

To: Cameron Mitchell(cmitchell@counxel.com)
Subject: U.S. Trademark Application Serial No. 97120599 - INSTANT LEADERBOARD PAYOUT - 00969
Sent: August 26, 2022 10:56:03 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

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**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97120599

Mark: INSTANT LEADERBOARD PAYOUT

Correspondence Address:

Cameron Mitchell
Counxel Legal Firm
2222 South Dobson Road, Suite 1104
Mesa AZ 85202 UNITED STATES

Applicant: Haste, Inc.

Reference/Docket No. 00969

Correspondence Email Address: cmitchell@counxel.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be abandoned. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 26, 2022

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant

must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF USPTO DATABASE OF MARKS

The trademark examining attorney has searched the USPTO database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

SUMMARY OF ISSUES:

- Section 2(e)(1) Refusal - Merely Descriptive
- Classification and Identification of Services

SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a feature or characteristic of applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

Two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. *See In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

Here, applicant has applied to register the mark INSTANT LEADERBOARD PAYOUT for use in connection with "Payment exchange services of micro- and nano-transactions of cryptocurrency utilizing blockchain technology" in Class 36, and "Providing online gaming platform for competitive video games" in Class 41.

Please see the attached dictionary definitions showing that "INSTANT" means "Occurring at once; immediate", "LEADERBOARD" means "A board that displays the leaders in a competition", and "PAYOUT" means "The act or an instance of paying out".

Generally, if the individual components of a mark retain their descriptive meaning in relation to the goods and/or services, the combination results in a composite mark that is itself descriptive and not registrable. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002)); TMEP §1209.03(d); *see, e.g., DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1255, 103 USPQ2d 1753, 1758 (Fed. Cir. 2012) (holding SNAP SIMPLY SAFER merely descriptive for various medical devices, such as

hypodermic, aspiration, and injection needles and syringes); *In re Fallon*, 2020 USPQ2d 11249, at *12 (TTAB 2020) (holding THERMAL MATRIX merely descriptive of a heat-responsive, malleable liner that is an integral component of an oral dental appliance).

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. *See In re Omniome, Inc.*, 2020 USPQ2d 3222, at *4 (TTAB 2019) (citing *In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968); *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983)); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1162-63 (TTAB 2013).

In this case, both the individual components and the composite result are descriptive of applicant's services and do not create a unique, incongruous, or nondescriptive meaning in relation to the services.

In the context of the services, the combined wording of "INSTANT LEADERBOARD PAYOUT" immediately conveys that the services are provide immediate payment to users based on their position on a leaderboard. Specifically, the attached Internet evidence from applicant's website shows that users of the applied-for services are paid based on their position on video game leaderboards.

In view of the above, the applied-for mark is merely descriptive of a feature and characteristic of the applicant's services, and therefore, registration is refused under Trademark Act Section 2(e)(1).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. Applicant must address the following requirement.

CLASSIFICATION AND IDENTIFICATION OF SERVICES

The identification of services in Classes 36 and 42 is indefinite and/or misclassified and must be clarified or reclassified to ensure proper analysis.

In Class 36, the wording "Providing online gaming platform for competitive video games" in the identification of services is indefinite and must be clarified to further specify the nature of the services, as set forth below. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

Additionally, this wording is misclassified, as such software is classified in Class 42.

In Class 41, the wording "Payment exchange services of micro- and nano-transactions of cryptocurrency utilizing blockchain technology" in the identification of services is indefinite and must be clarified to further specify the nature of the services, as set forth below. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.0

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Applicant may adopt the following suggestions, if accurate:

036: Payment exchange services **in the nature of cryptocurrency exchange services, namely, processing** micro- and nano-transactions of cryptocurrency utilizing blockchain technology

042: Providing **temporary use of online non-downloadable software in the nature of an** online gaming platform for **playing** competitive video games

Applicant may amend the identification to clarify or limit the services, but not to broaden or expand the services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted services may not later be reinserted. *See* TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

RESPONSE GUIDELINES

Please call or email the assigned trademark examining attorney with questions about this Office action. Although an examining attorney cannot provide legal advice, the examining attorney can provide additional explanation about the refusal(s) and/or requirement(s) in this Office action. *See* TMEP §§705.02, 709.06.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

How to respond. [Click to file a response to this nonfinal Office action.](#)

/Nathaniel Pettican/
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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find [contact information for the supervisor](#)** of the office or unit listed in the signature block.



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THE USAGE PANEL

The Usage Panel is a group of nearly 200 prominent scholars, creative writers, journalists, diplomats, and others in occupations requiring mastery of language. Annual surveys have gauged the acceptability of particular usages and grammatical constructions.

THE PANELISTS

in·stant (in-'stnt)

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n.

1. A period of time so short as to be almost imperceptible. See **Synonyms** at **moment**.
2. A particular or precise time: *at the instant of combustion*.
3. Abb. **inst.** The current month: *your letter of the 15th instant*.
4. A food or beverage designed for quick preparation.

adj.

1. Occurring at once; immediate: *instant gratification*.
2. Imperative; urgent: *an instant need*.
3. Now under consideration; present.
4.
 - a. Commercially prepared or processed for quick and easy final preparation: *an instant cake mix*.
 - b. Appearing, done, or taking place with great quickness and ease: *"She had the gift of instant intimacy" (Sylvia Jules Morris)*.
 - c. Quickly and easily resolved or determined: *instant lottery tickets*.

adv.

At once; instantly.

