IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant Name: Sockeye Media LLC

Mark: SPRING

Ser. No. 88138750

Filing Date: October 1, 2018

Allowance Date:

Attorney Ref. No. 009520-60830

RESPONSE

Box RESPONSES NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Attention: Thomas Young, Esq.
Law Office 120

Sir:

In response to the Office action of January 11, 2019, please consider the following in support of registration:

LIKELIHOOD OF CONFUSION

The Examining Attorney has searched the Office's database of registered and pending marks and has found a mark that would, in his view, bar registration under Trademark Act Section 2(d). The Examining Attorney is of the opinion that Applicant's mark, when used on or in connection with the identified goods, so resembles the mark set forth in Reg. No. 5329888 as to be likely to cause confusion, or to cause mistake or deceive. Consequently, the Examining

Attorney has refused registration under Section 2(d). However, the Examining Attorney's refusal to register is respectfully traversed.

The goods set forth in the cited registration are "providing an online computer game". Conversely, the goods set forth in this application, as amended, are "electronic game software for wireless devices". In order to find a likelihood of confusion, the good and/or services of two parties must be related in some manner, or the conditions surrounding their marketing must be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that they come from a common source. *See In re Martins's Famous Pastry Shoppe, Inc*., 748 F.2d 1565, 233 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc*., 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott paper Co*., 200 USPQ 738 (TTAB 1978); *In re International Telephone and Telegraph Corp*., 197 USPQ 910 (TTAB 1978). In this case, the respective parties' goods are neither related nor marketed in such a way that the same purchasers could encounter them.

True, the respective parties' goods fall in the gaming field. However, to say that they are related as a consequence is to say that every letter is related because it came in an envelope or that every web site is related because it is accessible via the Internet. In sum, there is no per se rule that all goods that fall in the gaming field must as a consequence be related to such a degree that confusion is likely. The respective parties' goods are directed to different audiences via different channels of trade. Where target markets and channels of trade differ, confusion as to either source of origin or sponsorship is unlikely. The Examining Attorney is respectfully reminded that even assuming arguendo that the respective parties' marks are confusingly similar, it does not follow that the respective parties' goods are so related that consumers would be likely to

assume from the one word that the two marks that the respective parties goods share the same source.

"Sophisticated consumers may be expected to exercise greater care." *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992), quoting *Pignons S.A. de Mecaniaue de Precision v. Polaroid Corp.,* 657 F.2d 482,489 (1st Cir. 1981). When goods or services are expensive and purchased after careful consideration there is always less likelihood of confusion. *Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 1206 (1st Cir. 1983) (finding the sophistication of purchasers the most critical factor weighing against the plaintiff's claim of likelihood of confusion). In trademark cases the kind of product or service, its cost and the conditions of purchase are important factors in determining whether the degree of care that consumers of such products will exercise is sufficient to avoid a likelihood of confusion. *Grotrian, Helfferich, Sculz, Th. Steinweg; Nachf. v. Steinway & Sons*, 523 F.2d 1331, 1342 (2d Cir. 1975). Courts "must stand in the shoes of the ordinary purchaser, buying under the normally prevalent conditions of the market and giving the attention such purchasers usually give in buying that class of goods." *Luiaino's, Inc. v. Stouffer Corp.*, 170 F.3d 827, 83 1 (8th Cir. 1999).

While some games may not be particularly expensive it is also obvious that users and purchasers of games will exercise a high degree of care in choosing a source for such goods. It is reasonable to assume that consumers will be familiar with the sources of games that they frequent. No reasonable consumer would purchase games from someone they do not know or trust. The degree of inquiry that consumers are likely to make before deciding upon a game provider is so thorough as virtually to preclude confusion as to the source of those services. In other words, the goods provided by the respective parties' are not the subject of impulse buying.

Thus, it is evident that the parties' games are purchased only after careful consideration and investigation by consumers.

In sum, confusion as to either source of origin or sponsorship between the respective parties' marks is unlikely given the differing target markets and channels of trade in which the respective parties' goods travel.

REMARKS

Applicant has amended the application in a manner thought to comply with the Examining Attorney's requirements. Consequently, it is respectfully requested that the application be promptly approved for publication.

Please direct all communications to the undersigned at (615) 238-6300 or trademarks@bonelaw.com.

Sockeye Media LLC

By: _____

Name: Paul W. Kruse

Title: Attorney

Date: July 19, 2019

Submitted by:

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