

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINATION OPERATION

In re: trademark application

Serial No. 88/402,910
For the Mark: "COFFEE BREAK GAMES"
Applicant: Huuuge Global Limited
Filed Date: April 25, 2019

Examining Attorney: William Jackson
Law Office: 117

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

Dear Commissioner:

The following is in response to the Office Action dated July 9, 2019 (the "Office Action").

In the Office Action, the U.S. Patent & Trademark Office (the "USPTO") issued a refusal of the mark "COFFEE BREAK GAMES" (the "Mark") as applied for by Huuuge Global Limited ("Applicant") under Section 2(d) citing a likelihood of confusion with the mark "COFFEE BREAK MANIA" in U.S. Registration No. 4,720,116 (the "Registered Mark").

The Office Action also required a disclaimer of the term "GAMES" as it appears in the Mark, which Applicant notes is being submitted concurrently via the TEAS system with this response.

Applicant is now filing this response in connection with a petition to revive the Mark application with the corresponding fee.

Applicant believes the following fully addresses all matters in the Office Action, and provides arguments and evidence supporting registration of the Mark on the Principal Register.

Reconsideration of the Mark is respectfully requested in light of this response.

THE REGISTERED MARK HAS A DISTINCT MEANING AND COMMERCIAL IMPRESSION RESULTING FROM USE OF THE DISTINCT TERM "MANIA"

While Applicant believes the Office Action correctly cited to relevant general legal authorities for a Section 2(d) examination of similarity between marks, Applicant believes the Office Action's refusal was issued in error because the USPTO failed to examine the marks in

their entireties and to take into consideration specific authorities and facts which are relevant to the present examination.

Applicant specifically disagrees that the Mark shares the same overall meaning and commercial impression as the Registered Mark, namely because the Registered Mark employs a unique and highly distinct term “MANIA”, which distinguishes it from Applicant’s Mark.

Applicant submits that the following authorities are relevant:

Similarity in commercial impressions of marks must be determined based on the entirety of the examined marks. *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F. 2d 1056, 1058 (Fed. Cir. 1985); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340-41, 115 USPQ2d 1671, 1676 (Fed. Cir. 2015) (noting that the overall impression of a mark may well not be adequately captured by a dissection of its component parts); TMEP 1207.01(b) *et seq.*

Additions *or* deletions to marks may be sufficient to avoid a likelihood of confusion if (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. *See, e.g., Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 1356, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011).

Consumers are more likely to perceive fanciful, arbitrary, or suggestive terms in compound word marks as “dominant”, rather than terms which are commonly used, or “weak” in terms of trademark strength, and that confusion is unlikely unless there are other commonalities between examined marks. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338-40, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015); TMEP §1207.01(b)(viii).

Evidence of a mark’s context of use in actual commerce can be used to demonstrate the connotative significance and commercial impression of terms in a mark. *See 7-Eleven, Inc. v. Lawrence I. Wechshler*, 83 USPQ2d 1715, 1721 (TTAB 2007); *In re Nationwide Industries*, 6 USPQ2d 1882, 1884 (TTAB 1984).

Significant differences in meaning and commercial impression, especially for marks with multiple connotative meanings, may avoid likelihood of confusion when examined in light of the specific types of goods claimed in application, and even when those goods are related for trademark purposes. *See In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984) (PLAYERS for shoes implying fit and purpose for the product v. PLAYERS for underwear implying conjugal modes of use); *see also In re Sears, Roebuck & Co.*, 2 USPQ2d 1312, 1314 (TTAB 1987) (CROSS-OVER for bras implying goods construction v. CROSSOVER for sportswear implying fitness of use); TMEP §1207.01(b)(v).

In the present case, the Office Action failed to appreciate the significance the respective third terms in each mark represents, as each provides connotative suggestiveness that creates significant differences in overall commercial impression between the marks.

In the case of the Registered Mark, “MANIA” (as defined by “excitement manifested by mental and physical hyperactivity) creates an impression of excessive energy or overactivity. *See* Exhibit A.

Applicant believes this term bolsters the impression of “COFFEE” as a merely descriptive term in the Registered Mark, the common (side) effects of consumption of which include an increase in mental and physical performance, as well as nervousness, restlessness, and increased heart and breathing rate. *See* Exhibit B.

Applicant also notes that all the terms of the Registered Mark appear to describe the thematic subject matter/premise of the Registrant’s electronic game, which appears to depict gameplay requiring the “breaking” of cups of coffee in an “action-packed” game. *See* Exhibit C.

Taken together, Applicant submits that the term “COFFEE BREAK” in the Registered Mark is merely descriptive or so highly suggestive (notwithstanding its placement in the mark) that it should be afforded less weight in examination, and/or that “MANIA” as an additional element is critical in creating a distinct impression of “manic” or energetic gameplay or subject matter of Registrant’s game.

Notwithstanding the fact that Applicant will disclaim the term “GAMES”, Applicant’s Mark creates no such impression of “mania” or “manic” activity, and the term “GAMES” is significant in terms of creating a distinct commercial impression.

When used in Applicant’s Mark, the term “GAMES” highlights a pleasant and entertaining experience a user might have similar to a “coffee break” as a brief *rest* period for refreshment and diversion. *See* Exhibit D.

Use of the term “GAMES” in this fashion serves to bolster a meaning and impression for the term “COFFEE BREAK”, which is suggestive of relaxation and enjoyment, which is highly contrasting with “mania” or any sort of frenetic activity.

For these reasons, Applicant believes the marks are so distinct in overall appearance, sound, meaning, connotation, and commercial impression that source confusion is not likely.

SIMILARITY OF GOODS IS IRRELEVANT TO THE PRESENT CASE

Without conceding that Applicant’s goods associated with “COFFEE BREAK GAMES” are related to those of the Registrant, Applicant submits that a likelihood of confusion is not applicable in the present case due to the highly contrasting commercial impressions created by the examined marks.

Applicant's Mark contains additional matter beyond the term "COFFEE BREAK" that conveys such a distinct meaning and nuance to those words that its resulting commercial impression cannot rightly be seen as similar to that in the Registrant's Mark.

As discussed above, the third terms in each mark provides nuance to the words "COFFEE BREAK", and provides a means to distinguish those words by *subject matter* of gameplay (in the case of Registrant) v. *suggestive effect* similar to that of a coffee break (in the case of Applicant).

For that reason, as was found in in *In re British Bulldog* and *In re Sears, Roebuck & Co.* (both of which found no likelihood of confusion due to highly different commercial impressions emanating from *identical* wording with no additional matter for highly related goods), Applicant believes relatedness of goods should be afforded little consideration in the present examination.

As such, Applicant submits that it was in error to find a likelihood of confusion on the perceived similarity between Applicant's and Registrant's goods.

REQUEST FOR REGISTRATION

For at least these foregoing reasons, Applicant believes the Office Action's refusal was issued in error. Accordingly, Applicant respectfully requests that the USPTO withdraw its refusal and permit registration of the Mark on the Principal Register.

Respectfully submitted,

/N Park/
Neil Park

March 20, 2020
DATE

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