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**THIS DISPOSITION
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Paper No. 14
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bettor Technology, Inc.

Serial No. 75/489,177

Francis E. McDonnell, Esq. for Bettor Technology, Inc.

Darlene D. Bullock, Trademark Examining Attorney, Law
Office 111 (Craig Taylor, Managing Attorney).

Before Hohein, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Bettor Technology,
Inc. to register on the Principal Register the mark THE
RACING NETWORK for the following services, as amended:
"audio, data and video telecommunications services, namely,
the dissemination of audio, data and video programs
featuring horse racing, dog racing and other sports events
over television, satellite and other audio and video media
and over a global computer network" in International Class
38; and "entertainment services, namely, the production of
audio, data and video programs featuring horse racing, dog

racing and other sports events for dissemination over television, satellite and other audio and video media and over a global computer network" in International Class 41.¹

Citing Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), the Examining Attorney has finally refused registration for both classes of services on the ground that when applicant's mark is used in connection with the services identified in the application, it is merely descriptive thereof.

Applicant has appealed, and both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The test for determining whether a mark is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Associates*, 226 USPQ 285 (TTAB 1985); and *In re Bright-Crest, Ltd.*, 204 USPQ 591

¹ Application Serial No. 75/489,177, filed May 21, 1998, based on applicant's assertion of a bona fide intention to use the mark in commerce. As part of applicant's response to the first Office action refusing registration of the mark as merely descriptive, applicant disclaimed the term "racing."

(TTAB 1979). The determination of mere descriptiveness must be made, not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the term or phrase is being or will be used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). That is, the question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them. See *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

The Examining Attorney argues that the phrase "THE RACING NETWORK" describes a significant feature of the services, namely, "that the applicant has a broadcast network where the subject matter is racing" (Final Office action, p. 2). In support of her refusal to register the Examining Attorney submitted (i) dictionary definitions of the terms "race" and "network"; (ii) photocopies of several excerpted stories retrieved from the Nexis database

relating to "racing network"; and (iii) several third-party registrations wherein the term "network" was disclaimed.

The most relevant portions of the definitions from The American Heritage Dictionary of the English Language (Third edition 1992) are as follows:

- (1) "racing" (verb) is defined as "1. Sports. To compete in a contest of speed"; and
- (2) "network" (noun) is defined as "3. a. A chain of radio or television broadcasting stations linked by wire or microwave relay. B. A company that produces the programs for these stations."

The following are examples of the excerpted stories retrieved from the Nexis database, showing use of the term "racing network" (emphasis added):

HEADLINE: Top Trainers Have Their Ups, Downs
...Sahadi auditioned for an announcer's job on a national television **racing network**. She asked at Santa Anita about an in-house television spot. "The Palm Beach Post," June 1, 2000;

HEADLINE: A holiday for handicappers; Stakes races across the nation offer plenty to chew on
...major races will not be shown on one of the national networks, regular or cable, this summer. Instead, the club has contracted with Television Games (TVG) Network, a 24-hour horse **racing network** available only via

satellite. "The San-Diego Union-Tribune," May 27, 2000; and

HEADLINE: AT&T beats Click! into Uplace; High-speed Internet, cable TV, local phone service through new lines ...University Place subscribers will get new channels such as Speedvision, a motor sports **racing network**, Country Music Television, E! Entertainment Network, sports pay channels, Fox Family, Toon Disney, Oxygen and The Weather Channel.... "The News Tribune," July 10, 2000.

Applicant contends that in this case "two descriptive words, 'RACING' and 'NETWORK' have been combined to form a nondescriptive phrase that does not have a plain and readily understood meaning" (brief, p. 1); that the purchasing public would need further information to perceive any significance of the combined term "because it is not clear whether the mark 'THE RACING NETWORK' refers to automobile racing, boat racing, or, as in the instant matter, horse and dog racing" (brief, p. 2); that it is inappropriate to dissect applicant's mark into separate words, without considering the mark as a whole; and that, when considered as a whole, the phrase THE RACING NETWORK is not merely descriptive of applicant's services.

We agree with the Examining Attorney that the phrase THE RACING NETWORK immediately and directly conveys information about a significant feature of both applicant's

telecommunications services and its entertainment services. Specifically, applicant's services, as identified, are for the dissemination of programs featuring horse racing and dog racing over television and other media, as well as the production of said programs for dissemination over television and other media. This record shows that the purchasing public would perceive that applicant provides a racing network, both providing programs dealing with racing and telecasting said programs over television, satellite and other media. A descriptive mark does not have to provide information regarding every aspect of applicant's services. See *In re Opryland USA Inc.*, 1 USPQ2d 1409 (TTAB 1986); and *In re The Weather Channel, Inc.*, 229 USPQ 854 (TTAB 1985). See also, *In re Conus Communications Co.*, 23 USPQ2d 1717 (TTAB 1992).

The combination of these words does not create an incongruous or creative or unique mark. Rather, applicant's mark, THE RACING NETWORK, if used in connection with applicant's identified services, would immediately describe, without conjecture or speculation, a significant feature of applicant's services, as discussed above. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's

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services to readily perceive the merely descriptive significance of the phrase THE RACING NETWORK as it pertains to applicant's services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996); and *In re Time Solutions, Inc.*, 33 USPQ2d 1156 (TTAB 1994).

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