

3/7/01

Hearing:
March 17, 1999

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Reebok International Limited and Reebok Sports Limited
v.
Antoine R. Konstantin and Geraldine S. Konstantin

—
Request for Reconsideration
—

Opposition No. 91,238
to application Serial No. 74/286,573
filed on June 12, 1992
—

Larry C. Jones of Alston & Bird LLP for Reebok International
Limited and Reebok Sports Limited.

Antoine R. Konstantin and Geraldine S. Konstantin, pro se.
—

Before Hanak, Wendel and Bucher, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Antoine R. Konstantin and Geraldine S. Konstantin
(hereinafter referred to collectively as "applicant") seek
reconsideration of this Board's decision of November 1,
1999. Applicant has filed a sixteen page brief in support
of its request.

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Reebok International Limited and Reebok Sports Limited (hereinafter referred to collectively as "opposer") filed a seven page brief in opposition to applicant's motion for reconsideration.

Before dealing with the request for reconsideration, one preliminary point deserves discussion. As noted at page three of the decision, an oral hearing was held on March 17, 1999 at which only counsel for opposer was present. Applicant was not present.

On November 30, 1998 counsel for opposer requested an oral hearing. Attached to the request was a certificate of service reflecting that counsel for opposer had sent a copy of the request for an oral argument to applicant at its new, correct address in Boca Raton, Florida. On December 29, 1998 this Board sent a letter to counsel for opposer, with a copy to applicant, informing both counsel for opposer and applicant that an oral hearing was scheduled at the Board on March 17, 1999. Unfortunately, this letter was sent to applicant at its old, incorrect Deerfield Beach, Florida address and not at its new, correct Boca Raton, Florida address.

In its request for reconsideration, applicant stated that the request was "made on the grounds that applicant was prejudiced by not being notified of the oral argument March 17, 1999 and that the majority of the Board erred in their

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decision to deny applicant the right to registration of the mark REEDA in Class 28." At page nine of its brief, applicant again stated in essence that it was prejudiced by not being present at the oral hearing.

In order dated September 12, 2000 this Board allowed applicant the opportunity to have a second oral hearing. Applicant responded by stating that it did "not wish another oral argument scheduled in this case." Applicant stated that "another oral argument would not rectify this situation that applicants were not informed of the 8/17/99 [sic] oral argument and would not give applicants the opportunity to know what was discussed at the first oral argument."

This Board respectfully disagrees with applicant regarding the curative properties of a second oral argument. To whatever extent applicant was prejudiced by not being present at the March 17, 1999 oral argument, we believe that this prejudice would have been eliminated by a second oral argument. Applicant's paper declining a second oral argument is dated September 30, 2000 and was received by the Board on October 5, 2000. As a practical matter, a second oral hearing could not have been scheduled any earlier than late 2000, well over one and one half years after the first oral argument was held on March 17, 1999. Any notes taken by the Administrative Trademark Judges at the first oral hearing would have long since been destroyed. In short, a

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second oral argument held in late 2000 or early 2001 would truly have been a "fresh" argument.

Turning to the merits of applicant's request for reconsideration, the majority of this Board is not persuaded that its original decision was in error. Accordingly, the request for reconsideration is denied.

As noted on a number of occasions in the original decision, the majority based its finding that there would be a likelihood of confusion in large part on the great fame of opposer's REEBOK mark. The majority's significant reliance on the great fame of opposer's REEBOK mark is fully in keeping with the teachings of our primary reviewing Court. In a decision rendered subsequent to our November 1, 1999 decision, the Court reiterated the importance of taking into account the fame of a plaintiff's mark in any likelihood of confusion analysis. Recot Inc. v. M. C. Becton, _____ F.3d _____, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). In particular, the Court noted that the Board in Recot erred when it set forth a rule "that the fame of the FRITO-LAY marks extends no further than the products with which the marks are currently used." 54 USPQ2d at 1897.

Applicant and the dissenting Administrative Trademark Judge have stated that applicant's card game is dissimilar from the vast array of products for which opposer has registrations for REEBOK or for which opposer is the prior

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user. Opposer's goods include a wide array of both apparel and recreational items, as well as such diverse items as pens, pencils, stationery, key chains and toy radios. Given the vast array of goods (and services) for which opposer has prior rights in its REEBOK mark, a consumer encountering a card game bearing a similar mark would, in the judgement of the majority, not be at all surprised that this common, consumer item was yet another item in the vast line of REEBOK products.

Decision: The request for reconsideration is denied.

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Wendel, Administrative Trademark Judge, Concurring in part and Dissenting in part:

I concur with the majority that a second oral hearing would have eliminated any prejudice to applicant by not having been properly notified of the original hearing.

I stand by my original dissent with respect to the merits of the decision issued November 1, 1999.