

Hearing:

August 19, 1998

THIS DISPOSITION IS NOT

CITABLE AS PRECEDENT OF THE TTAB JUNE 3, 99

Paper No. 12

JQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Synapsis Gaming Systems, Ltd.*

Serial No. 75/081,829

Tobey B. Marzouk of Marzouk & Parry for applicant.

Wanda Kay Price, Trademark Examining Attorney, Law Office
103 (Michael Szoke, Managing Attorney).

Before Seeherman, Quinn and Walters, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Synapsis Gaming
Systems, Ltd. to register the mark MILLION DOLLAR BLACK
JACK for "network of electronically interfaced games
comprised of computer hardware and software located at two

or more licensed gaming establishments linked to conduct gaming activities.”¹

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant’s mark, if applied to applicant’s goods, would be merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs, and both were present at an oral hearing held before the Board.²

Applicant contends, in urging that the refusal be reversed, that the mark is only suggestive. More specifically, applicant maintains that the mark suggests that winning players of applicant’s black jack game will receive a large amount of money. Applicant goes on to state that “[i]n almost every case, the amount received will not be a million dollars, but will be significantly less [\$50,000-\$200,000] or significantly more [up to \$30 million].” Applicant does acknowledge, however, that “the first million is paid instantly, i.e., that is [sic] if the

¹ Application Serial No. 75/081,829, filed April 1, 1996, alleging a bona fide intention to use the mark in commerce. The words “Black Jack” are disclaimed apart from the mark.

² Attached to applicant’s brief is an information sheet describing applicant’s game. Generally, evidence accompanying an appeal brief is untimely submitted. Trademark Rule 2.142(d). In the present case, however, the Examining Attorney made no such objection, but rather, in her appeal brief, considered the

consumer wins, they will be paid \$1,000,000 on the spot with any amounts over one million dollars to be paid in annual installments."

The Examining Attorney argues that the mark, when considered as a whole, merely describes applicant's specific type of black jack game which provides a monetary payoff of \$1 million or more. The Examining Attorney has submitted a dictionary definition of the term "gaming," and excerpts retrieved from the NEXIS data base which show that blackjack is a gaming (i.e., gambling) activity.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely

evidence as if properly of record. We likewise have considered this evidence in reaching our decision.

Ser No. 75/081,829

descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

There is no question, as established by applicant's information sheet, that applicant's game is an electronic version of black jack played by gamblers. Further, applicant's black jack game offers players a chance to win \$1 million instantly. The fact that players may win more or less than that specific amount does not, in our view, diminish the descriptiveness of the mark. The simple fact is that a significant characteristic or feature of applicant's black jack game is that \$1 million is paid instantly to certain winners. Thus, when MILLION DOLLAR BLACK JACK is applied to applicant's game, the mark is merely descriptive as contemplated by Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed.

E. J. Seeherman

T. J. Quinn

Ser No. 75/081,829

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

Ser No. 75/081,829