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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dynamics Inc.

Serial No. 85050940

Daniel M. Gantt, General Counsel, for Dynamics Inc.

Hélène Liwinski, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Zervas, Bergsman and Wolfson, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Dynamics Inc. (“applicant”) filed an application to register the mark MultiAccount, in standard character form, for the following goods, as amended:

Blank electronic chip cards; Blank electronic storage media; Blank integrated circuit cards; Blank magnetic data carriers; Blank smart cards; Cards and microprocessors for computers; Electronic and magnetic ID cards for use in connection with payment for services; Electronic key cards; Electronically encoded badges and swipe cards for use with time clocks; Magnetic coded gift cards; Magnetic identifying cards; Magnetically encoded debit cards; Magnetically encoded identity cards; Magnetically encoded key cards; Pre-paid telephone calling cards, magnetically encoded; Radio frequency identification (RFID) credentials, namely, cards and tags, and readers for radio frequency identification credentials, in Class 9.

The Trademark Examining Attorney refused registration on the ground that the term MultiAccount is merely descriptive for applicant's goods pursuant to Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1). According to the Trademark Examining Attorney, "[t]he mark describes a function or purpose of applicant's goods in that the goods are all blank or encoded cards or electronic storage media that are capable of accessing more than one account."¹ To support the descriptiveness refusal, the Trademark Examining Attorney introduced the following evidence:²

1. The dictionary definition of "multi-" as meaning, *inter alia*, "many: multiple: much" and "more than one";³

2. The dictionary definition of "account" as meaning, *inter alia*, "a record or statement of financial expenditure and receipts relating to a particular period or purpose" and "an arrangement by which a body holds funds on behalf of a client or supplies goods or services to them on credit";⁴

3. An excerpt from applicant's website displaying a photograph of applicant's MultiAccount card shown below.



¹ Trademark Examining Attorney Brief, p. 5 (unnumbered).

² Because much of the evidence is cumulative, we have listed evidence that is representative of the entire record.

³ **MERRIAM-WEBSTER** online dictionary (merriam-webster.com).

⁴ **OXFORD DICTIONARIES** (oxforddictionaries.com).

4. An article posted on the *MyBankTracker.com* website (September 15, 2010) describing applicant's product.

Multiple Account Credit Card Debuts at DEMO Conference

Credit card technology has officially moved into the 21st century. "Payments 2.0," a system created by Dynamics, Inc., allows you to use one card to make payments from two accounts.

* * *

Two Cards in One

The MultiAccount card lives up to its name, allowing you to use two cards without carrying two cards. MultiAccount includes two standard, 16-digit card numbers, each situated next to a button. You can select "Button 1" to use one account for payment or "Button 2" to use your second account. Each button has a light next to it so you know from which account your payment will come. This simple card can be used at any card reader.

5. An article posted on the *Gizmag.com* website (September 16, 2010) introducing applicant's MultiAccount card.

Credit cards that hide the account number and store multiple accounts

* * *

MultiAccount

The first was a card that includes two buttons on the face to select the desired account. When one of the buttons alongside the two printed account numbers is pressed, a small light next to the chosen account number lights up and the magnetic-stripe information associated with the selected card is written to the Electronic Stripe, ready to be swiped at any magnetic card reader.

6. An article posted on the *UniBulMerchantServices.com* website (September 23, 2010) introducing applicant's MultiAccount card.

Credit Card 2.0 Hides Sensitive Data, Links Multiple Accounts

* * *

Dynamics MultiAccount enables users to link two accounts on one piece of plastic.

* * *

The other version of the card – MultiAccount – can link two separate accounts. The front of the card displays two account numbers, none of which has any of its digits hidden from view. Instead, to the right of each number there is a button, which enables users to select the account they would like to use, and a LED signal, which indicates the selection. Once you make the selection, the magnetic stripe rewrites itself with the information of the selected account.

According to Dynamic's founders, the multi-account linking feature could be used, for example, by cardholders who want to combine a credit card and a debit card on the same piece of plastic. Alternatively, users can link a personal and a business account on a single MultiAccount card. Those of us who would like to reduce the weight of plastic in our pockets would probably welcome this feature, provided it doesn't mix up account information and works as advertised. It is not clear whether two cards issued by different banks can have their account information on a single MultiAccount card.

7. An article posted on *TheReviewCrew.com* website (September 14, 2010) introducing applicant's MultiAccount card.

Multiple Credit Card Accounts ... One Card

8. An article posted on the *DesignNews* website (abetter-design.com) (September 17, 2010) introducing applicant's MultiAccount card.

