

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

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November 2, 2006
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hollywood Stock Exchange, LLC

Serial No. 78389911

Georges Nahitchevansky of Kilpatrick Stockton LLP for
Hollywood Stock Exchange, LLC.

Henry S. Zak, Trademark Examining Attorney, Law Office 108
(Andrew Lawrence, Managing Attorney).

Before Bucher, Walsh and Cataldo, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On March 24, 2004, Hollywood Stock Exchange, LLC
(applicant) filed an intent-to-use application to register
the mark GAMESTUDIO in standard-character form for services
now identified as "education and entertainment services in
the nature of a simulated securities exchange game
accessible through a global computer information network
for the transfer and dissemination of a wide range of

information" in International Class 41.¹ The Examining Attorney has refused registration on the grounds that the mark merely describes the services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). Applicant argued against the refusal in its response; the Examining Attorney made the refusal final; and applicant appealed. Applicant and the Examining Attorney have filed briefs.² We reverse.

A term is merely descriptive of goods or services within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute

¹ Applicant proposed this amended identification in its request for reconsideration and the Examining Attorney accepted it in responding to that request.

² In its main brief applicant objected to certain evidence the Examining Attorney attached to his response to applicant's request for reconsideration. The Examining Attorney withdrew the evidence in response to applicant's objection. Therefore, we have not considered that evidence in deciding this case. If we had considered it, we would not decide the case differently.

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or function of the goods. See In re H.U.D.D.L.E., 216 USPQ 358, 359 (TTAB 1982); and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services identified in the application, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of use or intended use. In re Polo International Inc., 51 USPQ2d 1061, 1062 (TTAB 1999); and In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The Examining Attorney argues that, "A term that identifies the source or provider of a product or service is merely descriptive under Section 2(e)(1)." (Citations omitted.) He argues further, "The term applicant seeks to register, GAMESTUDIO, is not uniquely coined or created by the applicant, but appears to be commonly used by organizations who specialize in the creation or marketing of on line electronic games, regardless of the subject matter or method of play of such games. The Examining Attorney has made of record materials clearly showing that this term, 'game studio' is frequently used by third-party electronic or online game developers and marketers to identify the entity involved in the creation or marketing

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of such electronic games." The Examining Attorney likens GAMESTUDIO to terms, such as "men's store" or "dairy," and relies on cases, such as In re Taylor & Francis [Publishers] Inc., 55 USPQ2d 1213, 1215 (TTAB 2000) (PSYCHOLOGY PRESS held merely descriptive for series of nonfiction books in the field of psychology); In re Polo Intl. Inc., 51 USPQ2d 1961, 1063 (TTAB 1999) ("Doc-Control" held merely descriptive for software for document management); and In re The Phone Co., Inc., 218 USPQ2d 1027, 1028 (TTAB 1983) (THE PHONE COMPANY held merely descriptive for telephones and related equipment).

Applicant argues that, "the Examining Attorney contends that the mark describes the applicant." (Emphasis in the original.) Applicant states further, "... the evidence does not in any way demonstrate that 'Game Studio' is a common business reference akin to 'men's store' or 'dairy'... nor does it demonstrate that a company designated as a 'game studio' offers access to players of online games." Applicant adds, "There is no reason consumers would describe Applicant, Applicant's services or its games as a 'game studio' or believe they came from a 'game studio.'" Applicant also points to potential suggestive meanings of its mark: as a suggestive reference to the film industry, the focus of its current games; or as a

suggestive reference to the "place" where its virtual, online games are played. Applicant also argues, "It is well settled that a mark which has multiple meanings, and is vague, is suggestive rather than descriptive." In support of its position, applicant cites cases, such as, In re TMS Corporation of the Americas, 200 USPQ 57, 59 (TTAB 1978) (THE MONEY SERVICE held not merely descriptive for financial services wherein funds are transferred to and from a savings account from locations remote from the associated financial institution).

