

Hearing:
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DEB

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC. 14, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Stanley D. Ference III

Serial No. 75/006,702

Stanley D. Ference III, *Pro Se*.

Henry S. Zak, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Quinn, Hohein and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Stanley D. Ference III, a citizen of the United States
and resident of Pittsburgh, Pennsylvania, has applied to
register the mark "BLITZBURGH" for "clothing, namely hats,
T-shirts and sweatshirts," in International Class 25.¹

A final refusal was ultimately issued pursuant to
Section 2(a) of the Trademark Act, 15 U.S.C. 1052(a), on the
ground that applicant's mark consists of or comprises matter

¹ Application Serial No. 75/006,702, filed October 17, 1995,
based upon an allegation of a *bona fide* intention to use the mark
in commerce.

Serial No. 75/006,702

which falsely suggests a connection with a professional
football team known as the Pittsburgh Steelers, a member

team of the National Football League, operated by Pittsburgh Steelers Sports, Inc., and located in Pittsburgh, Pennsylvania.

Applicant has appealed the final refusal to register. The case was fully briefed, and an oral hearing was held before the Board. We reverse the refusal to register.

Section 2(a) of the Trademark Act prohibits, *inter alia*, the registration of a mark if it "consists of or comprises ... matter which may ... falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols."

In order to prevail on this ground, the Trademark Examining Attorney must demonstrate that:

- (1) applicant's mark is the same or a close approximation of a name or identity previously used by the Pittsburgh Steelers;
- (2) the mark would be recognized as such;
- (3) the Pittsburgh Steelers are not connected with the products being marketed by the applicant under the mark; and,
- (4) the Pittsburgh Steelers' name or identity is of sufficient fame or reputation that when the applicant's mark is used in connection with its goods, a connection with the Pittsburgh Steelers would be presumed.

See *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

Applicant argues that the Trademark Examining Attorney has failed to show that the term "Blitzburgh" is actually used by a professional football team; that this term is part of the Steelers' "persona"; and that the football team is the "prior user."

The record herein demonstrates that "Blitzburgh" was an oft-used nickname for a defensive scheme associated with the Pittsburgh Steelers football team, beginning in 1992. As shown by excerpts from newspaper articles made of record by the Examining Attorney, the term "Blitzburgh" received substantial publicity in 1994. Then, from 1994 through 1996, sports writers, players, coaches and staffers from the Pittsburgh Steelers football team and other NFL teams, as well as Steelers fans in the public at large, repeatedly used the term "Blitzburgh" to refer to this dominating pass rush employed by the Pittsburgh Steelers. The Trademark Examining Attorney found nearly seven hundred media citations to this expression, all referring in some manner to this "complicated" and "aggressive" defensive scheme.

Applicant argues, however, that nothing in the record suggests that the Pittsburgh Steelers team itself ever adopted this "persona." While it is arguably not required, we have to agree that there is no showing that the team itself actually adopted and used this term. We also find it

probative that neither the NFL nor the Pittsburgh Steelers specifically objected to the use of the word mark "BLITZBURGH" during their litigation against a local brewery using this word prominently as a trademark for beer.² Rather, the plaintiffs in that action objected only to the defendant's use of the team's colors, references to the hype among Steelers' fans hoping to return to the Super Bowl ("The Road to Phoenix"), etc. Finally, as applicant argues, even to the present date, the Pittsburgh Steelers have not applied for a federal trademark registration for the term "Blitzburgh," nor is there even any indication they have taken steps to support common law rights. It is indeed difficult to conclude on the record before us, that a slang expression that achieves recognition among sports aficionados, but has not been appropriated or exploited by the sports team itself, can be deemed to be the "persona" of that organization.

The Trademark Examining Attorney argues that sports teams use, and frequently register, their team names, nicknames, mascots, etc., for exactly the same collateral items as those set forth in applicant's identification of

² National Football League Properties, Inc. and Pittsburgh Steelers Sports, Inc., plaintiffs, v. Pittsburgh Brewing Company, defendant (Civ. Action No. 97-0638, filed in the United States District Court for the Western District of Pennsylvania, April 9, 1997).

goods -- namely, clothing items, such as hats and shirts. Even if such is indeed the case, it is certainly entirely too speculative to suggest that at some point in the future, the Pittsburgh Steelers might well begin to use or seek to register the term "Blitzburgh."

Another troubling weakness of the refusal herein is that while this term may have been popular among sports fans for a year or two, the renown of such terms in sports is often transient. With abrupt changes in personnel and team performance, the record suggests that there was no longer any reason for sports writers, team personnel or fans to enthuse over "Blitzburgh." It would appear that, at that point, "Blitzburg" joined many other expressions as an historic footnote, known only to the most serious of sports trivia buffs. Hence, we find that even by the time the evidentiary record in this case was closing (late in 1997), there was a dearth of evidence to show that this term was still of sufficient fame or reputation to support a finding of a false suggestion of connection with the Pittsburgh Steelers.

Given the record as reviewed above, we have serious doubt as to the present fame of this persona as applied to the Pittsburgh Steelers. However, in the event Pittsburgh Steelers Sports, Inc., and/or the National Football League

Properties, Inc. believe they would be damaged by the Patent and Trademark Office's issuing applicant a federal trademark registration for "BLITZBURGH" for these clothing items, they will have an opportunity under Section 13 of the Trademark Act to oppose registration of this mark. In such an *inter partes* setting, a plaintiff could well present evidence not available to the Trademark Examining Attorney during this *ex parte* process.

Decision: The refusal to register is reversed.

T. J. Quinn

G. D. Hohein

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board