Mailed:
April 16, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Affinity Gaming

Serial No. 85909611

Peter H. Ajemian and Lauri S. Thompson of Greenberg Traurig, LLP,
for Affinity Gaming.

Kelly Trusilo, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

Before Mermelstein, Wolfson, and Gorowitz, Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Affinity Gaming ("Applicant") seeks registration on the Principal Register of the mark SILVER SEVENS (in standard characters) for

> Casinos and casino services; entertainment in the nature of theater productions, live music concerts, visual and audio performances, variety, and comedy shows; arranging for ticket reservations for shows and other entertainment events; arcades; night clubs; figure salons; gymnasiums; health club services, namely, providing instruction and equipment in the field of physical exercise; providing facilities for recreation activities; providing facilities for gaming tournaments; special event

> planning for social entertainment purposes; photography services; on-line entertainment ticket agency services

in International Class 41.[1]

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), in view of Applicant's failure to supply a disclaimer of "SEVENS," which the Examining Attorney maintains is merely descriptive of the casino services identified in the application.

When the refusal was made final, Applicant appealed and filed a request for reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. For the reasons discussed below, we reverse the refusal to register.

I. Disclaimers — Legal Standard

"The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable." Trademark Act § 6(a), 15 U.S.C. § 1056(a). Merely descriptive terms are unregistrable pursuant to Trademark Act § 2(e)(1), 15 U.S.C. § 1052(e)(1), and are therefore subject to a disclaimer requirement if the mark is otherwise registrable. Registration may be refused for failure to comply with a valid disclaimer requirement. *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1954 (TTAB 2006).

[1] Application Serial No. 85909611 was filed on April 19, 2013, based on Applicant's bona fide intent to use the mark in commerce. An allegation of first use and first use in commerce of July 1, 2013 was submitted by amendment on April 22, 2014.

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); *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (TTAB 2007); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought. It is sufficient if the term describes a significant attribute or feature about them; it is not necessary that the term describe all of the properties or functions of the goods or services in order for it to be considered merely descriptive thereof. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). On the other hand, a mark is suggestive if, when the goods or services are encountered under the mark, a multistage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. *See, e.g., In re Abcor Development Corp.,* 200 USPQ at 218; *In re Mayer-Beaton Corp.,* 223 USPQ 1347, 1349 (TTAB 1984).

II. Discussion

Applicant argues that the Examining Attorney has not shown that the term SEVENS is merely descriptive because Applicant is not seeking registration of casino gaming equipment *per se*, and because Applicant's mark is used on a wide

variety of casino, entertainment, and hospitality services, "most of which do not relate to the number seven."[2] The Examining Attorney, on the other hand, asserts that "SEVENS" is merely descriptive of card games, such as seven-card stud poker, that are played in casinos; that the number "seven" is used as the winning number in slot machines, which are major attractions for casinos; and that users of casino services will immediately associate the term SEVENS in Applicant's mark as describing a purpose, feature or function of its casino services[3].

We first consider Applicant's argument as to the breadth of services it provides. If Applicant's mark is merely descriptive for any of the listed services in the application it cannot be registered, even if it is not merely descriptive with respect to other of the listed services. "A descriptiveness refusal is proper 'if the mark is descriptive of any of the services for which registration is sought.'" *In re Chamber of Commerce of the U.S.,* 675 F.3d at 1300, 102 USPQ2d at 1219 (*quoting In re Stereotaxis Inc.*, 429 F.3d 1039, 1040, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)). *See also In re Franklin Cnty. Historical Soc'y,* 104 USPQ2d 1085, 1089 (TTAB 2012). In their arguments, both the Examining Attorney and the Applicant focused on "casino services." We also focus on these services.

Turning to the meaning of the word SEVENS, there is no dispute that the number "7" or its equivalent word SEVEN, has a meaning with respect to gaming machines, in particular to slot machines using triple sevens to designate a jackpot.[4]

[2] 3 TTABVUE at 6.

[3] 5 TTABVUE at 4.

[4] To show that SEVENS is merely descriptive of slot machines, the Examining Attorney has

Applicant argues, however, that even if the term SEVENS is merely descriptive of gaming equipment it is not merely descriptive of casino services. Even given a finding that SEVENS is descriptive of slot machines, it does not necessarily follow that it is likewise descriptive of casino services which involve slot machines.[5] In this case, the record does not suggest that potential customers would readily understand SEVENS to describe a feature, function, or characteristic of Applicant's casino services. Potential purchasers would have to first recognize that SEVENS is descriptive of a feature of slot machines, and then realize that Applicant's casino services feature slot machines, and thereby associate the term which describes a feature of slot machines with the casino services. The connection is simply too attenuated, requiring additional thought to connect SEVENS to Applicant's services.

III. Conclusion

Considering the totality of the evidence, we conclude that the term SEVENS is not merely descriptive of a feature or characteristic of casino services and that the record does not support a finding that a disclaimer of the term SEVENS is required. Any doubt about this finding has been resolved in Applicant's favor.

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submitted web pages from the Internet discussing the importance of the number in relation to gaming equipment, as well as numerous third-party registrations for marks including the term SEVENS for gaming machines or slot machines, where the term has been disclaimed.

[5] That SEVENS is descriptive of slot machines is essential to the Examining Attorney's argument; she has offered no evidence or argument supporting an alternative theory. Thus if SEVENS is not descriptive of slot machines, we could not find it descriptive of casino services, either.

Decision: The refusal to register based on the failure to comply with the disclaimer requirement is reversed.