

LEASON ELLIS

One Barker Avenue
Fifth Floor
White Plains, New York 10601-1526
t: 914.821.3084
f: 914.288.0023

Deirdre Clarke
Clarke@LeasonEllis.com

December 23, 2015

Reference No.: 05839/309571-USO

Via First-Class Mail

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail to Addressee in a prepaid envelope with sufficient postage addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on December 23, 2015.

Date of Deposit: December 23, 2015

Deirdre A. Clarke



Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451
Attn: Raul Codova, Esq., Law Office 114

RE: Supercell OY
U.S. Trademark App. Serial No. 79/166,418
HAY DAY in Classes 6, 9, 16, 18, 20, 21, 25, 26 and 28

Dear Sir/Madam:

Please find enclosed the response to the Office Action issued on June 23, 2015.

Sincerely,



Deirdre Clarke

{DC/MISC/01422644.1}



12-28-2015

U.S. Patent & TMO/TM Mail Rpt Dt. #11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Supercell Oy :
Serial No.: 79166418 : Raul Cordova
Filed: May 24, 2004 : Trademark Examining Attorney
Trademark: HAY DAY : Law Office 114

Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

RESPONSE TO OFFICE ACTION

This is in response to the Office Action dated June 23, 2015.

ARGUMENT

The Examining Attorney cites Registration No. 3399120 of the mark HEYDAY covering “footwear; clothing, namely t-shirts as a blocking mark as to Class 25 only. Applicant respectfully submits that confusion with the cited mark is unlikely for the reasons discussed below.

I. The Goods as Amended Are Not Closely Related

Applicant has amended its identification of goods in Class 25 to cover just the following: Class 25: Clothing, footwear, headgear; T-shirts, sweat shirts, shirts, blouses, vests; jeans, pants, shorts; underwear, sportswear; socks; coats, jackets, suits; skirts; scarves; gloves, mittens; bathing suits, pajamas, negligee robes, bathrobes; caps and hats all the aforementioned to promote a computer game.

The remaining goods are not closely related to those covered by the cited mark. A clothing line specifically geared towards the promotion of a computer game will not be confused with a popular line of shoes, sneakers and t-shirts for weight-lifting, body building and training as provided by Registrant. See the attached printout from TSDR showing the specimen of use provided. The only way to find a relationship between these goods is to lump them into an overbroad relatedness category, such as “clothing,” a practice which the C.C.P.A. and other tribunals have cautioned the P.T.O. against doing. *See, e.g., Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 U.S.P.Q. 151 (C.C.P.A. 1978) (RED ZINGER for herbal tea not confusingly similar to the ZINGER snack cake). A clothing line geared toward the promotion of a specific computer game and shoes for bodybuilding are not related in any commercially meaningful manner.

II. The Marks Are Different

There are noticeable differences between the marks. The cited mark is HEYDAY. Consumers will automatically think of the word’s meaning which is high spirits or the period of one’s greatest popularity, vigor or prosperity. See Exhibit B. The term connotes great fortune or success that consumers will receive in using the goods of the registrant. By contrast, Applicant’s mark HAY DAY, which will make a consumer think of a farm or barn as one would associate with hay. Indeed, the computer game under this mark is a mobile farming game. Marks which have such different connotations are often held not confusingly similar, even when applied to the same types of goods or services. *See, e.g., Safeway Stores Inc. v. The Bell Canto Fancy Foods Ltd.*, 5 U.S.P.Q.2d 1980, 1982 (T.T.A.B. 1987)(finding no likelihood of confusion between BEL ARIA for food products and BEL-AIR for frozen food products). The differences between the marks in

spelling and meaning will alert consumers that the goods come from different and unrelated sources.

III. The Consumers are Sophisticated

Those who would seek out registrant's goods are presumably sophisticated about the source of those goods specifically bodybuilding and training footwear and t-shirts. Similarly, those who will download Applicant's mobile computer game and purchase items clothing items associated with the game will be knowledgeable and discriminating. Neither good is the kind normally purchased on impulse.

The Federal Circuit has cautioned the P.T.O. not to overlook the great importance of consumer sophistication in deciding whether confusion is likely. The decision in *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 21 U.S.P.Q.2d 1388 (Fed. Cir. 1992) is instructive. The Federal Circuit there held that confusion was unlikely between E.D.S. for computer services and EDS for power supplies and battery chargers because the buyers were sophisticated commercial purchasers. The Federal Circuit strongly stressed that the sophistication of discriminating customers is an extremely important likelihood of confusion factor, even in cases where the marks are identical. Indeed, the Court reversed the Board's finding of likely confusion because the Board "apparently failed to consider, and certainly failed to address, the sophistication of buyers." 21 U.S.P.Q.2d at 1392. Here, as discussed above, the marks are not even identical.

With the above, Applicant respectfully requests that the Examining Attorney withdraw the cited mark as an obstacle to registration and approve the instant application for publication.

