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APRIL 6, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re International Data Group, Inc.

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Serial No. 75/025,160

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George W. Lewis of Spencer & Frank for International Data Group, Inc.

Andrew J. Benzmilller, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

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Before Simms, Chapman and Wendel, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

International Data Group, Inc. has filed an application to register the mark NET ENTERTAINMENT for

Books, magazines, magazine supplements, catalogues, manuals, brochures, pamphlets, guides, and newsletters, in the field of interactive entertainment and information technology services in Class 16, and

Computer services, namely providing on-line books, magazines, magazine supplements, catalogues, manuals, brochures, pamphlets, guides, and newsletters, in the field

of interactive entertainment and information technology services in Class 42.<sup>1</sup>

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

The Examining Attorney maintains that the mark NET ENTERTAINMENT merely describes the subject matter of applicant's publications, both printed and on-line, as being directed to Internet-related entertainment or entertainment available on the Internet. He notes that applicant has voluntarily disclaimed the word ENTERTAINMENT, and argues that the word NET would be understood by a large segment of the population as meaning "Internet." To support his position, the Examining Attorney has introduced a definition from the *Random House Personal Computer Dictionary* (1996) of "Net" as "short for Internet"; a statement from the book *The Internet for Dummies* (1993) that "The Internet-also known as the Net-is the world's largest computer network, or net"; and several excerpts of articles from the NEXIS database showing the interchangeable use of the words "Internet" and "Net." In

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<sup>1</sup> Serial No. 75/025,160, filed Nov. 28, 1995, based on a bona fide intention to use the mark in commerce. A disclaimer of the word "Entertainment" has been entered.

addition, he has introduced five NEXIS database excerpts which demonstrate use of the exact phrase "Net entertainment" in describing various types of entertainment available on the Internet, and a second excerpt from *The Internet for Dummies* describing features available on the Internet including "games and gossip" in which a person can "challenge other players who can be anywhere in the world" or "have more or less interesting conversations with other users all over the place."

Applicant's position is that NET ENTERTAINMENT is only suggestive to consumers of the wide range of topics covered by its print and on-line publications. Applicant argues that

...while consumers viewing Applicant's mark would know that Applicant's publications ... in some way relate to the many categories of amusements available on the world wide global computer network, without more information, they would be hard pressed to articulate the subject matter of Applicant's publications. [Brief, pp. 4-5].

Applicant maintains that NET ENTERTAINMENT is not merely descriptive, since the mark does not convey with any certainty information as to the particular subject matter of applicant's publications. Applicant considers the Examining Attorney's characterization of NET ENTERTAINMENT as "entertainment involving the Internet" to be less than precise, in that this "creature described by

the Examiner" could be interpreted in many ways, as "games", as "videos", and so on.

A word or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, purpose, function, or feature of the goods with which it is being used. Whether or not a mark is merely descriptive is not determined in the abstract, but in relation to the goods or services for which registration is sought. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Titles of publications are not treated any differently than marks for other products. If the title immediately reveals information as to the contents or subject of the publications, the mark is merely descriptive. See In re Waverly Inc., 27 USPQ2d 1620 (TTAB 1993); In re The Gracious Lady Service, Inc., 175 USPQ 380 (TTAB 1972) and the cases cited therein. It is not necessary that a term describes all features of the publication in order to be merely descriptive, since a term is regarded as merely descriptive of a product if it describes one significant feature or attribute thereof. See In re MBAssociates, 180 USPQ 338 (TTAB 1973).

As a preliminary matter, we agree with the Examining Attorney that whether applicant's publications are provided

to the public in printed form or electronic form, the test for descriptiveness of the mark used in connection therewith remains the same. Thus, the question is whether NET ENTERTAINMENT merely describes the subject matter or content of publications, regardless of form, which have been identified as being directed, at least in part, to the field of "interactive entertainment."

We find the evidence produced by the Examining Attorney fully adequate to establish that the term NET, as used in applicant's mark, would be interpreted by the public as a shortened form of the word Internet. While there are obviously other meanings for the word "net," these other meanings have little relationship to publications directed to "interactive entertainment," and applicant no longer appears to be contending otherwise. The Examining Attorney has also introduced evidence showing that "interactive entertainment," such as games or gossip, is in fact offered on the Internet. Thus, NET ENTERTAINMENT must be construed as the equivalent of "Internet Entertainment" or "Entertainment on the Internet."

Applicant's principal argument is that, even if NET ENTERTAINMENT is so interpreted, consumers would still not be informed of the actual topics covered in the publication

and, thus, the mark is not merely descriptive of the contents. We have frequently held, however, that a mark need not set forth information with respect to each and every feature of the goods in order to be merely descriptive. The description of a single significant characteristic or feature of the goods is sufficient. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). Here the use of the mark NET ENTERTAINMENT in connection with applicant's publications immediately conveys the information that the publications contain subject matter directed to Internet entertainment. Applicant's identification of its goods and services confirms the applicability of this information, in that its publications cover the field of "interactive entertainment", an offering of the Internet. No more is necessary to hold the mark merely descriptive of the publications with which it is, or is intended to be, used.

Although applicant points to the Board's holding in *In re Distribution Codes, Inc.*, 199 USPQ 508 (TTAB 1978), in which the mark CODE & SYMBOL was found to be only suggestive when used for journals dealing with the applied science of product identification, we do not find the situation to be the same here. There the mark CODE & SYMBOL did not directly describe, even in broad terms, the

actual content of the publications; they were not compilations of codes and symbols, but rather were primarily concerned with product identification, in connection with which codes and symbols are used. Thus, at least a two-step reasoning process was required to associate the title with the contents of the publications. The same is not true here. The subject matter of applicant's publications is just that - NET ENTERTAINMENT. Furthermore, in the prior case, the Board found there was no need for competitors to use "Code & Symbol" to describe publications of similar content. Here we consider "Net Entertainment" to be a highly descriptive phrase which should remain available to competitors.

Accordingly, we find the mark NET ENTERTAINMENT to be merely descriptive of the contents of the publications with which applicant intends to use the mark.

Decision: The refusal under Section 2(e)(1) is affirmed.

R. L. Simms

B. A. Chapman

H. R. Wendel  
Trademark Administrative Judges,  
Trademark Trial and Appeal Board

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