

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 19, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
—

In re Avant Garde Marketing Solutions, Inc.

—
Serial No. 77735279
—

Theodore F. Shiells of Shiells Law Firm P.C.,
for Avant Garde Marketing Solutions, Inc.

Steven M. Perez, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

—

Before Bucher, Holtzman and Adlin,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Avant Garde Marketing Solutions, Inc. (“applicant”) seeks registration on the Principal Register of the mark **CASH VALUE** (*in standard character format*) for the following services, as amended:

customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes featuring the ability for customers to earn rewards with a value equivalent to cash when applied to purchase goods or services from a participating merchant subject to compliance with any conditions imposed by the merchant; promoting the goods and services of others by means of the issuance of loyalty rewards cards which offer customers the ability to earn rewards with a value equivalent to cash when applied to purchase goods or services from a participating merchant subject to compliance with any conditions imposed by the merchant; providing incentive award programs for customers and employees for the purpose of promoting and rewarding loyalty through the distribution of prepaid stored value cards hav-

ing a value equivalent to cash when applied to purchase goods or services from a participating merchant subject to compliance with any conditions imposed by the merchant; providing incentive award programs for customers for frequent use of participating businesses through the issuance and processing of loyalty coupons having a value equivalent to cash when applied to purchase goods or services from a participating merchant subject to compliance with any conditions imposed by the merchant in International Class 35.¹

The examining attorney has refused registration on the ground that the term is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

When the refusal was made final, applicant appealed and requested reconsideration. After the examining attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

I. The Applicable Law

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is whether someone who knows what the services or products are will understand the mark immediately to convey information about them. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

¹ Application Serial No. 77735279 was filed on May 12, 2009, based on an allegation of a *bona fide* intention to use the mark in commerce.

Applicant argues that this term is suggestive, not descriptive; that the examining attorney has failed properly to apply the legal tests for determining descriptiveness; and that the combination of these two descriptive terms creates a new meaning that does not immediately convey to prospective consumers the ingredients, qualities or characteristics of applicant's services.

By contrast, the examining attorney contends that each of the individual words is merely descriptive of applicant's services, as is the combined term, "Cash Value." He argues that this composite does not create a unique, incongruous or non-descriptive meaning in relation to the recited services.

II. The Evidence of Record

The examining attorney has supplied for the record a number of dictionary definitions of the words "cash" and "value":

Cash NOUN:

1. Money in the form of bills or coins; currency.
2. Payment for goods or services in currency or by check.

TRANSITIVE VERB:

cached, cash-ing, cash-es

To exchange for or convert into ready money: *cash a check; cash in one's gambling chips.*

PHRASAL VERBS:

cash in

1. To withdraw from a venture by or as if by settling one's account.
2. *Informal* To obtain a profit or other advantage by timely exploitation: *Profiteers cashed in during the gasoline shortage.*
3. *Slang* To die.

cash out To dispose of a long-held asset for profit: *Hard-pressed farmers are tempted to cash out by selling their valuable land.*

IDIOM: cash on the barrelhead

Immediate payment: *You must pay cash on the barrelhead; we don't offer credit.*²

² <http://education.yahoo.com/reference/dictionary/entry/cash>

Cash *noun*

Definition of **CASH**

- 1: ready money
- 2: money or its equivalent (as a check) paid for goods or services at the time of purchase or delivery

Origin of **CASH**

modification of Middle French or Old Italian; Middle French *casse* money box, from Old Italian *cassa*, from Latin *capsa* chest — more at [CASE](#)

First Known Use: 1593 ³

cash

- definition  NOUN

1. money in the form of bills and coins *Some checkout lines at the store take cash only.*
in cash: *Do you want to pay in cash or by credit card?*
2. money in any form, especially money that is available for you to use when you need it
The Treasury has cash reserves of about \$500 billion.
short of cash: *Olga's short of cash so she decided to put off her trip.* ⁴

value *noun*

Definition of **VALUE**

- 1: a fair return or equivalent in goods, services, or money for something exchanged
- 2: the monetary worth of something : [MARKET PRICE](#)
- 3: relative worth, utility, or importance <a good *value* at the price> <the *value* of base stealing in baseball> <had nothing of *value* to say>
- 4: a numerical quantity that is assigned or is determined by calculation or measurement <let *x* take on positive *values*> <a *value* for the age of the earth>
- 5: the relative duration of a musical note
- 6 *a* : relative lightness or darkness of a color : [LUMINOSITY](#) *b* : the relation of one part in a picture to another with respect to lightness and darkness
- 7: something (as a principle or quality) intrinsically [valuable](#) or desirable <sought material *values* instead of human *values* — W. H. Jones>
- 8: [DENOMINATION](#) 2

