

10/3/01

GDH/gdh

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Prize Central Networks, Inc.

---

Serial No. 75/509,370

---

Bradley M. Gantz, Esq. for Prize Central Networks, Inc.

Carol A. Spils, Trademark Examining Attorney, Law Office 101  
(Jerry Price, Managing Attorney).

---

Before Hanak, Hohein and Walters, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Prize Central Networks, Inc. has filed an application  
to register the mark "VIRTUAL LAS VEGAS" for "entertainment  
services, namely providing on-line computer games."<sup>1</sup>

Registration has been finally refused under Section  
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

---

<sup>1</sup> Ser. No. 75/509,370, filed on June 26, 1998, which alleges a date of first anywhere and first use in commerce of July 24, 1996. The word "VIRTUAL" is disclaimed.

basis that, when used in connection with applicant's services, the mark "VIRTUAL LAS VEGAS" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

Noting that it is the owner of a registration, which "was duly examined and found worthy of registration on the Principal Register ... without any requirement of proof of acquired distinctiveness," for the mark "VIRTUAL VEGAS" for, inter alia, "interactive multimedia computer programs, computer software, and digital media, namely, CD-ROMs, for use in the field of entertainment featuring virtual casino gambling scenarios, shopping expeditions, music and detective stories; [and] prerecorded video tapes and video discs featuring a virtual entertainment environment" in International Class 9,<sup>2</sup> applicant argues that, "for the same reasons that VIRTUAL VEGAS was deemed distinctive enough to be entitled to registration, so

---

<sup>2</sup> Reg. No. 1,987,449, issued on July 16, 1996, which for each of the three classes thereof sets forth a date of first use anywhere of August 8, 1994 and a date of first use in commerce of September 15, 1994; combined affidavit §§8 and 15. Besides containing a disclaimer of the word "VIRTUAL," the registration also covers "interactive multimedia computer game programs and computer game software, computer game tapes, electronic and video game programs, [and] computer and video game cartridges" in International Class 28 and "leasing access time to an electronic bulletin board in the field of virtual entertainment" in International Class 42.

should VIRTUAL LAS VEGAS." In particular, applicant contends that in this case:

The ... Examining Attorney principally relies on a LEXIS-NEXIS search showing that there is a style of game called "Vegas Style". The Examining Attorney believes that the term "VIRTUAL" merely describes an online nature of the game style. Applicant has submitted evidence showing that in present-day usage LAS VEGAS is not primarily and merely a style of game but can be used to characterize a great number of things including blinking lights, glamour, themed megaresorts and palaces, art centers, showmanship, headliners, illusion, razzle dazzle and Hollywood glitz. ....

Applicant maintains, in view thereof, that (*italics in original*):

The Examining Attorney considers the mark VIRTUAL LAS VEGAS merely descriptive of the *nature* of computer games, namely that games are Vegas-style casino games offered online. The evidence of record amply establishes that the mark VIRTUAL LAS VEGAS does not *merely* convey the nature of Applicant's online entertainment services or characteristics, functions, uses or other aspects of such services: The notion of Las Vegas floating in cyberspace is an absurd or incongruous notion or otherwise a notion that gives consumers a mental pause. Accordingly, the refusal to register on the Principal Register should be withdrawn.

Applicant argues, moreover, that even if the components of its mark are separately regarded as merely descriptive of its on-line computer game services, it is well settled that "[a] composite mark composed of descriptive parts may be more than

the mere sum of its parts, and non-descriptive as a whole"

(citations omitted). Applicant insists that "[t]he mark VIRTUAL LAS VEGAS is a composite mark" and that:

The mark in its entirety easily conveys an image of Las Vegas' neon-strewn streets and towering casinos and all the many other things LAS VEGAS represents embodied in the ether of cyberspace. Of course, it is impossible to digitize physically Las Vegas to make this fantasy image a reality. This is the absurdity or incongruity of the VIRTUAL LAS VEGAS mark that causes consumers to mentally pause and ponder.

