

**THIS DISPOSITION
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Paper No. 25
CEW

11/29/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re eCash Technologies, Inc.¹

Serial No. 74/605,417

Anna C. Silva of Steinhart & Falconer for applicant.

Jessie W. Billings, Trademark Examining Attorney, Law
Office 103 (Michael Szoke, Managing Attorney).

Before Quinn, Walters and Bucher, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Applicant seeks to register on the Principal
Register the mark E-CASH for "data processors, computers,
computer software and microcontrollers, the foregoing all
used for accomplishing value and data transfers,
exchanging, maintaining and storing information related

¹ By assignment, recorded in the USPTO, from David Chaum, the original
applicant, to Digicash Acquisition Corporation (DAC), and from DAC to
eCash Technologies, Inc.

to such transfers, and protecting the privacy of such transactions and information related thereto."²

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

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that "the term 'e-cash' refers to the electronic transfer of money"; that "applicant's computer hardware and software are specifically designed for value transfer and ancillary functions"; that "value transfer includes the transfer of money electronically"; and that "applicant's goods are designed to allow the user to send and receive electronic money or 'e-cash.'" In support of her position, the Examining Attorney submitted numerous excerpts of articles from the LEXIS/NEXIS database. Several of the

² Serial No. 74/605,417, in International Class 9, filed November 18, 1994, with a priority filing date of May 20, 1994, based on applicant's allegation, under Section 44(d) of the Act, of a filing in the Benelux office on that date. This application is based, under Section 44(e), on Benelux Registration No. 551,345, which issued to David Chaum on May 30, 1994, and expires May 30, 2004. It is unclear whether applicant has also asserted a separate claim under Section 1(b) of the Trademark Act, based on the allegation of a bona fide intention to use the mark in commerce. Should applicant ultimately prevail in this appeal, this issue should be addressed.

excerpts refer to applicant and several are from foreign publications or newswire services, which are of little probative value. However, there remain a substantial number of excerpts in U.S. publications showing numerous uses of the term "e-cash" to refer to electronic "cash."

Following are several examples:

Telephone companies and toll-booth operators already offer memory-only cards that store e-cash in denominations of \$20 to \$100. Smart cards - with brains as well as memory - will be used as combination credit - debit - ATM - e-cash cards. [*PC/Computing*, June, 1997.]

Payment for the product also can be made using e-checks or e-cash. ... E-cash uses an encrypted string of digits to represent money. [*Crain's Small Business Detroit*, June 2, 1997.]

Electronic or "e"-cash is here. Almost. Rather than being based on tokens like coins and notes, its medium is a microprocessor loaded up with information Like paper money, e-cash can be used to purchase goods or services from any trader who recognizes its value. [*The Independent*, June 22, 1997.]

Internet transaction standards at a glance. Electronic cash: E-cash. Term describing transactions involving client software that allows a customer to withdraw E-cash from a bank and store it locally on the PC. The user can spend the digital money at any shop accepting E-cash. [*PC Week*, February 19, 1996.]

Applicant contends, on the other hand, that the excerpts made of record by the Examining Attorney do not establish that "e-cash" is a common term for "electronic

money"; and that, even if "e-cash" does have such a meaning, it does not merely describe applicant's goods.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We find the evidence supports the conclusion that "e-cash" is a term commonly used to refer to "electronic cash"; and that, contrary to applicant's contentions,

these terms describe digital "money" or "funds" in the form of information stored on a computer for access via a computer, the Internet, or stored on a card that may be read electronically. Applicant admits in its reply brief that applicant's goods "are computer equipment used to facilitate the electronic transfer of funds." Clearly, "e-cash" is a form of currency used for value and data transfers. It is equally clear that transfers involving e-cash require the storage of information, either on electronic cards or computers; and these transfers require software to be effective and to maintain privacy. Thus, it would appear, from the identification of goods of record, that applicant's goods are, essentially, computer hardware and software used to effectuate value and data transfers, i.e., to effectuate the use of "e-cash." Thus, applicant's mark, E-CASH, merely describes this significant characteristic and purpose of applicant's goods.

Applicant's contention that the original applicant herein, David Chaum, was the first to coin the term "e-cash" for the electronic transfer of funds from bank accounts for use in on-line transactions, does not require a different result. Regardless of whether this contention is true, as it is not established in this

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record, it is clear from the evidence that the term has become widely used to refer to all such electronic transfers, not merely those effectuated by applicant's hardware and software.

In conclusion, it is our view that, when applied to applicant's goods, the term E-CASH immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term E-CASH as it pertains to these goods.

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

T. J. Quinn

C. E. Walters

D. E. Bucher
Administrative Trademark Judges,
Trademark Trial and Appeal Board