Examples of **VALUE**

- The company's stock continues to decline in *value*.
- Real estate prices have doubled in *value* over the last decade.
- The difference in *value* between the two currencies is not significant.
- You may exchange the item for something of equal *value*.
- We sold the home for less than its full *value*.
- an increase in the *value* of the dollar
- The home has a *value* of \$1,000,000.
- Property *values* tend to rise as interest rates fall.
- The store advertises great *values*.
- No one can deny the *value* of a good education.

³ <http://www.merriam-webster.com/dictionary/cash>

⁴ <http://www.macmillandictionary.com/dictionary/american/cash>

Origin of **VALUE**

Middle English, worth, high quality, from Anglo-French, from Vulgar Latin **valuta*, from feminine of **valutus*, past participle of Latin *valēre* to be of worth, be strong — more at [WIELD](#)

First Known Use: 14th century⁵

value *NOUN*:



1. An amount, as of goods, services, or money, considered to be a fair and suitable equivalent for something else; a fair price or return.
2. Monetary or material worth: *the fluctuating value of gold and silver*.
3. Worth in usefulness or importance to the possessor; utility or merit: *the value of an education*.
4. A principle, standard, or quality considered worthwhile or desirable: "*The speech was a summons back to the patrician values of restraint and responsibility*" (Jonathan Alter).
5. Precise meaning or import, as of a word.
6. *Mathematics* An assigned or calculated numerical quantity.
7. *Music* The relative duration of a tone or rest.
8. The relative darkness or lightness of a color. See Table at [color](#).
9. *Linguistics* The sound quality of a letter or diphthong.
10. One of a series of specified values: *issued a stamp of new value*.⁶

The examining attorney has also supplied the following website evidence from a range of different types of merchants and service providers:



- **Watkins Glen unveils Media Center sketches:** The construction of the new media center at Watkins Glen International is in high gear and on schedule for completion for the Grand-Am Rolex Sports Car Series weekend, The Sahlen's Six Hours of The Glen, June 6-8. The new 17,600-square foot building consists of a dedicated workroom that can host over 180 members of the media on a deadline, a dedicated photographer's workroom, a press conference/large meeting room, radio station and sanctioning body workrooms and a lounge/cafe/tertia. The two-story building is set back approximately 125 feet to the east of the previous press tower which was demolished this past December. Both the first and second floors of the new building are already in place and the construction of the peaked roof began earlier this week. Help celebrate the 60th Anniversary of racing in The Glen by purchasing your tickets for the 2008 season now! Tickets can be purchased at The Shop, located at 2 North Franklin Street in downtown Watkins Glen. Gift Certificates worth **cash value** toward any ticket at Watkins Glen International can be purchased at the Information Center of Corning located in Centerway Square on Historic Market Street. For more information, please contact the Watkins Glen International ticket office at 866-461-RACE or log on to the official website www.TheGlen.com. (WGI PR)(2-6-2008).⁷

⁵ <http://www.merriam-webster.com/dictionary/value>

⁶ <http://education.yahoo.com/reference/dictionary/entry/value>

⁷ <http://www.jayski.com/next/2008/22wg2008.htm>



HealthStyles Exercise Equipment Recycles Too!

...
If you are thinking about trading in your old exercise equipment now is the time because during August HealthStyles is offering our [Dollars for Dinosaurs special!](#) Trade in any piece of old equipment during August and get **cash value** toward a trade-in – no matter what the condition – and we pick up your old equipment for FREE*! (good with delivery of new equipment).⁸



- ...
- **Huge Cash Value Rewards** (See [“Referrals Program”](#) and [“Irresistable Offer”](#) pages)⁹

GLENORA'S FREQUENT STAY PROGRAM



Enjoy a stay at The Inn at Glenora Wine Cellars on us!

