

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed:
06 April 2006
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lac Du Flambeau Band of Lake Superior Chippewa
Indians

Serial No. 76546220

Eric O. Haugen of the Haugen Law Firm PLLP for Lac Du
Flambeau Band of Lake Superior Chippewa Indians.

Mark T. Mullen, Trademark Examining Attorney, Law Office
111 (Craig D. Taylor, Managing Attorney).

Before Hohein, Holtzman, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On September 8, 2003, Lac Du Flambeau Band of Lake
Superior Chippewa Indians (applicant) applied to register
the mark PLAYER PRIVILEGES (in standard character form) on
the Principal Register for "casino services featuring

Ser No. 76546220

awards for casino patrons" in Class 41.¹ Applicant has disclaimed the word "player."

The examining attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) because of a likelihood of confusion with the same mark, PLAYER PRIVILEGES (in standard character form), for "arranging and planning travel tour packages" in Class 39, which is the subject of Registration No. 2,453,809 (issued May 22, 2001).

The examining attorney notes that the marks are identical and argues that casinos are commonly found in hotels and that it "must be assumed that [registrant's services] could include an awards program for frequent casino patronage as well as a host of other possible discount coupons or bonus programs." Brief at 7.

Applicant's position (Brief at 5) is that:²

¹ Serial No. 76546220. The application is based on an allegation of a bona fide intention to use the mark in commerce. Applicant is a "Federally Recognized Indian Tribe."

² We note that the original registrant is listed as Preferred Hotels Association and the most recent assignee is listed as Preferred Hotels & Resorts Worldwide, Inc. (Reel/Frame No. 2670/0164) but hotel services are not included in the identification of services. We do not limit or expand the registrant's goods or services based on how registrant actually does business. Accord Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration")

In order to arrive at the conclusion that the services at issue are somehow related, the Examining Attorney has had to apply the following logic: Applicant's services are defined as "casino services featuring awards for casino patrons" ... Applicant's services at issue hav[e] *nothing* to do whatsoever with "arranging and planning travel tour packages." Applicant's services do have something to do with casinos. Further, while Applicant's services have nothing to do with hotels, casinos are commonly found in hotels... Registrant is not a hotel but hotels have been known to offer travel tour packages. The relevant market will, therefore, believe that Applicant and Registrant are both somehow associated with a hotel, and that it is that hotel offering travel tour packages under the PLAYER PRIVILEGES mark, even though, in reality, neither party offers hotel services of any sort.

After the examining attorney made the refusal final, applicant appealed.

When we analyze likelihood of confusion cases, we consider the facts in relation to the factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); and Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We first consider the similarities and dissimilarities of the marks in the application and registration. There is no dispute that applicant's and registrant's marks are for the identical term, PLAYER PRIVILEGES. This factor certainly favors the examining attorney's position.

The next critical issue in this case is the relatedness of the services. Applicant's services are "casino services featuring awards for casino patrons" and registrant's services are "arranging and planning travel tour packages." Obviously, the services are not identical and the question then becomes whether the services are related. The evidence of relatedness of the services includes a webpage from the "Bellagio Las Vegas" indicating that the hotel has gaming and "offers the following special rates." The site includes a link to the Bellagio's "Players Club." The examining attorney also includes webpages from www.travel-destinations.com where purchasers can "Book Your Casino Vacation Online & Save." The site includes a two-page list of casinos in Mississippi, New Jersey, and Nevada as well as the room rates for these "Casino Hotels." See, e.g., "Casino Magic & Golf Resort - Bay Tower, Bay St. Louis, As low as \$78." We note that "goods or services need not be identical or even competitive in order to support a finding of likelihood of

confusion." In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991). See also Time Warner Entertainment Co. v. Jones, 65 USPQ2d 1650, 1661 (TTAB 2002). If purchasers are likely to assume that the services are associated with a common source, the services can be related enough to support a conclusion that confusion is likely.

In this case, we have evidence that casinos are associated with hotels. In addition, rooms at hotels with casinos can be booked on line. The examining attorney's other evidence shows that a hotel/casino in Las Vegas has rooms that can be reserved online and that at another site you can "book your own casino vacation" at various United States casinos.

However, the services in this case are arranging and planning travel tour packages and casino services featuring awards for casino patrons. Tour packages can be arranged to almost any destination and for almost any activity. It is assumed that companies arrange and plan tours to historical sites, sporting events, cultural activities, and other entertainment activities.³

³ For example, the www.travel-destinations.com site includes links for "Ski Lodging Vacations Specials," "Golf Hot Spots," "Luxury Spa Lodging," and "Country Weddings."

The simple fact that tours can be arranged to an activity does not establish that services such as casinos, golf, wedding-related services, soccer events, marathons, and museums are related to tour planning services. If that were the case, virtually every activity would be related to tour planning services and there is no evidence that consumers make this broad association. Furthermore, merely because rooms at the Bellagio can be booked online does not show that consumers would associate casino services with arranging and planning travel tour packages. Therefore, it is unlikely that the prospective purchasers would rely on these common occurrences to assume that the services in this case are related.

In addition, the examining attorney argues (brief at 7) that "registrant's services could include providing a casino service such as an awards program for frequent play." However, this is simply a matter of speculation. We are constrained to consider the services as they are described in the application and registration. Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods"). See also Octocom Systems, Inc. v. Houston Computers Services Inc., 918 F.2d

937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Based on the record, we cannot conclude that there is any significant relation between the services here. In re Coors Brewing Co., 343 F.3d 1340, 68 USPQ2d 1059, 1064 (Fed. Cir. 2003) (“[D]egree of overlap between the sources of restaurant services and the sources of beer is *de minimis*”).

Another factor we consider is that while the marks in this case are the same, PLAYER PRIVILEGES, the mark is not an arbitrary or unique term; rather it is a suggestive one and, as such, is afforded a more limited scope of protection. The term “privilege” means “a right, immunity, or benefit enjoyed only by a person beyond the advantages of most.” *The Random House Dictionary of the English Language (unabridged)* (2d ed. 1987).⁴ The PLAYER PRIVILEGES mark thus suggests that the customers of applicant’s and registrant’s services will receive benefits beyond that of other consumers.

We conclude that if the mark PLAYER PRIVILEGES were used in connection with the identified services, confusion would not be likely.

⁴ We take judicial notice of this definition. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Ser No. 76546220

Decision: The refusal to register under Section 2(d) of the Trademark Act is reversed.