In support of its position, applicant points to the declaration of Phil Jungwirth, who according to applicant "is an authority on the industry for online computer games, casino-style games, and Las Vegas culture." The relevant portions of such declaration, applicant insists,<sup>3</sup> indicate that Mr. Jungwirth

---

<sup>3</sup> Although applicant states in its initial brief that the Jungwirth declaration was "submitted with Applicant's February 9, 2001 Response to Final Office Action" dated August 25, 2000, the record does not contain a copy of such response other than a copy of applicant's timely filed notice of appeal. It appears, instead, that in light of the reference in the declaration to "the term 'VR Vegas,'" the declaration may have been submitted solely in connection with "[a] related mark of Applicant, Serial No. 75/459,251 for VR VEGAS," which as applicant also notes in its initial brief, "is the subject of an appeal filed February 9, 2001 that involves issues similar to this appeal" and which likewise was in response to a final refusal issued on August 25, 2000. The apparent failure to file a copy of such declaration in this case would appear to be confirmed by the fact that there is no indication in the file history that the Board followed its usual practice, which it would have done if it had received a copy of applicant's response in its entirety and not just a copy of its timely filed notice of appeal, of suspending the appeal pending a remand of the response, including the Jungwirth declaration, to the Examining Attorney for consideration thereof. Nevertheless, inasmuch as the Examining Attorney has discussed in her brief the same portions of the Jungwirth declaration which applicant in its initial brief emphasized

has "never used nor heard anyone else ever using the term 'VR Vegas' or 'Virtual Las Vegas' to describe online services for, or relating to, casino-style games, either directly or indirectly in terms of a characteristic, function, use or other aspect of such services."<sup>4</sup> Applicant also relies upon, as

---

as being relevant, we have treated such portions of the Jungwirth declaration as being of record herein and thus have considered the evidence to the extent of its probative value. See, In re Nuclear Research Corp., 16 USPQ2d 1316, 1317 (TTAB 1990) at n. 2.

<sup>4</sup> While the remaining portions of the Jungwirth declaration state various opinions held by the declarant, including among other things his beliefs that "the most dominant meaning conveyed by 'Las Vegas' to me and to the trade (including business and consumers) is Las Vegas as a city and cultural center--a geographical and physical place or location and associated cultural activities--not as a style of any one particular thing in the city," that "the dominant connotation of a physical place or location and associated activities carries over to the composite term 'Virtual Las Vegas'" and that "[a]ccordingly, the most immediate and obvious connotation of 'Virtual Las Vegas' ... is the imagery of physical Las Vegas city floating in cyberspace with its associated activities," such opinions essentially are of no probative value. As pointed out in the analogous case of Plyboo America Inc. v. Smith & Fong Co., 51 USPQ2d 1633, 1640-41 (TTAB 1999):

[T]he opinion of an asserted expert ... is simply not dispositive since, as stated in Tanners' Council of America, Inc. v. Scott Paper Co., 185 USPQ 630, 637 (TTAB 1975):

[I]t is well established that the expressions of opinion by witnesses, including persons considered to be experts in a particular field on any question before the Board, is not binding upon the Board for "if such testimony were adopted without considering other aspects of the case, the effect would be to substitute the opinion of the witnesses for the ultimate decision to be reached by the Court and would therefore be improper." The Quaker Oats Company v. St. Joe Processing Company, Inc., [232 F.2d 653,] 109 USPQ 390 at 391 (CCPA, 1956) ....

See also Ferro Corp. v. Nicofibers, Inc., 196 USPQ 41, 45 (TTAB 1977) [purchasers' "understanding of the marks must

mentioned earlier, the results which it made of record from a search of the "LEXIS/NEXIS" database for the term "vegas style." Such search retrieved, inter alia, stories referring to "Las Vegas-style gambling," "Las Vegas-style casinos," "Las Vegas-style entertainment," "Las Vegas-style casino games," "Las Vegas-style glamour," "Las Vegas-style marriage," "Las Vegas-style slot machines," "Vegas-style blackjack," "Las Vegas-style resort gambling," "Las Vegas-style stage show," "Vegas-style production values," "Las Vegas-style showmanship," "Vegas-style showrooms," "Las Vegas-style razzle-dazzle," "Vegas-style gambling," "Las Vegas-style tourism," "Las Vegas-style gambling machines," "Las Vegas-style slots and table games," "Las Vegas-style casino gambling," "Las Vegas-style celebration," "Las Vegas-style resort," "Las Vegas-style pageantry," "Las Vegas-style games," "Las Vegas-style restaurant and bar," "Vegas-style games," "Las Vegas-style production shows," "Las Vegas-style themed resort," "Las Vegas-style gaming," "Las Vegas-style sports betting," "Las Vegas-style sign," "Las Vegas-style casino

---

be determined in light of the relevant purchasing sector and not that of linguistic experts or those familiar with the meaning or derivation of words"]. Consequently, the opinion offered by Dr. Moody as to the descriptiveness of "plyboo" as a "blend word," as opposed to any testimony as to factual matters within her area of linguistic expertise or personal knowledge, is essentially of no probative value in this case. See *Mennen Co. v. Yamanouchi Pharmaceutical Co., Ltd.*, 203 USPQ 302, 305 (TTAB 1979) at n.4.