Join our frequent stay program and earn **cash value** towards rooms at our Inn. Each time you stay with us you will receive \$10.00 for every night of your stay. Just hand your card in at checkout and we will put the cash onto the card so it can be used at a later date. When you have accumulated enough on your card use it to pay for your next stay with us.¹⁰

⁸ <http://www.healthstylesexercise.com/wp/2010/08/healthstyles-exercise-equipment-recycles-too/>

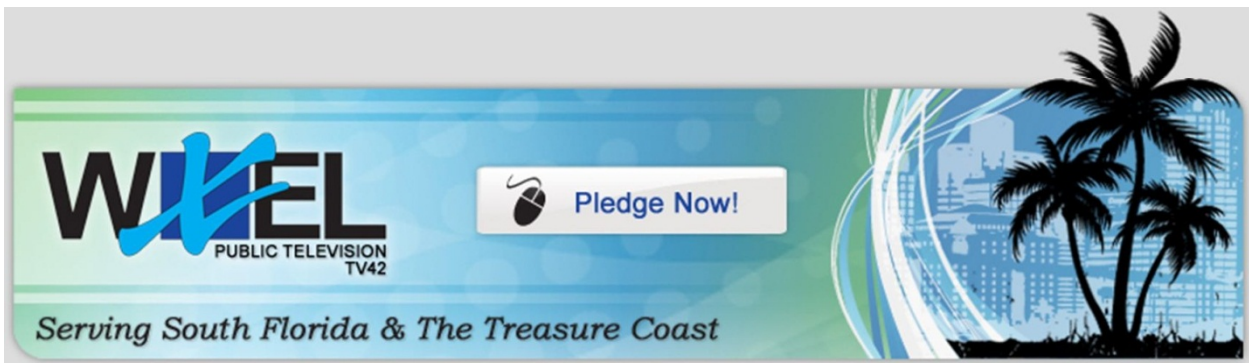
⁹ http://www.aabcleaningspecialists.com/More_Benefits.html

¹⁰ <http://www.glenora.com/Clubs/Earn-Rewards-at-Glenora/Frequent-Stay-Program>



◊ Redeemable **cash value** with our partners.

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Serving South Florida & The Treasure Coast

SHOP, EARN, SAVE AND SPEND!

How do I earn **cash value** rewards?

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13

11 http://aonesupermarkets.com/frequent_shopper.htm

12 <http://www.wxel.org/wxellmall.html/>

13 <http://www.johnsoncountykawasaki.com/custompage2.asp?pg=rewards>

M&T Bank Understanding what's important®

Personal Business Commercial Print This Page

M&T Bank > Personal > Card Products > M&T Bank Rewards Frequently Asked Questions

M&T Bank Rewards Frequently Asked Questions

1. What is M&T Bank Rewards?

M&T Bank Rewards* is a program that gives M&T Bank customers the opportunity to earn M&T Bank Rewards points for any qualifying purchases** made with their M&T Check Card, M&T Check Card for Business, M&T Visa Credit Card with Rewards or M&T Visa Signature Credit Card***. Points earned can be redeemed for **cash value** rewards, gift cards, merchandise, travel and other rewards.

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SUBARU REWARDS PROGRAM TERMS AND CONDITIONS

Rewards

SubaruBucks are redeemable toward the purchase or lease of any new Subaru vehicle in addition to the purchase of Subaru service and parts at any of the Subaru authorized dealers, and are earned by making purchases with the Subaru MasterCard from Chase (the "Card").

Cardmembers earn SubaruBucks in the following manner: Cardmembers earn a 3% rebate on every purchase of goods or services. Every time a cardmember has accumulated at least \$100 in **cash-value** rewards, a SubaruBucks certificate in \$100 increments will be sent to the cardmember. ...

Existing FFA Fit Pro login

Contact us: < memberservices@forafitamerica.com or 1-888-538-BFIT (1-888-538-2348)

HOME WHO ARE FFA FIT PROS? HOW IT WORKS FOR FIT PROS WHY THIS WORKS FOR ALL FIT PROS WHO ARE QUALIFIED

WHY OUR PROGRAM WORKS FOR FITNESS PROS

...