[Middle English, from Old French, from Latin *instāns*, *instant-*, present, present participle of *instāre*, to approach : *in-*, on; see *ex*² + *stāre*, to stand; see **sta-** in the Appendix of Indo-European roots.]

in-'stant-ness a.

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lead-er-board (lə'dər-bōrd')

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n. A board that displays the leaders in a competition.

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THE PANELISTS

pay-out (pa'out)

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n.

1. The act or an instance of paying out.
2. A percentage of corporate earnings that is paid as dividends to shareholders.

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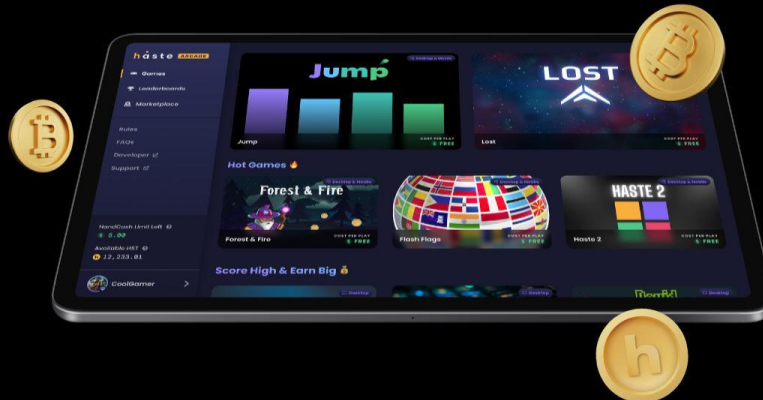
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Post a high score
to any game.



Get paid for your position
on the board.

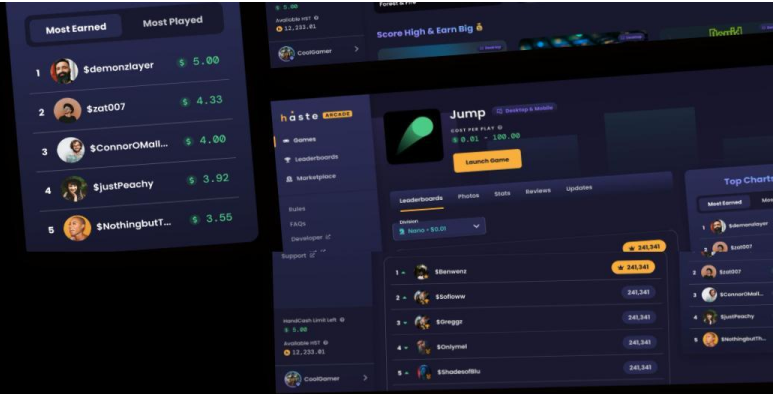
What exactly is an ILP Arcade™?

Brought to life by Haste's creators, Haste Arcade is a developer SDK and player site with ILP Games™. ILP™, or Instant Leaderboard Payout™, is what makes our games a world's first. Games built using our patent-pending ILP™ technology enable players globally to earn real-time, peer-to-peer rewards for



simply placing on a game's leaderboard. Everyone plays. And a whole lotta folks... get paid.

patent-pending ILP™ technology enable players globally to earn real-time, peer-to-peer rewards for simply placing on a game's leaderboard. Everyone plays. And a whole lotta folks... get paid.



Coins in... Coins out.

Imagine going to your local arcade, inserting 25 cents into the gaming console, posting a high score on the Pac-Man leaderboard, and then getting paid 2.5 cents every time subsequent players play the game but fail to beat your score. Now consider holding a top score in a global online arcade where millions of daily players are playing the game but failing to beat your score, and earning 2.5 cents per day. This is the game-changer. This is the future of gaming.

play. This is a game changer. This is Haste Arcade.



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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 26, 2022 for
U.S. Trademark Application Serial No. 97120599

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO **[website](#)**, the application process, the status of your application, and whether there are outstanding deadlines to the **[Trademark Assistance Center \(TAC\)](#)**.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the **[Trademark Status & Document Retrieval \(TSDR\)](#)** database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain “@uspto.gov.” Verify the correspondence originated from us by using your Serial Number in our database, **[TSDR](#)**, to confirm that it appears under the “Documents” tab, or contact the **[Trademark Assistance Center](#)**.

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

User: Nathaniel Pettican

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1	"haste inc"[on]	7	0	1	1	0:00
2	(*nstant* and *lead* and *board* and *pay*)[bi,ti] and live[ld]	1	0	1	1	0:00
3	*n{"sz"}t{v}nt*[bi,ti] and live[ld]	1762	0	0	0	0:01
4	(*l{v}{v}d* and *b{v:2}rd*)[bi,ti] and live[ld]	71	0	71	71	0:02
5	(*p{v}{v}{"iey"}* and *{v}{v}t*)[bi,ti] and live[ld]	3230	0	0	0	0:08
6	3 and 4 and 5	2	0	2	2	0:06
7	3 and (4 5)	3	0	3	3	0:05
8	4 and 5	3	0	3	3	0:05
9	3 and ("036" "042")[cc]	681	0	0	0	0:01
10	3 and ("036" "042" "009" a b "200")[ic]	536	0	300	300	0:01
11	5 and ("036" "042")[cc]	1599	0	0	0	0:02
12	5 and ("036" "042" "009" a b "200")[ic]	645	0	0	0	0:03
13	(*pay* and *out*)[bi,ti] and live[ld]	54	0	54	54	0:00

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