

Finally, we agree with the Trademark Examining Attorney that in the event **SPORTSBET INFO** should be found not to be generic for the identified services, it is certainly merely descriptive. By definition, if merely descriptive, it is not inherently distinctive, and applicant has made no attempt to demonstrate acquired distinctiveness for this matter, so as to permit registration on the Principal Register under Section 2(f) of the Act.

Decision: The refusal to register the designation **SPORTSBET INFO** as incapable of registration under Section 23 of the Lanham Act is hereby affirmed, and registration to applicant is denied. In the alternative, should the applied-for term be found not to be generic for the identified services, it is merely descriptive. Hence, in the absence of a showing of acquired distinctiveness, the refusal to register on the Principal Register based upon Section 2(e)(1) of the Lanham Act is hereby affirmed.