A GOAL OR INCENTIVE:

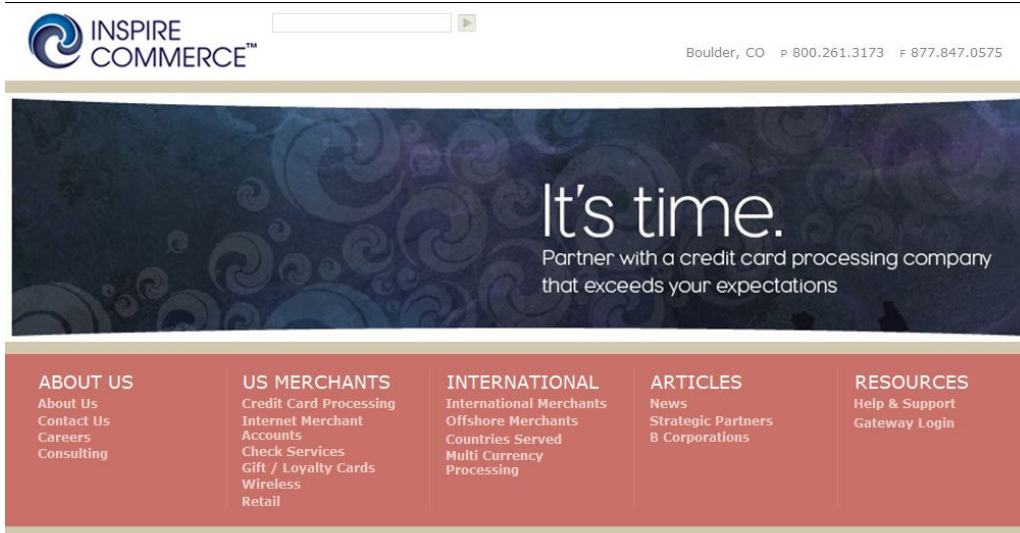
You have to first want to make a change for a change to happen. Whether it is to be a certain size for that wedding dress, look you best for that 30 year reunion or just beat your friend in a game of golf, there is a goal. There has to be that proverbial "carrot." Behavioral scientists say that goal achievement is best accomplished when short and long term goals are set. Many people drop out of a nutrition and exercise program because they say they don't see it working after a short period. We measure even small changes in fitness and give **cash value** rewards for every increment of improvement towards the goal. We give the member a short-term reason for that long-term goal. We put them in cash card rewards.

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14 <https://www.mtb.com/personal/cardproducts/Pages/MTBankRewardsFAQs.aspx>

15 http://drive2.subaru.com/Terms_Conditions.html

16 <http://www.forafitamerica.net/index/whythisworks>



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 - Gateway Login

Gift, Loyalty & Reward Cards

Drive traffic to your business, increase sales and build brand awareness. Trusted by tens of thousands of merchants nationwide, offering gift, loyalty and reward cards is easy and affordable. There are many benefits and rewards to implementing these programs for your business. Give us a call to get started today: **800-261-3173**.

Gift Card Programs

Gift card programs can improve your customer loyalty and increase your profits. You can customize your program with standard denominations for every card or varying amounts. Cards hold no **cash value** until activated at a register, virtually eliminating the threat of theft. This allows cashiers to emphasize your gift card program with cards on hand in front of registers.

When a customer makes purchases using a gift card, the **cash value** will decrease until they have spent the amount of the card value. You can further customize your gift card program by making gift cards reusable and rechargeable in-store or online.

Consumer surveys show that more than half of all gift card holders will make two or more trips to a store to use up the **cash value** on their gift cards. More than one in ten customers will not use up the entire value of their gift card. Many customers will use up the value on their card and spend additional money at your store during the same visit.

Contact Us

Company Name (required)

Your Name (required)

Your Phone

Your Email (required)

Type Of Account Desired
US Merchant Account

Expected Monthly Volume
New Merchant

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69 Taps Medina

Home Events Coupon Daily Specials Beer List

Coupon

Please Present Coupon to Your Server.

\$5.00 Cash Value
toward your entire purchase!

Print this coupon & redeem for \$5.00 cash value toward your entire. Valid for ladies only. Good any Saturday after 8pm. Good only for 1st 30 ladies through the door.
1 coupon per person per visit.

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Final Boarding Skateboard Shop

(215) 576-5760

1314 Easton Road, Abbingdon, PA

Join the Loyalty Program and earn points for every dollar you spend in the store, which you can save up and redeem as **cash value** toward future purchases.¹⁹

17 <http://www.inspirecommerce.com/gift-cards/>

18 <http://www.69taps.com/medina/coupon.html>

19 http://philadelphia.citysearch.com/profile/8923548/abbingdon_pa/final_boarding_skateboard_shop.html

...

