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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Harry B. Platis

Application Serial No. 78808399

Application Serial No. 78808409

Matt Jellett of Jellett Law, PS for Harry B. Platis.

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(Karen M. Strzyz, Managing Attorney).

Before Bucher, Grendel, and Mermelstein, Administrative
Trademark Judges.

Opinion by Mermelstein, Administrative Trademark Judge:

These appeals present common issues of law and fact,
and are accordingly consolidated for issuance of this
decision.

Applicant seeks registration of the following marks:¹

App. No.	Mark	Services
78808399	PARIMUTUEL SPORTS	Entertainment services, namely, providing a web site featuring cooperative wagering on contestants within sporting events, and providing a web site featuring cooperative wagering on contestants within sporting events including track and field, martial arts, bicycle racing, extreme sports, fictitious sports, gymnastics, vehicle racing, miscellaneous sports such as card playing sports, trading card games and the like, strength sports, racquet sports, skating sports, snow sports, winter sports, entertainment sports, target sports, team sports, board games, and water sports.

¹ Both applications were filed on February 6, 2006, based on allegations of a *bona fide* intent to use the marks in commerce.

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App. No.	Mark	Services
78808409	PARIMUTUEL POOL	Gambling services, namely, providing a web site featuring cooperative wagering on billiards and pool playing contestants and providing a web site featuring cooperative wagering on billiards and pool playing contestants within a billiards and pool tournament event occurring in venues such as casinos, hotels, pool halls, or where contestants compete.

Registration of each mark was finally refused under Trademark Act § 2(e)(1); 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive of the identified goods.

We affirm.

I. Applicable Law

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the products for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass'n of*

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Greenville, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am.*

Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); see also *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980). Even where individual terms are descriptive, combining them may evoke a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, without the combination of terms creating a unique or incongruous meaning, then the resulting combination is also merely descriptive. *In re Tower Tech.*, 64 USPQ2d at 1317-1318.

II. Discussion

Applicant and the examining attorney each submitted a variety of dictionary definitions and other reference materials defining the terms at issue. While these sources differ somewhat, the basics are not in dispute.

A. Definitions

1. Parimutuel Betting System

According to the evidence of record,

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Parimutuel betting ... is a betting system in which all bets of a particular type are placed together in a pool; taxes and a house take are removed, and payoff odds are calculated by sharing the pool among all placed bets.

The parimutuel system is used in gambling on horse racing, greyhound racing, jai alai, and all sporting events of relative short duration in which participants finish in a ranked order. A modified parimutuel system is also used in some lottery games such as Lotto South.

...

Parimutuel betting differs from fixed odds betting in that the final payout is not determined until the pool is closed - in fixed odds betting, the payout is agreed at the time the bet is sold.

<http://en.wikipedia.org/wiki/Parimutuel> (Feb. 28, 2007).

In a parimutuel betting system, odds are not set by the house, but by the pattern of the bets themselves; the greater the amount bet on a particular outcome, the lower the odds. Thus, odds are not the result of a static prediction of the probability of that outcome at the time the bet is placed, but rather an indirect product of the predictions made by each bettor, as expressed through their wagers, and the final odds are not fixed until wagering is closed. All wagers are then put into a single pool which is divided equally among the winning bets. Finally, instead of making its money through adjustment of the odds, the house

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takes a percentage of the pooled wagers (the "vig"²) prior to payout, regardless of the result. *Id.*; *Gambling*, MSN ENCARTA ENCYCLOPEDIA (Mar. 2, 2007) (online ed.); THE COLUMBIA ENCYCLOPEDIA (6th ed. 2006) (online ed.).

2. "Sports" and "Pool"

There is no serious dispute as to the definitions of "sports" or "pool," but for the sake of completeness, we note that the following definitions (among others) are of record:

sport ...

1.
 - a. Physical activity that is governed by a set of rules or customs and often engaged in competitively.
 - b. A particular form of this activity.
2. An activity involving physical exertion and skill that is governed by a set of rules or customs and often undertaken competitively.
3. An active pastime; recreation.

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, (4th ed. 2000) (online ed.).

pool ...

1. **ball and cue game:** a game played with a cue stick, cue ball and 15 balls on a felt-covered table with six pockets.
2. **form of gambling:** a form of gambling in which the participants contribute an amount to a common fund that is divided among the winners
3. **total amount staked:** the collective amount that the players in a gambling game have staked.

MSN ENCARTA DICTIONARY (Apr. 2, 2007) (online ed.).

² Short for *vigorish*, Yiddish slang derived from Russian for "winnings" or "profit." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2004) (online edition).

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B. Applicant's Services

As set out in its applications, applicant's services are essentially "providing a web site featuring cooperative wagering on contestants within sporting events," '399 App., and "providing a web site featuring cooperative wagering on billiards and pool playing contestants," '409 App. In response to the examining attorney's request for further information about applicant's services pursuant to Trademark Rule 2.61(b), applicant provided "fact sheets" in both of the applications at issue.³

Pari Mutuel Sports™ is all about betting on Sports Events. ... The concept behind Pari Mutuel Sports™ is to offer people the ability to bet on sporting events and tournaments. ... As it turns out Pari Mutuel Sports™ is simply the pooling of bets on the outcome of a sports event. The payouts from the Pari Mutuel Sports™ pool will give you better odds as compared to any sports book casino handling the same event. The difference between a pari mutuel event and a casino handling the same event is that the Pari Mutuel Sports™ system pays out each bet on a participant in the pool tournament from a massive pool of all the collective bets, whereas the casino would set the odds on a given player and would payout based on their odds. In fact if you are betting on a pool tournament via our pari-mutuel sports site you are really betting that you can handicap a pool tournament better than the other bettors on this web site. ...