The evidence the Examining Attorney provided indicates that "game studio" most often refers to a software development group which specializes in the development of interactive games. For example, the excerpt from Consumer Electronics Daily, dated December 9, 2004, discusses a company called "Climax" and its "game studio" and indicates the company's expected involvement with the development of games for both Xbox2 and Playstation3, competing game platforms. An excerpt from TheStreet.com, dated May 20, 2005, suggests the structure of the game industry. It states, "Other publishers have been gobbling up game studios in an effort to bring more IP in house and lower licensing and royalty costs. Don't expect Atari to follow a similar path in its turnaround plan..."

The following statement in an excerpt from The Hollywood Reporter of May 17, 2005, provides perhaps the best insight into the role "game studios" play in the industry: "One big change this year is that two Hollywood major-studio operators - Warners and the Walt Disney Co. - are taking more active roles in the creation of video games. In addition to licensing big movie and TV properties to publishers, such as Electronic Arts, THG and Midway Games, Warner Bros. Interactive Entertainment and Buena Vista Games now own game development studios and are creating licensed content internally while overseeing the development of and even distributing and codistributing other titles... WBIE, which funded and oversaw the development of 'The MATRIX Online' for four years then bought its game studio Monolith Prods., has an assortment of big movie properties in development..."³ These excerpts, and others, suggest that "game studios" typically develop and license use of game programs, but do not provide games directly to consumers.

Based on this evidence, it is unclear whether average purchasers of applicant's services would perceive

³ This excerpt is one of the longer ones in the record. Many of the excerpts are short and truncated which makes it difficult to discern the precise significance of "game studio" as used in the excerpt.

GAMESTUDIO as either a merely descriptive term or as an entity designation as the Examining Attorney argues. The record does include some instances of "Game Studio" being used in conjunction with a group name or possibly as part of a trade name, for example, "Microsoft Game Studios" or "Bungie game studios." However, the evidence fails to establish that average purchasers of or players of online games would perceive GAMESTUDIO in the same sense as potential clothing purchasers would perceive "men's store" or potential purchasers of dairy products would perceive "dairy."

The example applicant has provided of its use of GAMESTUDIO casts further doubt on the Examining Attorney's argument. The example shows GAMESTUDIO displayed in stylized form (with the letter "S" suggesting a dollar sign) serving as a marquee of sorts, and the names of three individual games appearing immediately below: ON THE MONEY, MOVIE MOGUL, and BOXOFFICE BATTLE. As used here GAMESTUDIO does not in any way suggest an entity type. Furthermore, the use of the mark lends credence to applicant's argument that its mark may be perceived as suggesting an association with the film industry, the focus of the three games, or even a virtual place or "STUDIO" where these online games may be played.

When we consider the totality of the circumstances and evidence in this case we conclude that the significance of GAMESTUDIO in the minds of relevant customers, as applied to a simulated securities exchange game accessible through a global computer information network, is not merely descriptive. We concur with the applicant in concluding that the significance of GAMESTUDIO in this context is ambiguous.

This case is more accurately categorized with cases, such as, In re TMS Corporation of the Americas, 200 USPQ at 59, and the THE MONEY SERVICE mark, than it would be with cases, such as, In re The Phone Co., Inc., 218 USPQ2d at 1028 and THE PHONE COMPANY mark. In In re The Phone Co., Inc., the Board characterized its task as follows, "to decide that a mark which names the type of commercial establishment from which particular goods [or services] come is merely descriptive of those goods [or services]." In that case the Board concluded that such marks are merely descriptive and that THE PHONE COMPANY was such a mark. Id. On this record, we cannot conclude that GAMESTUDIO is such a mark, nor can we conclude that GAMESTUDIO otherwise conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the services at issue here. In re Gyulay, 3 USPQ2d 1009 at

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1009. Therefore, we conclude that GAMESTUDIO is not merely descriptive of the services in this case.

Finally, we recognize that this is a case where some doubt may exist and, as applicant points out, we resolve any doubt in a case such as this in favor of applicant. In re Penwalt Corp., 173 USPQ 317, 319 (TTAB 1972).

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