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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Redneck Entertainment, Inc.

Serial No. 76529701

Peter J. Alessandria, Esq. for Redneck Entertainment, Inc.

Florentina Blandu, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Hanak, Quinn and Walters, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Redneck Entertainment, Inc. (applicant) seeks to
register in standard character form REDNECK RICHES for
"gaming machines for playing electronic games of chance."
The intent-to-use application was filed on July 17, 2003.

Citing Section 2(d) of the Trademark Act, the Examining
Attorney refused registration on the basis that applicant's
mark, as applied to applicant's goods, is likely to cause
confusion with the mark REDNECK previously registered in

standard character form for "computer programs for video games and computer games and instruction manuals sold as a unit with the programs, and computer programs for video games and computer games which may be downloaded from a global computer network." Registration No. 2,448,883.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the marks, we recognize that in comparing applicant's mark and registrant's mark we are obligated to compare the marks "in their entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985). However, in comparing the marks in their entirety, it is completely appropriate to give less weight to a portion of a mark that is, at a minimum, highly

suggestive of the relevant goods. National Data, 224 USPQ at 751.

Obviously, the registered mark consists simply of the single word REDNECK. There is no dispute that as applied to applicant's goods and registrant's goods the work REDNECK is an entirely arbitrary word. In creating its trademark, applicant has taken the entirely arbitrary word REDNECK and merely added to it the word RICHES. As applied to applicant's goods and registrant's goods, we find that the term RICHES is, at a minimum, highly suggestive of the two sets of goods. Indeed, at page 1 of its brief, applicant concedes that "consumers [interested in such goods] are naturally attuned to a word like 'Riches' since it has a special significance to those playing casino games for money."

However, before we explain our reasoning, one point should be clarified. At page 3 of her brief, the Examining Attorney has stated that registrant's goods include "computer programs for video games and computer games." At page 1 of its reply brief, applicant makes the following statement: "The goods covered by the Registrant's mark are 'computer programs for video games and computer games.'" While the cited registration includes additional goods, both applicant

and the Examining Attorney have focused simply on registrant's "computer programs for video games and computer games." Because these are some of the goods of the cited registration, we too will focus simply upon registrant's "computer programs for video games and computer games." The fact that these programs for games may be downloaded from a global computer network does not alter our analysis.

The term "riches" is defined as follows: "valuable possessions; much money." Webster's New World Dictionary (2d ed. 1996.). Obviously, the whole point of "gaming machines for playing electronic games of chance" is to obtain money, and hopefully much money. Applicant does not argue to the contrary. Moreover, registrant's "computer programs for video games and computer games" can include gaming video games and gaming computer games, a point which will be discussed at greater length when we turn to an analysis of applicant's goods and registrant's goods. Thus, the term "riches" as applied to both applicant's goods and at least certain of registrant's goods is, at a minimum, highly suggestive in that it readily identifies the object of playing said games, namely to obtain "riches," that is, money.

Thus, while we are obligated to compare the two marks in their entireties, in doing so we give less weight to the second word in applicant's mark because it is, at a minimum, highly suggestive of applicant's goods and at least certain of registrant's goods. As noted earlier, this is an entirely appropriate approach pursuant to the teachings of National Data, 224 USPQ at 751.

The marks are also similar for a second reason in that the arbitrary term REDNECK constitutes the entirety of the registered mark and it is the first word in applicant's mark. Because it is "the first word" in applicant's mark, this is a factor which makes "the marks similar." Palm Bay Imports, Inc. v. Veuve Clicquot, 396 F.3d 1369, 73 USPQ2d 1689, 1690 (Fed. Cir. 2005). See also Presto Products v. Nice-Pak Products, 9 USPQ2d 1825, 1897 (TTAB 1998) (The fact that two marks share the same first word is generally "a matter of some importance since it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.").

Finally, the marks are also similar because both are depicted in standard character form (typed drawing form). This means that the two marks are not limited to being "depicted in any special form," and hence we are mandated to

"visualize what other forms the mark[s] might appear in."

Phillips Petroleum Co. v. C. J. Webb Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

One reasonable manner of presenting applicant's mark would be to depict the entirely arbitrary word REDNECK in large lettering on one line, and then depict the, at a minimum, highly suggestive term RICHES in decidedly smaller lettering on a second line. When so depicted, the two trademarks would be extremely similar.

Turning to a comparison of applicant's goods and certain of registrant's goods (computer programs for video games and computer games), applicant makes the error of attempting to distinguish its goods from registrant's goods by focusing on its actual goods and registrant's actual goods. Applicant argues that its gaming machines "are only available in Indian casinos." (Applicant's brief page 3). On the other hand, applicant argues, without any evidentiary support, that registrant's "computer games are used solely for family or social entertainment ... There are no opportunities to win cash or prizes." (Applicant's brief page 2).

It is well settled that in Board proceedings, "the question of likelihood of confusion must be determined based

on an analysis of the marks as applied to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services recited in [the cited registration], rather than what the evidence shows the goods and/or services to be." Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1491, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). Applicant's description of goods contains absolutely no limitation that its gaming machines will be used solely in Indian casinos. Moreover, at least certain of registrant's goods (computer programs for video games and computer games) are described in a broad enough fashion to include both games where money is not involved and games where money is involved. In this regard, we note that the Examining Attorney has made of record a number of advertisements taken from the Internet where various entities offer both computer games that can be played with no money involved and computer games that are indeed gaming machines where money is most certainly involved.

Thus, as set forth in the application and cited registration, we find that applicant's goods and at least certain of registrant's goods are closely related. Applicant's goods are "gaming machines for playing electronic games of chance" and certain of registrant's goods are

"computer programs for video games and computer games."

There is no restriction in the cited registration that states that the computer programs for video games and computer games shall be limited to games not involving money.

In summary, given the fact that applicant's goods and registrant's goods are closely related and the additional fact that applicant's mark and registrant's mark are similar, we find that were applicant to use its mark there would exist a likelihood of confusion.

Decision: The refusal to register is affirmed.