Resp. to Office Action, Appx. A (Feb. 9, 2007).

³ The fact sheets are essentially identical, the major difference being in the use of the term "sports" or "sports event" in the '399 Application and the use of the term "pool" or "pool tournament" in the '409 Application. For the sake of brevity, we have quoted only the fact sheet from the '399 Application, although we have fully considered both.

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It is clear from the plain language of the application, and from the information provided by applicant that applicant's services include parimutuel⁴ betting on sports in general ('399 Application), and parimutuel betting on pool and billiards ('409 Application).

C. Descriptiveness

Despite the definitions of record, applicant argues that its mark is at most suggestive:

[T]he term "pari-mutuel" has been used nearly exclusively in the betting industry for *animal track races*. The races traditionally are in the form of horse races, dog races, or other type of track sport where there are [a] limited number of contestants (usually animals) defining the field.

App. Br. at 7.

⁴ The marks at issue are PARIMUTUEL SPORTS and PARIMUTUEL POOL. In referring to the mark in its briefs, applicant frequently uses the wording "pari-mutuel pool" or "pari-mutuel sports" (lowercase in original), while "Pari Mutuel Pool™" and "Pari Mutuel Sports™" is used in applicant's fact sheets. (Applicant also refers to the mark in the '399 Application as "pari-mutuel poker," which is clearly incorrect.)

The reference materials of record most commonly refer to "parimutuel" wagering, although one source treats "pari-mutuel" and "parimutuel" as equivalent. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000) (online edition) (listing "pari-mutuel" first).

We consider the terms "parimutuel," "pari-mutuel," and "pari mutuel" to be equivalent for purposes of determining descriptiveness in this case. The difference among them is merely a space, a hyphen, or neither between the first and second syllables, and there is nothing in the record to suggest that the terms have a different pronunciation or commercial impression, or would not be recognized by potential purchasers as having the same meaning. Minor misspellings and inconsequential punctuation differences are not sufficient to render otherwise descriptive marks registrable. *E.g. In re Wyandotte Chemicals Corp.*, 156

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While applicant is correct that the parimutuel betting system is most commonly used in connection with horse or dog racing, the record reveals that parimutuel betting is hardly exclusive to "animal track races." For instance, the same betting system is used for wagering on the outcome of jai alai and at least one lottery game. Parimutuel Betting, <http://en.wikipedia.org/wiki/Parimutuel> (Feb. 28, 2007). Another website notes that parimutuel wagering is used to wager on events such as "*league championships, the Academy Awards, and major elections ... whatever may be of national interest can be pari-mutuel. NCAA, NASCAR, NHRA, etc.*" www.allsportsaction.com/asa/index.cfm (Feb. 28, 2007). And according to an article submitted by the examining attorney, as long as a decade ago, a company was providing parimutuel wagering on football, auto racing, golf, tennis, and baseball. "The possibilities are truly endless...." Michael Konik, *Mega Sports*, Cigar Aficionado (Nov./Dec. 1997) (online).

Applicant further argues that

the term "pari-mutuel pool" is a made up term, can be applied to non-racing events, and association of "pari-mutuel" with the term ... "*pool*" is not merely wagering on horse racing, dog racing, etc..., and therefore would involve the requisite mental pause, reflection and forethought (all recognized hallmarks of

USPQ 100, 100 (TTAB 1967) ("[A] descriptive term is not made arbitrary by hyphenating or misspelling it").

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the suggestive mark) prior to such an association. See *In re Micro Instrument Corp.*, 222 USPQ 252, 253 (TTAB 1984).

App. Br. at 8 (similar argument in App. No. '399, App. Br. at 8).

Contrary to applicant's contention, the parimutuel wagering system can be and has been used to provide for betting on a wide range of activities, including many sports. Even if still most commonly thought of as a type of betting on horse races, we cannot agree that the term "parimutuel" is so associated with that one sport that its meaning would be completely lost in a different context.

The question is not - as applicant suggests - whether PARIMUTUEL SPORTS or PARIMUTUEL POOL is a "made up term." In order to establish descriptiveness under Trademark Act § 2(e)(1), the examining attorney need not show that others in the field are using the same term. Descriptiveness depends on whether the mark would be perceived to describe a feature, function, or characteristic of the identified services. The fact that applicant is the first or only user of the term has no relevance. *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983) ("This highly descriptive designation is not registrable under Section 2(e)(1) of the Act even though the record reflects no use of this combination of words by competitors.")

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While we recognize that a combination of descriptive words does not necessarily result in a descriptive term, *National Shooting Sports*, 219 USPQ at 1020, there is no evidence which would suggest that the combinations of descriptive terms at issue here (PARIMUTUEL SPORTS and PARIMUTUEL POOL) have achieved any commercial impression other than the sum of their parts - by virtue of either their incongruous or unusual combination or by their use in this particular context. Based on the evidence of record, we find that the relevant customers for such services would immediately, and without need for further reflection, understand applicant's services to pertain to "parimutuel" betting on "sports" or on "pool." Such services are clearly encompassed in the services set out in the respective applications. While applicant correctly points out that any doubt as to descriptiveness should be resolved in favor of the applicant, the record in this case leaves us with no doubt to be resolved.

III. Conclusion

After careful consideration, we find that applicant's marks, PARIMUTUEL SPORTS (App. No. 78808399) and PARIMUTUEL POOL (App. No. 78808409), are merely descriptive of the services recited in each respective application, and that registration is accordingly barred under Trademark Act § 2(e)(1).

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Decision: The refusal to register is affirmed as to both applications.