

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

Hearing: September 15, 2015

Mailed: November 19, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Xylomen Participations, S.à r.l.

Serial No. 86024542

Margaret S. Millikin of Millikin Intellectual Property Law, PLLC,
for Xylomen Participations, S.à r.l.

Daniel S. Stringer, Trademark Examining Attorney, Law Office 103,
Michael Hamilton, Managing Attorney.

Before Wellington, Wolfson and Lykos,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Xylomen Participations, S.à r.l. (“Applicant”) seeks registration on the Principal
Register of the mark MULTI BINGO (in standard characters) for

Computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; Components for gaming machines that generate or display wager outcomes, namely, electric control panels, electronic display interfaces, electric control button panels, bolsters, namely, power amplifiers, electrical wires and computer hardware and operating software associated therewith;

Gaming software that generates or displays wager outcomes of gaming machines; all of the foregoing sold or leased to owners or operators of gambling places

in International Class 9; and

Gaming devices that accept a wager, namely, gaming machines, slot machines, bingo machines, with or without video output; Spin reel game playing equipment games that accept a wager, namely, reel slot machine games; Stand-alone video game machines that accept a wager; Gaming machines, namely, devices which accept a wager; Gaming machines that accept a wager and that are comprised of electric control panels, electronic display interfaces, electric control button panels and bolsters, namely, power amplifiers, electrical wires and computer hardware and operating software associated therewith, sold as a unit; all of the foregoing sold or leased to owners or operators of gambling places

in International Class 28.¹

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that Applicant's mark, when applied to Applicant's goods, is merely descriptive thereof.²

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.³

¹ Application Serial No. 86024542 was filed on July 31, 2013, 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 The initial Office Action contained a refusal under Trademark Act Section 2(d), 15 U.S.C. §1052(d). The refusal was continued in the Final Office Action, but was withdrawn in the appeal brief.

³ The requirement for a disclaimer of "Bingo" was not repeated during *ex parte* prosecution and is considered withdrawn.

Trademark Act Section 2(e)(1) prohibits registration of a mark which is merely descriptive of the applicant's goods or services. A term is deemed to be 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, 1831 (Fed. Cir. 2007) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). 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*, 200 USPQ at 218; *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). "A descriptiveness refusal is proper 'if the mark is descriptive of any of the [goods or] services for which registration is sought.'" *In re The Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 1040, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)). The issue is whether someone who knows what the goods or services are will understand the mark to directly convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Assn. of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990).

While a combination of merely descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004).

Based on the evidence of record, we find that MULTI BINGO is merely descriptive of Applicant's gaming machines, bingo machines, and the related software, firmware and gaming equipment that allow players to play multiple games of chance (i.e., bingo) at one time. The submitted dictionary evidence shows that the meaning of the term "multi" is "many; much; multiple"⁴ and that it is used to refer to "more than one" or "more than two."⁵ The definition of "bingo" is "a game of chance in which each player has one or more cards printed with differently numbered squares on which to place markers when the respective numbers are drawn and announced by a caller."⁶ The dictionary definitions alone are sufficient to show that the composite word mark MULTI BINGO immediately conveys to owners and operators of gambling places that Applicant's gaming machines and related software enable players to play multiple, simultaneous, bingo games.

⁴ From <http://education.yahoo.com>, attached to first Office Action dated November 18, 2013.

⁵ *Id.*

⁶ *Id.*

Applicant does not dispute that the individual terms have descriptive significance as used in connection with the identified goods. Applicant makes the argument that because there is no dictionary definition for “multi bingo” *per se*, the mark is not merely descriptive as a whole. However, the fact that a descriptive word or term is not found in the dictionary is not controlling on the question of registrability. *In re Planalytics, Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004) (GASBUYER is merely descriptive of providing on-line risk management services in the field of pricing and purchasing decisions for natural gas); *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977) (BREADSPRED for jellies and jams is merely descriptive). The test is whether the merely descriptive components retain their merely descriptive significance in relation to the goods when the mark is considered as a whole; if they do, the resulting combination is also merely descriptive. *See, e.g., In re Oppedahl & Larson*, 71 USPQ2d at 1371; *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs, and pillows where the evidence showed that the term “breathable” retained its ordinary dictionary meaning when combined with the term “mattress” and the resulting combination was used in the relevant industry in a descriptive sense); *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER held merely descriptive of commercial and industrial cooling towers); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1663 (TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services, because such wording “is nothing more than a

combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression").

In addition, the Examining Attorney has made of record several pages from third-party websites showing use of the terms "multi and multiple" to describe bingo games, bingo game machines, or bingo game rooms where a single player can play multiple games of bingo at once. Representative examples include:

CoinoExpress.com (offering a bingo redemption machine that resembles a pinball machine under the designation Multi Bingo; players can play four bingo frames at once);⁷

OnlineBingoLady.com (operating a U.S. Bingo site called "Cyber Bingo" with "the following bingo rooms: ...Diamond Multi-Bingo Room...Paradise Multi-Bingo Room....");⁸

About.com (posting an article that explains how to play bingo, noting that "many casinos offer games that allow gamblers to play multiple cards....");⁹

Apponic.com (providing free downloadable software for making bingo cards, including one with the option of printing "multi bingo cards in one paper to save money");¹⁰

⁷ At <http://www.coinopexpress.com>, attached to Office Action dated November 18, 2013.