AMENDMENT

Please delete the present identification of goods and substitute the following:

Class 6: Chains and rings of common metal; Statuettes of common metal; non-electric locks of metal; trophies of common metal; nameplates of common metal; rings and chains of common metal for keys

Class 9: Fitted Bags, cases and sleeves for storing and carrying telephones, computers, headphones, cameras covers for mobile phones, portable computers and tablets; headphones; downloadable electronic publications in the nature of magazines and books in the field of computer games; decorative magnets; portable blank flash memory card; straps for electronic apparatus, namely, telephones, mobile phones, computers, portable computers, cameras, and tablets; power supplies [electrical]

Class 16: Paper and cardboard; comic books; newspapers, photographs, general feature magazines, books in the field of computer games, printed periodicals in the field of computer games, newsletters in the field of computer games, notebooks, and brochures in the field of computer games; computer game instruction manuals; writing paper and envelopes; calendars; bookmarks; notebook, calendar and business card covers; packing paper, wrapping paper and packaging materials namely paper bags for packaging; cardboard boxes; party decorations made of paper; pens, erasers; posters, paper banners; figures made of paper; paper bags; sticker albums, stickers; cards, namely business cards and greeting cards, post cards, collectable cards, trading cards; printed paper signs

Class 18: all purpose sport bags; carry-all bags; leather bags, suitcases and wallets; shoulder bags; textile, shopping bags; hand bags; luggage; school bags

Class 20: Furniture; sculptures made from plastic; mobiles being decorative articles; storage boxes made from wood; decorative wooden objects, namely figures made of wood; baskets, not of metal, namely baskets for storing goods; trophies of plastic; nameplates, not of metal; figures made of plastics

Class 21: Household or kitchen utensils, namely, rolling pins, spatulas, turners, scoops, and whisks; containers for household or kitchen use; mugs; bottles and vacuum bottles sold empty; statues of china or glass; beverage glassware; candlesticks; candle rings; works of art made of glass; coupes and vases; works of art, of porcelain, terra-cotta or glass

Class 25: footwear, headgear, namely, beanies; T-shirts, sweat shirts, shirts, blouses, vests; jeans, pants, shorts; underwear, sportswear; socks; coats, jackets, suits; skirts; scarves; gloves, mittens; bathing suits, pajamas, negligee robes, bathrobes; caps and hats all the aforementioned to promote a computer game.

Class 26: Lace and embroidery, ribbons and braid; buttons, hooks and eyes, ornamental novelty pins and needles; barrettes hair-slides, hair pins, and hair ties; hat pins; ornamental novelty button badges and pins; trimmings for clothing, namely, lace trimmings, and ornamental novelty badges; shoe ornaments, not of precious metal; brassards; buttons; belt buckles

Class 28: Action figures; play sets for action figures; game cards; non-electric hand-held action skill games; soft dolls; toys, stuffed toys, water toys, wooden toys, namely, mechanical and battery operated action toys, toy weapons, toys made of plastics, namely, mechanical and battery operated action toys, toy weapons; children's multiple activity toys; puzzles; balloons; playing cards; bags, cases and sleeves specially adapted for storing and carrying apparatus for games, namely, hand held units for playing computer games, joysticks, and game consoles

SIGNIFICANCE

The term "HAY DAY" has no meaning or significance in the industry in which the goods are manufactured nor is the mark a "term of art" within applicant's industry.

ATTORNEY ADDRESS

Applicant proposes to amend to the following:

Karin Segall of Leason Ellis LLP, having an address of
One Barker Avenue, Fifth Floor
White Plains, New York 10601
United States
email: tmddocket@leasonellis.com
Tel: 914-821-9072
Fax: 914-288-0023

The attorney docket/reference number is 05839/309571-US0.
The Other Appointed Attorney(s): Attorneys of Leason Ellis LLP.

{05839/309571-US0/01422640.1}

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend to the following:

Karin Segall of Leason Ellis LLP, having an address of
One Barker Avenue, Fifth Floor
White Plains, New York 10601
United States
email: tmducket@leasonellis.com
Tel: 914-821-9072
Fax: 914-288-0023

The attorney docket/reference number is 05839/309571-US0. No further fee should be required in connection with the subject response. However, should any fee be required, the Commissioner of Patents and Trademarks is respectfully requested to charge the same to the Deposit Account of Leason Ellis LLP, Deposit Acct: 504570

Dated: December 23, 2015

FIRST-CLASS MAIL CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail to Addressee in a prepaid envelope with sufficient postage addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on December 23, 2015.

Date of Deposit: December 23, 2015


Deirdre A. Clarke

(Printed name of person mailing paper or fee)



Signature

Respectfully submitted,



Deirdre A. Clarke
Leason Ellis LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 821-3084
Fax: (914) 288-0023

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia,

{05839/309571-US0/01422640.1}

Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.