- **More flexible than paper certificates** – One card can contain **cash value** or loyalty points, with redemption program custom designed to fit your business.

VaHomeschoolers Connection

After the lecture, families head over to the campus dining hall for lunch. Each child is given a voucher with a **cash value** toward lunch, as well as a Kids' Tech t-shirt. After lunch, parents and students are invited to attend a hands-on activities fair, presented by campus clubs, academic departments and community organizations.



Henry made a new friend.

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News release from school district in Minnesota:

Posted: 9/13/06

Foundation is launching **cash value** card program

by [L.A. Jones](#)
Union editor

The Anoka-Hennepin Educational Foundation (AHEF) will get off the dime, or perhaps more appropriately the dollar or several thousand of them, beginning Oct. 1 when it introduces its new VIP **CashValue** Card Program.

"I don't think there's another program like it in Minnesota that's for education," Tom Heidemann, AHEF president and vice chairman of the District 11 School Board, told other board members Aug. 28.

Accompanied by AHEF Executive Director Dr. Barb Winfield, AHEF Treasurer Georgie Schulte, AHEF Director Todd Protivinsky and Shane Dunn, chief executive officer and president of VIP International, Heidemann helped to introduce the new **cash value** card program that the foundation hopes will inject an additional \$100,000 into district student programs within the next year.

"Our goal is to grow this program," Schulte said.

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20 <http://www.vitalcashflow.com/giftCardProgram.html>

21 http://vahomeschoolers.org/blog/2011/10/kids_tech/

22 www.abcnewspapers.com/2006/september/13ahef.html

EDebitPay Rewards: BSP to provide custom rewards-mall for EDP.

Monday, January 7, 2008

LOS ANGELES--(Business Wire)--EDP (EDebitPay, LLC) has partnered with MediaNet Group Technologies, Inc. (BSP Rewards) to build a custom branded rewards-mall for EDebitPay (www.edebitpay.com), one of the nation's premier Prepaid Debit Card marketing companies.

...

Martin Berns, Chief Executive Officer of MediaNet Group Technologies/BSP Rewards stated, "We are excited to be working with EDebitPay as they are addressing a large and underserved segment of the under-banked consumer market. Offering BSP Rewards as a value added feature of their cards allows cardholders to earn **cash value** rewards each time they make a purchase. Rewards, provided through the custom branded online rewards-mall, can be viewed through the private branded mall when cardholders login to the debit card customer support site at www.debitcardsupport.com.

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Capcom Unity pre-paid Visa Debit Cards Come With Gamer Perks

Capcom Unity points can be redeemed at the Capcom Rewards Mall (BSPRewards) ... over 750 participating e-merchants, in addition to up to 20% in **cash-value** rewards.

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Boost revenues, encourage repeat business and increase customer loyalty with Gift Cards.



Increase Customer Loyalty and Your Revenues

Gift cards are an essential marketing tool for merchants who want to increase customer loyalty, market awareness or deliver an easier way to provide in-store credit. Gift cards are no longer just for gifts; in today's marketplace prepaid plastic cards have multiple uses that can help boost revenue for any business.

Benefits include:

- Loyalty card programs help build repeat business by showing your customers you appreciate them.
- Offering a gift card in place of a cash refund is a great way to keep a customer spending with you.
- Gift cards increase your average sale because the cardholders usually spend more than the value of the card.
- A large portion of cardholders like to reload money onto their gift cards once the card is used.
- Use gift cards as a tool to increase sales during slow days or promotions.
- Signs and display material in your store will attract more customers wanting to buy a gift for a loved one.
- Eliminate problems with tracking reporting, fraud, duplicate use of paper certificates.
- The biggest reason to use gift cards is not to have to give customers cash back! Balances stay on cards! Typically only 85% of a card's value is actually redeemed!
- Keep the sale in your store by loading a gift card for the **cash value** of the returned merchandise.

DAG offers a wide range of preset styles that will compliment your company's logo or you can design a custom card that uniquely makes you stand out from your competition.




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Finally, the examining attorney has offered the following listing of third-party registrations showing that recitations of services in the United States Patent and Trademark Office employ the term "cash value" in the context of loyalty programs:

²³ http://www.edebitpay.com/press_bsp_012008.asp and <http://www.allbusiness.com/>.