games," "Las Vegas-style shows," "Vegas-style blinking lights," "Las Vegas-style nightclub act," "Las Vegas-style arts center," "Las Vegas-style megaresorts," "Las Vegas-style billboards," "Las Vegas-style themed palaces," "Las Vegas-style jackpot," and "Las Vegas-style showgirls." All of such references, however, are from stories appearing in Las Vegas Review-Journal, a periodical published in Las Vegas, Nevada which, in light of its hyping of virtually everything as "Las Vegas-style,"<sup>5</sup> appears to be directed to promoting the city and its attractions to tourists.

Applicant concludes, based upon consideration of all of the evidence of record, including that offered by the Examining Attorney (discussed below), that:

The Examining Attorney has not in any way contradicted the fact that the mark VIRTUAL LAS VEGAS is susceptible to the interpretation propounded by Applicant. Instead, she relies on an alternative[, ] less dominant interpretation, almost entirely founded in speculation and impermissible dissection of the mark. While the Examining Attorney cites references to the term VEGAS [STYLE] or LAS VEGAS STYLE, the focus on this terminology does not consider the mark VIRTUAL LAS VEGAS in its entirety. Instead, the Examining Attorney's interpretation is strictly based on a

---

<sup>5</sup> In addition to the above, examples include references to "Las Vegas-style golf merchandise," "Las Vegas-style development," "Vegas-style enterprises," "Vegas-style salvation," "Las Vegas-style restaurant and bar," "Las Vegas-style respectability," "bank headquarters Las Vegas-style," "Blood Drive Las Vegas-style" and "Las Vegas-style crisscross driving."

dissection of the mark into its individual components. Notably, the LEXIS-NEXIS reports that are of record ... did not turn up any reference to "VIRTUAL LAS VEGAS" or any similar phrase in any context. This confirms Mr. Jungwirth's assessment that there are no others using such terminology and that others would not need to use such terminology to describe [the services of providing] online games.

The Examining Attorney, on the other hand, contends that the mark "VIRTUAL LAS VEGAS" is merely descriptive of applicant's entertainment services of providing on-line computer games because the mark "describes ... services which are virtual computer games which feature LAS VEGAS or VEGAS-style games." In this regard, the Examining Attorney asserts that the evidence of record shows that the term "Las Vegas has descriptive meaning for certain goods and services, and is not simply a geographical term." The Examining Attorney also points out that "new case law now indicates the descriptive nature of VIRTUAL in the rapidly and continually evolving language of the computer," citing the recent case of *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1526 (TTAB 2001), which found the term "VIRTUAL FASHION" to be merely descriptive of, inter alia, computer software for providing fashion, beauty and shopping advice and electronic retailing services featuring apparel, fashion accessories, personal care items, jewelry and cosmetics.



As to the argument which applicant bases upon its ownership of a registration for the mark "VIRTUAL VEGAS," the Examining Attorney, citing *In re Scholastic Testing Service, Inc.*, 196 USPQ 517, 519 (TTAB 1977), correctly notes that each case must be considered on its own merits and that a mark which is merely descriptive is not made registrable simply because the register already contains a similar mark or marks. Moreover, citing *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983), the Examining Attorney properly observes that the fact that, on this record, applicant is apparently the first and only user of the mark "VIRTUAL LAS VEGAS" does not justify registration thereof if such mark is merely descriptive of applicant's services.

The evidence of record offered in support of the Examining Attorney's position includes a definition from the electronic version of The American Heritage Dictionary of the English Language (3rd ed. 1992) which defines "Las Vegas" as "[a] city of southeast Nevada near the California and Arizona borders. It is a major tourist center known for its casinos." In addition, from her Internet search of the term "virtualvegas" using the "GOOGLE" search engine, the Examining Attorney has made of record a list of web-pages found at applicant's [www.virtualvegas.com](http://www.virtualvegas.com) website, which in two instances include the following subject matter description: "Play the best Las Vegas

casino style Java gambling games on the Internet and win free prizes in Virtual Vegas."

