

<p>This Opinion is Not a Precedent of the TTAB</p>

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hollywood Stock Exchange, LLC

Serial No. 85775831

Jason M. Vogel and Jill K. Tomlinson of Kilpatrick Townsend & Stockton, LLP,
for Hollywood Stock Exchange, LLC.

Allison P. Schrody, Trademark Examining Attorney, Law Office 115,
John Lincoski, Managing Attorney.

Before Kuhlke, Bergsman and Kuczma,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Hollywood Stock Exchange, LLC (“Applicant”) seeks registration on the
Principal Register of the mark BOLLYWOOD STOCK EXCHANGE (in standard
characters) for

Entertainment services, namely, providing on-line
computer games; providing online computer games in the
nature of a simulated securities exchange game; providing
an online prediction market game for trading virtual
entertainment securities; providing entertainment
information via a website; providing information, news
and commentary in the field of entertainment; providing a
website featuring entertainment information in the fields
of games, television, movies, celebrities, comedy, drama,

sports, music, fashion, and culture; entertainment services, namely, arranging, organizing and conducting competitions for leagues, fantasy leagues, and tournaments in the field of simulated predictive markets and entertainment trivia; arranging and conducting online contests and sweepstakes in International Class 41.¹

Applicant disclaimed the exclusive right to use the term “Stock Exchange.”

Applicant also claimed ownership of the following registrations:

1. Registration No. 2094329 for the mark HOLLYWOOD STOCK EXCHANGE for “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 Class 41.² Applicant disclaimed the exclusive right to use the term “Stock Exchange”;

2. Registration No. 3912382 for the mark TELEVISION STOCK EXCHANGE for, inter alia, “entertainment services, namely, providing an on-line computer game, namely, a simulated securities exchange game; providing a website featuring news and information in the fields of entertainment, sports, music, television, movies, celebrities, culture, fashion, finance, politics, and general interest topics,” in Class 41;³ and

3. Registration No. 4280084 for the mark HOLLYWOOD MOVIE EXCHANGE for “education and entertainment services in the nature of a simulated securities

¹ Application Serial No. 85775831 was filed on November 9, 2012, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

² Issued September 9, 1997; renewed.

³ Issued January 25, 2011.

exchange game; providing online computer games in the nature of a simulated securities exchange game, in Class 41.⁴ Applicant disclaimed the exclusive right to use “Movie” or “Exchange.”

In addition, Applicant owns the following registrations:⁵

4. Registration No. 2317122 for the mark MUSIC STOCK EXCHANGE for “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 Class 41.⁶ Applicant disclaimed the exclusive right to use the term “Stock Exchange”; and

5. Registration No. 3151215 for the mark SPORTS STOCK EXCHANGE for 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 Class 41.⁷ Applicant disclaimed the exclusive right to use the term “Stock Exchange.”

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1) on the ground that Applicant’s mark BOLLYWOOD STOCK EXCHANGE is merely descriptive because “applicant’s entertainment services pertain to an online simulated securities-exchange game where virtual entertainment securities of

⁴ Issued January 22, 2013.

⁵ September 16, 2013 response to Office Action.

⁶ Issued February 8, 2000; renewed.

⁷ Issued October 3, 2006; Section 8 affidavit accepted.

Bollywood films and Bollywood actors are exchanged”⁸ and, therefore, directly describes the subject matter of the game.

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 reverse the refusal to register.

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. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). *See also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark or a component of a mark 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). A term need not immediately convey an idea of each and every specific feature of the goods or services in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of them. *See In re Gyulay*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). This requires consideration of the context in which the mark is used or intended to be used in connection with those goods or services, and the possible significance that

⁸ Trademark Examining Attorney’s Brief, p. 2 (unnumbered).

the mark would have to the average purchaser of the goods or services in the marketplace. See *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Abcor Dev. Corp.*, 200 USPQ at 218; *In re Venture Lending Assocs.*, 226 USPQ 285 (TTAB 1985). The question is not whether someone presented only with the mark could guess the products or activities listed in the description of goods or services. Rather, the question is whether someone who knows what the products or services 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. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, *Estate of P.D. Beckwith, Inc. v. Commissioner*, 252 U.S. 538, 543 (1920). See also *In re Tower Tech, Inc.*, 64 USPQ2d at 1318 (SMARTTOWER merely descriptive of commercial and industrial cooling 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). However, a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. *See In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR & SPICE for “bakery products”); *In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE for “a snow removal hand tool having a handle with a snow-removing head at one end, the head being of solid uninterrupted construction without prongs”). Thus, we must consider the issue of descriptiveness by looking at the mark in its entirety.

“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, 498 (TTAB 1978). *See also, In re Shutts*, 217 USPQ at 364-65; *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. *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 services do

not involve a tennis court in the middle of an auditorium). On the spectrum of distinctiveness, the dividing line between merely descriptive and suggestive is a fine one. *In re Gyulay*, 3 USPQ2d at 1010. *See also In re Recovery, Inc.*, 196 USPQ 830, 831 (TTAB 1977).

