

The Examining Attorney has refused registration of Applicant's mark, MATCHPOINT, App. No. 88/819109, on the basis of purported likelihood of confusion with three registrations. The Examining Attorney has also refused registration on the ground that the mark is allegedly merely descriptive. The Examining Attorney further requests additional information regarding Applicant's goods and services. Applicant respectfully submits that there no likelihood of confusion between Applicant's mark and the cited marks and that Applicant's mark is not descriptive.

I. Citations

Applicant herewith submits amendments to its identification of goods and services, which includes deletion of "computer software and computer programs, in particular software applications for smartphones and tablet computers" in Class 9 and "Entertainment; Arranging and conducting of cultural and sporting events" in Class 41. Applicant's amendments thereby obviate any potential likelihood of confusion with the cited marks. Applicant therefore requests that the citations be withdrawn.

II. Applicant's Mark is Not Merely Descriptive

The Office Action asserts that MATCHPOINT is merely descriptive on the basis that "the mark wording is a term of art that identifies a characteristic or feature of the specified goods/services, namely, that they involve or are for use with a particular "card game descended from whist"." In support to this assertion, the Office Action references includes evidence that the term "match point" is used in the card game bridge. However, Applicant's submits that its goods and services are unrelated to the card game bridge.

Specifically, in response to the specific questions raised by the Examining Attorney, Applicant responses as follows:

Explain whether the wording "MATCHPOINT" in the mark has any meaning or significance in the trade or industry in which applicant's goods and/or services are manufactured or provided, any meaning or significance as applied to applicant's goods and/or services, or if such wording is a term of art within applicant's industry. *The term "MATCHPOINT" has no meaning or significance in Applicant's industry, is not a term of art, and has no meaning or significance as applied to Applicant's intended goods and services beyond the fact that a "match point" can be understood as the point in certain games in which one player may win the game if a point is scored.*

- Do any of the identified goods or services involve bridge? NO
- Will any of the identified goods or services involve bridge? NO
- Are any of the identified goods or services for use in playing bridge? NO
- Will any of the identified goods or services be for use in playing bridge? NO
- Are any of the identified goods or services for use in scoring bridge? NO
- Will any of the identified goods or services be for use in scoring bridge? NO

As indicated by the amendments, Applicant's goods and services are video and online games. The evidence attached to the Office Action is insufficient to establish that the applied for mark is merely descriptive for video games. *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, U.S.P.Q.2d 1828, 1831 (Fed. Cir. 2007) (the Examining Attorney must support her conclusion with appropriate evidence and has the burden of establishing that a term is merely descriptive); TMEP § 1209.02.

The term MATCHPOINT has no inherent meaning in relation to video games and is intended to suggest the stage of a game at which one is on the verge of winning. Where a mental leap (*i.e.*, imagination, thought or perception) is required to connect the mark to the product, the mark is not “merely” descriptive, but is suggestive, inherently distinctive and registrable. *Brookfield Communications v. West Coast Entertainment Corp.*, 50 U.S.P.Q. 2d 1545, 1561 (9th Cir. 1999) (MOVIEBUFF not descriptive because it does not describe either the purpose or product of movie information database software).

The Federal Circuit recently reaffirmed that the suggestiveness bar is a low one when it reversed a descriptiveness refusal for DOTBLOG for “providing specific information as requested by customers via the Internet.” *In re Driven Innovations, Inc.*, No. 16-1094 (Fed. Cir. Jan. 4, 2017) (not precedential). In reversing the TTAB, the Federal Circuit noted that the descriptive meaning of the mark must be “immediate” and “instantaneous” in order for a mark to be considered merely descriptive and unregistrable. *Id.* at pp.7-8. “Mere relation,” the Court stated, “does not mean that a mark is descriptive.” *Id.* Without substantial evidence that U.S. consumers already associate MATCHPOINT as a descriptive term for Applicant’s goods, the descriptiveness refusal should be withdrawn.

Finally, it is well settled that any doubt as to mere descriptiveness should be resolved in Applicant's favor. As the Board stated in *In re Bed Check Corp.*, 226 U.S.P.Q. 946 (TTAB 1985) (holding that SENSORMAT was not merely descriptive of, inter alia, an electrical sensing pad placed under a patient):

We recognize that there is often a thin line separating merely descriptive from suggestive terms and that judgments in these cases are frequently subjective. However, where there is doubt in the matter, the doubt should be resolved in Applicant's favor.

Accordingly, Applicant respectfully requests that the refusal be withdrawn, and the application be approved for publication.

III. Conclusion

In conclusion, Applicant requests that the refusal to register the mark on the basis of descriptiveness and a likelihood of confusion be withdrawn and the application proceed to publication.