The Examining Attorney also has made of record the results from searches of the "LEXIS/NEXIS" database, using the search strategies "VEGAS STYLE W/10 (GAMBLING OR CASINO OR BLACKJACK OR CRAPS OR ROULETTE OR POKER)," "VEGAS STYLE BLACKJACK," "VEGAS STYLE SLOTS" and "VEGAS STYLE GAMES." Such search retrieved various stories referring to "Las Vegas-style games," "Las Vegas-style poker game," "Las Vegas-style poker, blackjack and dice games," "Las Vegas-style casinos," "Las Vegas-style casino night," "Las Vegas-style gambling," "Vegas-style gambling," "Las Vegas-style gaming machines," "Las Vegas-style poker table," "Las Vegas-style poker and Black Jack," "Las Vegas-style poker," "Las Vegas-style poker machines," "Vegas-style blackjack tables," "Vegas-style blackjack," "Las Vegas-style blackjack," "Las Vegas-style blackjack, roulette, craps and various card games," "Las Vegas-style blackjack game," "Las Vegas-style slots," "Las Vegas-style slot machines," "Vegas-style slots" and "Vegas-style slot machines."

We observe, however, that in addition to two references made of record by applicant, the record contains only three other specific mentions of either "Las Vegas-style games" or "Vegas-style games," which plainly are the most pertinent excerpts for the purpose of determining whether applicant's mark

is merely descriptive of its services.<sup>6</sup> These five excerpts are reproduced below:

"... play slot machines, blackjack and other Vegas-style games." -- San Jose Mercury News, July 10, 2000;

"Racingcasino.com opened Nov. 23 to those who want to play Las Vegas-style games for fun." -- Indianapolis Business Journal, November 19, 1999;

"The Independent Entertainment Software Rating Board ... evaluates and rates games by their objectionable content. But that's not always sufficient: Hoyle Casino, with 350 Las Vegas-style games, is rated appropriate for all ages, but few parents want to give their 6-year-old a realistic gambling simulation." -- USA Today, November 24, 1999;

"...roulette and most other Vegas-style games are illegal." -- Las Vegas Review-Journal, June 30, 1998; and

"... opened included Las Vegas-style games such as slot machines." -- Las Vegas Review-Journal, March 9, 1998;

Furthermore, while no definition of the term "virtual" is of record, the Examining Attorney in her brief refers to the Board's opinion in *In re Styleclick.com Inc.*, supra at 1525,

---

<sup>6</sup> We have not considered in this regard, due to their limited probative value, the several excerpts mentioning such terms which are from wire services. The reason therefore is that there is no evidence that the stories appearing in wire service articles have been printed in publications of general circulation and, thus, it cannot be assumed that the excerpts therefrom have had any material impact on consumer perception or attitude as to the meaning of either "Las Vegas-style games" or "Vegas-style games". See, e.g., *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1555 (TTAB 1987) at n. 6 and *In re Men's Int'l Professional Tennis Council*, 1 USPQ2d 1917, 1918-19 (TTAB 1986).

which sets forth the following definitions (*italics in original*):

The dictionary evidence shows the term "virtual" defined as follows: "Not real. The term *virtual* is popular among computer scientists and is used in a wide variety of situations. In general, it distinguishes something that is merely conceptual from something that has physical reality." *PC Webopaedia* (1998). We take judicial notice of these other listings for the term: "Not physical. Exists in the software only or in the imagination of the machine." *net.speak-the internet dictionary* (1994); "Used generally to describe something without a physical presence or is not what it appears to be. Virtual reality, for example, is made up of computer-generated images and sounds rather than actual objects." *The Computing Dictionary* (1996); and "conceptual rather than actual, but possessing the essential characteristics of a real function." *The Illustrated Dictionary of Microcomputers* (3rd ed. 1990).

Likewise, we judicially notice that The Computer Glossary (9th ed. 2001) defines "virtual" as "[a]n adjective applied to almost anything today that expresses a condition without boundaries or constraints," while The Dictionary of Computing & Digital Media (1999) lists such term as an adjective which (*italics in original*) "[d]escribes an object, an entity, or a relationship that exists in software rather than in a tangible, physical condition. .... *Virtual* is a commonly used term for anything that exists but that has no concrete manifestation."

---

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

However, a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning

process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. See, e.g., In re Abcor Development Corp., supra at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347, 1349 (TTAB 1984). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985).