“Bollywood is the informal term popularly used for the Hindi-language film industry based in Mumbai (formerly known as Bombay), Maharashtra, India. ... Bollywood is the largest film producer in India and one of the largest centres of film production in the world.”⁹ “Bollywood is the India’s [sic] version of California’s Hollywood.”¹⁰

A “stock exchange” is “[a] place where stocks, bonds, or other securities are bought and sold.”¹¹

In response to the Examining Attorney’s request for information regarding Applicant’s services, Applicant submitted webpages from its website at hsx.com describing Applicant’s “comparable services offered under its incontestable HOLLYWOOD STOCK EXCHANGE trademark (Reg. No. 2,094,329).”¹² Applicant described its comparable HOLLYWOOD STOCK EXCHANGE services as follows:

HOLLYWOOD STOCK EXCHANGE®

Hollywood Stock Exchange® (www.hsx.com) is the world’s leading entertainment stock market. At HSX.com, visitors

⁹ *Wikipedia* attached to the March 15, 2013 Office Action. *See also YourDictionary.com* attached to the October 11, 2013 Office Action; the Bollywood entry at uffilmanalysistwo.pbworks.com, and “A Beginner’s Guide to Bollywood Movies,” *Yahoo!Voices* (voices.yahoo.com) attached to the May 15, 2014 Office Action.

¹⁰ *TotallyBollywood.com* attached to the May 15, 2014 Office Action.

¹¹ *Yahoo!Education* (yahoo.com) attached to the March 15, 2013 Office Action.

¹² September 16, 2013 response to Office Action.

buy and sell virtual shares of celebrities and movies with currency called the Hollywood Dollar®. The Company's Virtual Specialist® technology allows an unlimited number of consumers to trade thousands of virtual entertainment securities in a fair and orderly, supply-and-demand-based market. HSX syndicates the data collected from the Exchange as market research to entertainment, consumer product and financial institutions and as original content to radio, television and print media.

The *Wikipedia* entry for "Hollywood Stock Exchange" states that "Hollywood Stock Exchange ... is a web-based, multiplayer game in which players use simulated money to buy and sell 'shares' of actors, directors, upcoming films, and film-related options."¹³

In view of the foregoing, the Examining Attorney contends that when consumers encounter a service "providing online computer games in the nature of a simulated securities exchange game; providing an online prediction market game for trading virtual entertainment securities," the mark BOLLYWOOD STOCK EXCHANGE directly informs consumers that the game is based on BOLLYWOOD movies. More specifically, she argues:

[I]t is clear that consumers will not need to make a mental leap to understand the key features, characteristics, or function of the services. Consumers will immediately surmise that applicant provides a virtual stock exchange game featuring shares of Bollywood movies and celebrities, and entertainment information and competition pertaining thereto.¹⁴

¹³ May 5, 2014 Office Action

¹⁴ Trademark Examining Attorney's Brief, p. 6 (unnumbered).

Applicant argues that the mark BOLLYWOOD STOCK EXCHANGE creates a unitary mark with a unique, incongruous meaning as applied to the services.

Applicant's BOLLYWOOD STOCK EXCHANGE mark is a non-literal play on the decades (even centuries)-old well-known marks such as NEW YORK STOCK EXCHANGE and LONDON STOCK EXCHANGE. Indeed both BOLLYWOOD STOCK EXCHANGE and HOLLYWOOD STOCK EXCHANGE marks quickly call to mind these earlier venerable institutions, deriving incongruity both because unlike NEW YORK or LONDON, which are better known for business and finance, BOLLYWOOD and HOLLYWOOD are thought of as film epicenters of their respective regions (Mumbai, India on the one hand and Los Angeles, California United States on the other hand) and because the marks are not used for traditional stock exchange services.¹⁵

When viewed in its entirety, we find this mark to be more in line with the circumstances of TENNIS IN THE ROUND where the mark's incongruity stemmed in part from the play on the well-known phrase "theater-in-the-round." Here, the term stock exchange as defined and as prominently used in connection with, for example, the NEW YORK STOCK exchange, is a term connected to financial institutions. To combine that term of art with the nickname of the Hindu-language film industry creates an incongruity in that BOLLYWOOD is not in any way associated with the world of securities exchanges. While the movies and celebrities that emanate from BOLLYWOOD are the ultimate subject matter of the virtual securities, this is not an immediate connection when presented with the incongruous terms of art, BOLLYWOOD and STOCK EXCHANGE. As the Board has noted, the concept of mere descriptiveness "should not penalize coinage of

¹⁵ Applicant's Brief, p. 5.

hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and ‘mental pause.’” *In re Shutts*, 217 USPQ at 364-5. As discussed above, the line between suggestive and merely descriptive terms is a fine one, and we must resolve any doubt on this question in favor of Applicant.¹⁶ *Id.*

Decision: The refusal to register Applicant’s mark BOLLYWOOD STOCK EXCHANGE is reversed.

¹⁶ Applicant contends that its previous intent-to-use application (Serial No. 77443442) to register BOLLYWOOD STOCK EXCHANGE for almost identical services was passed to publication and issued a notice of allowance.¹⁶ According to Applicant, “[t]he Examining Attorney has not argued and has provided no evidence that Applicant’s BOLLYWOOD STOCK EXCHANGE mark has lost its distinctiveness since the 2008 Applicant was approved or allowed by the USPTO,” and that this prior application is “probative of the mark’s distinctiveness.”¹⁶ However, a pending application is competent to prove only that an application was filed. *See In re Juleigh Jeans Sportswear, Inc.*, 24 USPQ2d 1694, 1699 (TTAB 1992) (“The drawings from the third-party applications are evidence of nothing other than the fact that the applications containing the drawings were filed.”); *Olin Corp. v. Hydrotreat, Inc.*, 210 USPQ 62, 65 n.5 (TTAB 1981) (“Introduction of the record of a pending application is competent to prove only the filing thereof.”); *Merritt Foods Co. v. Americana Submarine*, 209 USPQ 591, 594 (TTAB 1980).