Credit cards that hide the account number and store multiple accounts

"A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *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, not in the abstract or on the basis of guesswork. *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 not whether someone presented only with the mark could guess the products listed in the description of goods. Rather, the question 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 Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information services in the food processing industry). In this regard, we must consider the issue of descriptiveness by looking at the mark in its entirety. Common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. *See Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989) (CONCURRENT TECHNOLOGIES CORPORATION found not merely descriptive of printed electronic circuit boards because, while “concurrent” had

meaning in the computer field, “concurrent technologies” had no established meaning in relation to computer hardware or software).

Finally, “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, 498 (TTAB 1978). *See also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). In this regard, “incongruity is one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark.” *In re Shutts*, 217 USPQ at 365.

The concept of mere descriptiveness, it seems to us, must relate to general and readily recognizable word formulations and meanings, either in a popular or technical usage context, and should not penalize coinage of hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and “mental pause.”

Id. at 364-365 (SNO-RAKE is not merely descriptive for a snow removal hand tool). *See also, In re Tennis in the Round, Inc.*, 199 USPQ at 498 (the association of applicant’s mark TENNIS IN THE ROUND with the phrase “theater-in-the-round” creates an incongruity because applicant’s tennis courts are not analogous to a theater-in-the-round).

If the test for determining whether a term is merely descriptive is whether someone presented only with the mark could guess the products listed in the description of goods, MultiAccount might be suggestive because consumers presented with that term might pause to consider its meaning. However, as indicated above, the question is whether someone who knows what the products are will understand the mark to convey information about them. In this case, the term MultiAccount directly conveys to potential consumers and users that the cards hold information for multiple accounts. In this regard, the mark MultiAccount is a compound term

consisting of the prefix “Multi” meaning “multiple” and the suffix “Accounts” meaning “an arrangement by which a body holds funds on behalf of a client or supplies goods or services to them on credit.” When used in connection with electronic and magnetic ID cards for use in connection with payment for services, magnetic coded gift cards, magnetically encoded debit cards, magnetically encoded key cards, and pre-paid telephone calling cards, both terms comprising the mark retain their dictionary meanings. The compound term MultiAccount does not evoke a new or unique commercial impression or create an incongruous term. This finding of fact is supported by the news articles introducing applicant’s product (*e.g.*, “Credit cards that hide the account number and store multiple accounts,” “Credit Card 2.0 Hides Sensitive Data, Links Multiple Accounts,” and “Multiple Credit Card Accounts ... One Card”).

Applicant argues that because debit cards are linked only to a single checking account, consumers do not have any understanding regarding the use of the mark in relation to more than one account,⁵ especially because “[n]o such devices actually exist in the marketplace.”⁶ As explained above, the term “MultiAccount” immediately conveys, without the need for analysis or reasoning, that the card may be used with more than one account. The fact that applicant may be the first and only user of the term is not dispositive of whether the term is merely descriptive. Moreover, for a designation to be merely descriptive, it is not necessary that it be in common usage or that there is any third-party use. *In re Eden Foods Inc.*, 24 USPQ2d 1757, 1761 (TTAB 1992). *See also In re Sun Microsystems, Inc.*, 59 USPQ2d at 1087. Anyone marketing debit cards, gift cards, or telephone calling cards, and/or promoting associated services should have the right to use the term “Multi Account” descriptively if they offer access to more than one account on a single card.

⁵ Applicant’s Brief, pp. 5 and 7.

⁶ Applicant’s Reply Brief, p. 4

Applicant contends that its mark is suggestive because the articles submitted by the Trademark Examining Attorney noted above “feel the need to explain the functions of MULTIACCOUNT products in the credit card field ... something that would not need be done if the term were merely descriptive.”⁷ Applicant’s interpretation of the articles is not accurate. The articles introduce applicant’s product and explain that it has the capability of allowing the user to access two accounts from one card. The articles explain the function of the card, not the meaning of the mark. The articles are probative of whether MultiAccount is merely descriptive because they show that the writers use the term MultiAccount for its primary descriptive meaning, thus demonstrating that the compound term does not have a new meaning or incongruous meaning (*e.g.*, “The MultiAccount card lives up to its name, allowing you to use two cards without carrying two cards,” “Dynamics MultiAccount enables users to link two accounts on piece of plastic,” and “The other version of the card – MultiAccount – can link two separate accounts”).

In view of the foregoing, we find that the mark MultiAccount when used in connection with electronic and magnetic ID cards for use in connection with payment for services, magnetic coded gift cards, magnetically encoded debit cards, magnetically encoded key cards, and pre-paid telephone calling cards is merely descriptive.⁸

Decision: The refusal to register is affirmed.

⁷ Applicant’s Brief, p. 7.

⁸ See *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988) (it is well settled that where a mark may be merely descriptive of one or more items of goods in an application but may be suggestive or even arbitrary as applied to other items, registration is properly refused if the subject matter for registration is descriptive of any of the goods for which registration is sought).