In the present case, we agree with applicant that, when considered in its entirety, the mark "VIRTUAL LAS VEGAS" is suggestive rather than merely descriptive of applicant's "entertainment services, namely providing on-line computer games." Even assuming, despite the relatively small number of excerpts retrieved from searches of the vast "LEXIS/NEXIS" database and which refer specifically to "Las Vegas-style games" or its "Vegas-style games" equivalent, that such terms encompass the far more commonly used expressions of "Las Vegas-style

slots," "Las Vegas-style blackjack," "Las Vegas-style poker," "Las Vegas-style gambling," and the like, it is significant that applicant's mark is "VIRTUAL LAS VEGAS" instead of "VIRTUAL LAS VEGAS-STYLE." This distinction, although perhaps subtle, nevertheless serves to slow or delay recognition of one plausible meaning conveyed by applicant's mark, which is that its on-line entertainment services feature Las Vegas-style games. Just as plausible, if not immediately more so due to the absence from applicant's "VIRTUAL LAS VEGAS" mark of the suffix "-STYLE," is the connotation urged by applicant, which is that its mark is evocative, in a conceptual sense, of the casinos, resort hotels, neon lights, theme shows, and glitzy entertainment which individually as well as collectively symbolize the city of Las Vegas and its associated attractions. As applicant, in its reply brief, aptly asserts, "[i]t is axiomatic that a fantasy place cannot be descriptive of reality."

Stated otherwise, the amalgam formed by joining the word "VIRTUAL" and the name "LAS VEGAS" is more than simply a combination of two arguably descriptive terms which lose none of their descriptiveness when combined. The mark "VIRTUAL LAS VEGAS," instead, creates just enough of an initial ambiguity, or perhaps even an incongruity, when utilized in association with providing on-line computer game entertainment services, as to

require a modicum of imagination, perception or thought in order for ordinary consumers to comprehend or conclude that such services are a virtual form of Las Vegas-style games. This is because the games offered by applicant under its "VIRTUAL LAS VEGAS" mark are nonetheless real in the sense that they replicate the actual kinds of games of chance typically found in Las Vegas casinos and are not real (that is, virtual) only in the sense that they are provided on-line rather than in the physical confines of a casino. Applicant's mark, therefore, is no more than highly suggestive of its services. Taken as a whole, such mark projects a new and different commercial impression when used in the context of applicant's entertainment services of providing on-line computer games and thus it is not merely descriptive thereof within the meaning of the statute. See, e.g., *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 385 (CCPA 1968) [mark "SUGAR & SPICE" held suggestive of various bakery products since, while individual words of mark are descriptive, the "immediate impression evoked by the mark," in light of well known nursery rhyme, "may well be to stimulate an association of 'sugar and spice' with 'everything nice'"; "[a]s such, ... the mark, along with the favorable suggestion which it may evoke, seems to us clearly to function in the trademark sense and not as a term *merely* descriptive of goods"].



Furthermore, combining the word "VIRTUAL" with the name "LAS VEGAS" so as to form the mark "VIRTUAL LAS VEGAS" does not result in a term which directly imparts, with any degree of particularity, information about the nature, purpose, function, use, characteristics, features or other significant aspects of applicant's on-line computer game entertainment services. As to the precedent upon which the Examining Attorney principally relies, applicant in its reply brief persuasively points out that "*In re Styleclick.com* admonishes that each case is determined on its own facts" and "does not stand for the proposition that VIRTUAL cannot be combined with a descriptive term to form a non-descriptive composite mark." Such case, moreover, is distinguishable since, as noted by applicant its reply brief:

In any event, the mark VIRTUAL FASHION from *In re Styleclick.com* ... is significantly different from [the mark] VIRTUAL LAS VEGAS. In *In re Styleclick.com*, the component FASHION directly described the applied-for services, which related to fashion information or shopping for fashion online. .... Carrying this into the present case, the Examining Attorney's position on descriptiveness would be correct if Applicant's mark were, for example, VIRTUAL GAMING or VIRTUAL BLACK JACK. In such cases, the [term] VIRTUAL is combined with a word that directly describes the very nature of what is being offered as service, without creating anything incongruous [or ambiguous]. In contrast, the component LAS VEGAS does not directly describe Applicant's services, although it may suggest them.

Accordingly, when it is combined with [the term] VIRTUAL there results an overall distinctive mark ....

At the very least, and as a final consideration, we have doubt that applicant's "VIRTUAL LAS VEGAS" mark immediately conveys information about a significant characteristic or feature of its entertainment services of providing on-line computer games or their nature, purpose, function or use. In view thereof, we resolve such doubt, in accordance with the Board's practice, in favor of the publication of applicant's mark for opposition. See, e.g., In re Conductive Systems, Inc., 220 USPQ 84, 86 (TTAB 1983); In re Morton-Norwich Products, Inc., 209 USPQ 791 (TTAB 1981); and In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

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