⁸ *Id.*, at <http://www.onlinebingolady.com>.

⁹ At <http://casinogambling.about.com>; attached to Final Office Action dated June 6, 2014.

¹⁰ *Id.*, at <http://bingo-card-maker.apponic.com>.

Bingo Mania.com (explaining how to enter a bingo “room” and the “Auto Daub On & Off” feature, which is “on” by default, “so you can have your cards automatically daubed while you chat and play in multiple bingo rooms”);¹¹ and

InsideGamingDaily.com (discussing a future release of “Zyngo Bingo” that will allow players to play up to six cards at once and remarking that “the multi bingo card-toting grandma on *Zyngo Bingo* is about to put some serious money on the table.”).¹²

These websites serve to corroborate the dictionary definitions in showing that Applicant’s prospective consumers, when encountering Applicant’s mark MULTI BINGO in connection with bingo gaming machines and related software, firmware, and gaming equipment, will immediately perceive that the mark describes a feature or characteristic of the goods, namely, that they allow players to play bingo using more than one card at one time. In addition, Applicant identified FBM Gaming as its authorized seller or licensee of “Multi Bingo” games,¹³ and FBM Gaming advertises “Multi-Bingo” as a bingo game where players can play up to 20 cards at one time.¹⁴ The game is illustrated on FBM Gaming’s website:

¹¹ *Id.*, at <http://www.bingomania.com>.

¹² At <http://www.insidegamingdaily.com>; attached to Office Action dated November 18, 2013.

¹³ 14 TTABVue 28.

¹⁴ At <http://www.fbmgaming.com>; attached to December 24, 2014 denial of Applicant’s request for reconsideration.

Multi Bingo



Description

An exciting game of 20 bingo cards. The player has much more chances to win.

15

Applicant, in urging reversal of the refusal, maintains that its mark is suggestive and warrants registration. Applicant contends that because “multi bingo” could have many different meanings, the message conveyed by the mark is too vague for the mark to be considered merely descriptive, relying on *In re TMS Corp. of the Americas*, 200 USPQ 57 (TTAB 1978). There, the Board held that “thought, imagination and perhaps an exercise in extrapolation” was needed to discern a connection between the mark THE MONEY SERVICE and the financial services of transferring funds to and from a saving account to a retail store where a customer seeks to make a purchase (essentially, debit card services). The mark did not immediately describe a feature of the services because many types of services provide “money”; the word “money” was “too broad” to immediately describe applicant’s transfer services. The term “multi,” on the other hand, is not so broad as to require mature thought to discern the nature of the goods. The record establishes a readily understandable connection between the mark MULTI BINGO and the

¹⁵ *Id.*

goods. *See, e.g., In re Broco*, 225 USPQ 227, 229 (TTAB 1984) (“THE LIBRARY COMPANY” as applied to service of providing library supplies to libraries held merely descriptive; term “library” not so broad as to suggest a number of possibilities). Moreover, the alternate meanings suggested by Applicant are themselves descriptive; for example, that more than one person can play, that more than one game is played on the same card, or more than one bet is placed or prize awarded. Any of these possible meanings of “multi bingo” would be immediately discerned were the goods to include such characteristics. Thus, none of these possible meanings are so vague that it is not clear what information is being conveyed about the goods. The fact that several slightly different connotations are possible does not make the term any less descriptive or more registrable. As noted above, each of the possibilities identified by Applicant involves features of playing a game of bingo that could occur in multiples.

Moreover, the fact that Applicant’s identified customers are “owners or operators of gambling places” means they are knowledgeable about the features of competing bingo machines and the fact that some machines are enabled with a feature that allows for multiple play. The mark MULTI BINGO, when viewed by such sophisticated consumers, will immediately convey the information that Applicant’s goods enable multiple games of bingo to be played at one time.

The combination of terms in Applicant’s mark does not create a unitary mark with a nondescriptive or incongruous meaning. We have no doubt that, upon seeing the mark MULTI BINGO as a whole in connection with bingo machines and the

software, firmware and bingo game playing equipment identified in the application, Applicant's customers would immediately, and without further conjecture, be apprised of a central aspect of the goods, namely, that they allow players to play multiple games of bingo at the same time.

After careful consideration of the record evidence and arguments presented, we conclude that Applicant's mark is merely descriptive of a feature, function, or characteristic of Applicant's identified goods.

Decision: The refusal to register Applicant's mark MULTI BINGO under Trademark Act Section 2(e)(1) is affirmed as to the goods in both International classes 9 and 28.