

THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT OF THE TTAB      APRIL 27, 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. 74/707,130

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

Jennifer M. B. Krisp, Trademark Examining Attorney, Law  
Office 107 (Thomas Lamone, Managing Attorney).

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Before Cissel, Chapman and Wendel, Administrative Trademark  
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On July 20, 1995, applicant filed an application to  
register the mark "GAMEMAKERS ONLINE"<sup>1</sup> on the Principal  
Register for "providing an online service for persons  
interested in careers in the video game industry," in Class

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<sup>1</sup> Except in its heading, applicant's brief consistently refers to  
the proposed mark as "GAMESMAKER ONLINE" and consistently refers  
to the first word in the mark as "GAMESMAKER." This is at odds  
with the application's drawing, as well as with the rest of the  
prosecution history of this application, however. The mark

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sought to be registered is clearly "GAMEMAKERS ONLINE," and we have not considered it to be as argued in applicant's brief.

42. The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with the stated services.

The Examining Attorney refused registration under Section 2(e)(1) of the Act on the ground that applicant's mark, if used in connection with the specified services, would be merely descriptive of them. In support of the refusal, she attached to the Office Action copies of excerpts of published articles retrieved from the Nexis® automated database. These excerpts show the words "gamemaker" and "gamemakers" used in reference to manufacturers of video games. In addition to refusing to register the mark, the Examining Attorney also required amendment to the recitation of services because, she asserted, "the precise nature of the service intended to be rendered remains unclear."

Applicant responded to the refusal and requirement by amending the application to disclaim the word "ONLINE" apart from the mark as shown, and by amending the recitation of services to read as follows: "providing a database of information online via global computer information networks for persons interested in careers in the video game industry." Applicant argued that the mark

sought to be registered is not merely descriptive of this service because the mark "does not, with any certainty, forthwith convey an immediate idea of the subject audience of applicant's service..."

The Examining Attorney was not persuaded by applicant's response, and made the refusal to register final with the second Office Action. Attached to that action were copies of additional excerpts retrieved from the Nexis® database. Typical examples are as follows: "...the seventh-largest gamemaker, Interplay."; "The joint venture, Navio Communications Inc., involves Netscape working with IBM, Sony, NEC and Oracle, as well as gamemakers Sega Enterprises and Nintendo."; "Gamemakers have been successful in producing games for nearly every other sport--from auto racing to football to basketball."; and "As a result of stiff competition from other gamemakers, Atari Corp. has decided to merge with San Jose, Calif.-based JTS corp., a privately held maker..."

Applicant timely filed a Notice of Appeal and a request for reconsideration. The Board instituted the appeal, but suspended action on it and remanded the application to the Examining Attorney for reconsideration. She was not persuaded, however, so the application was returned to the Board and action on the appeal was resumed.

Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral hearing before the Board.

Accordingly, we have resolved this appeal based on the written record and arguments. Our conclusion is that the refusal is appropriate. The words "GAMEMAKERS ONLINE," if used in connection with the service specified in the application, as amended, would immediately convey the fact that the service provides online information about careers as gamemakers or working for the makers of games.

The test for descriptiveness is well settled. A mark is merely descriptive within the meaning of Section 2(e)(1) of the Lanham Act if, when considered in conjunction with the service with which it is intended to be used, it immediately and forthwith conveys information about the nature of the service, or about a feature, characteristic, purpose or function of the service. In re MetPath Inc., 223 USPQ 88, (TTAB 1984); In re Bright-Crest, Ltd., 204 USPQ 591(TTAB 1979). This test is not applied in the abstract. The question is not whether someone presented with only the mark could guess what the services are. Instead, it is whether someone who knows what the services are will understand the mark to convey information about them. In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990).

Applicant's argument is essentially that the term is suggestive of the service applicant intends to render under the proposed mark, rather than merely descriptive of it, because the term is an online service directed to people who aspire to have careers with the makers of video games, whereas the proposed mark refers to the gamemakers themselves.

As the Examining Attorney points out, the distinction drawn by applicant does not make a difference in the resolution of this issue. The record plainly establishes that the manufacturers of video games are referred to as "gamemakers." The descriptive nature of the word "ONLINE" has been conceded by applicant's disclaiming the exclusive right to use it in connection with the specified service. The recitation of services, as amended, involves providing information online to "persons interested in careers in the video game industry." This group would include more than people outside the industry who seek to enter the field by finding out about employment opportunities with the makers of such games. It would also necessarily include people who already have jobs within the industry who are nonetheless interested in maintaining or advancing their careers, and therefore are interested in the career-oriented information applicant will provide under the mark.

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Both the people who are employed making the games and the businesses for which they work can be characterized as "gamemakers."

In any event, whether the mark is understood to refer to the manufacturers, to their current employees, or to potential employees, to a prospective purchaser of applicant's service, who would already understand that the service involved providing online information about careers in the video game industry, the mark would immediately and forthwith convey information about applicant's proposed service, namely that this is a service for gamemakers. Thus, the test for mere descriptiveness within the meaning of Section 2(e)(1) of the Act is satisfied. Accordingly, the refusal to register is affirmed.

R. F. Cissel

B. A. Chapman

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

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