²⁴ <http://www.capcom-unity.com/>

²⁵ <http://www.diversifiedacquirersgroup.com/Products-Services/gift-a-loyalty-card-programs.html>

<p>EBUSINESS SECURE & GUARANTEED</p>	<p>for, <i>inter alia</i>, “ ... issuing customer loyalty cards, namely issuing stored value cards for use by customers as part of an incentive program in which points may be accumulated and translated into cash value and used by the customer to purchase goods or services at any participating location ...”²⁶</p>
	<p>for, <i>inter alia</i>, “ ... electronic processing of payment transactions made using cash value customer loyalty cards or points via wireless proximity payment devices and magnetically encoded cards ...”²⁷</p>
<p>MYCROPOD</p>	<p>for, <i>inter alia</i>, “ ... issuing customer loyalty cards, namely, issuing stored value cards for use by customers as part of an incentive program in which points may be accumulated and translated into cash value and used by the customer to purchase goods or services at any participating location ...”²⁸</p>
	<p>for, <i>inter alia</i>, “ ... issuing customer loyalty cards, namely, issuing stored value cards for use by customers as part of an incentive program in which points may be accumulated and translated into cash value and used by the customer to purchase goods or services at any participating location ...”²⁹ and</p>
 <p>MOVIE VIEWER PROGRAM</p>	<p>for, <i>inter alia</i>, “ ... theater customer loyalty program, namely, a promotional program to reward customer loyalty featuring cash value cards ...”³⁰</p>

III. Analysis

Based on all this evidence, we agree with the examining attorney that the term “Cash Value” immediately conveys to potential consumers a key characteristic of

²⁶ Registration No. 3038492 issued on the Supplemental Register on January 3, 2006; Section 8 (six-year) affidavit accepted. No claim is made to the exclusive right to use the term “EBusiness” apart from the mark as shown.

²⁷ Registration No. 3934802 issued on March 22, 2011. No claim is made to the exclusive right to use the word “Data” apart from the mark as shown.

²⁸ Registration No. 3931622 issued on March 15, 2011.

²⁹ Registration No. 3938393 issued on March 29, 2011.

³⁰ Registration No. 3074508 issued on March 28, 2006; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged. No claim is made to the exclusive right to use the words “Movie Viewer Program” apart from the mark as shown.

the rewards that make up the recited services. As opposed to rewards systems having a “points” structure or offering retail discounts, consumers obtain rewards having a value measurable in standard denominations of money. Throughout applicant’s recitation of services is the phrase “value equivalent to cash.” Logically, this is the definition of “cash value,” and hence, “cash value” is a significant characteristic or feature of applicant’s rewards programs. Moreover, we note that the representative, third-party registrations that the examining attorney placed into the record recite services substantially the same as those of applicant, which further supports the finding that “cash value” has become a well-understood term of art in the field of customer loyalty programs.

We see from the website evidence that a wide variety of merchants and service providers use the combined term, “cash value,” to describe rewards having a value equivalent to cash. Moreover, many of these uses appear within the context of consumer loyalty programs – and often involving the issuance of cards. In this actual marketplace context, prospective consumers will understand immediately that these programs provide “cash value” rewards usable toward further purchases from a participating merchant, but not necessarily redeemable for cash-in-hand. Hence, we agree with the examining attorney that “cash value” encompasses value which may be used in the same manner as cash, i.e., for purchasing goods or service. Similarly, we reject applicant’s narrow view that “cash value” refers only to value that is directly and without any limitation exchangeable for an equivalent amount of paper currency and coins. Actually, this appears closer to the first definition of “cash,” *supra*, rendering superfluous the “value” portion of applicant’s term “cash value.” Consumers

in the U.S. are accustomed to loyalty programs, each having unique constraints, but all effectively designed to encourage one to make further purchases from a defined network of merchants – not to have the consumer depart a participating establishment stuffing the merchant’s greenbacks into her wallet.

The sheer range of third-party uses of the term “cash value” in the context of customer loyalty programs demonstrates to us that others in fields closely related to that of applicant do indeed use the term “cash value” to describe their programs, and clearly have a need to continue doing so. Applicant reminds us of our obligation if, at this stage of the analysis, we still harbor doubts about descriptiveness. But in this case, about this determination, we have no doubts.

Decision: The refusal to register the term **CASH VALUE** under Section 2(e)(1) of the Lanham Act is hereby affirmed.