

REPONSES TO OFFICE ACTION – 88262510

1. LIKELIHOOD OF CONFUSION

a. Registration No. - 3242389

As a threshold matter, Family Entertainment Group, LLC, applicant for the BONKERS trademark under Serial No. 88262510 is the owner of the GOING BONKERS mark Reg. 3242839. See Assignment Listed Below:



Word Mark	GOING BONKERS
Goods and Services	IC 041. US 100 101 107. G & S: Children's entertainment and amusement centers, namely, indoor interactive play areas. FIRST USE: 19990805. FIRST USE IN COMMERCE: 19990805 IC 043. US 100 101. G & S: Restaurant Services. FIRST USE: 19990805. FIRST USE IN COMMERCE: 19990805
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	02.11.02 - Eyes, human; Human eyes; Iris (eye) 02.11.25 - Blood vessels, human; Brain, human; Buttocks, human; Human, other parts of the body; Intestines, human; Lungs, human; Nerves, human; Nose, human; Spine, human; Tongue, human
Serial Number	78327086
Filing Date	November 12, 2003
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 3, 2005
Registration Number	3242839
Registration Date	May 15, 2007
Owner	(REGISTRANT) Going Bonkers, Inc. CORPORATION ILLINOIS 229 N. 48th Quincy ILLINOIS 623050049

(LAST LISTED OWNER) FAMILY ENTERTAINMENT GROUP, LLC
LIMITED LIABILITY COMPANY DELAWARE 1265 HAMILTON
PARKWAY ITASCA ILLINOIS 60143

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Terrence J. Anastas

Description of Mark The color(s) purple, blue, yellow and green is/are claimed as a feature of the mark. The mark consists of Two eyeballs with eyebrows above, the word "Going" in stylized letters, and the word "Bonkers" in stylized letters including a purple "B", a blue "O", a yellow "N", a green "K", a purple "E", a blue "R", and a yellow "S".

Type of Mark SERVICE MARK
(Emphasis Added.)

Applicant will not raise any infringement arguments against itself and therefore respectfully disagrees with the Examining Attorney's opinion regarding likelihood of confusion.

b. Registration No. - 2979516

Applicant disagrees with the Examining Attorney's "[r]efusal [] made as to board and card games, coin token or card-operated game machines, arcade games, coin token or card-operated video game machines" creates a likelihood of confusion. Without waiving any rights, Applicant is willing to accept the following description of goods under IC Class 028 to resolve the Examining Attorney's concerns regarding both Likelihood of Confusion and Identification of Goods and :

Games, playthings, and sporting articles, namely, puzzles, toy jewelry, balloons, dolls and plastic character toys, action figures, collectable toy figures, plush and stuffed toys, inflatable toys and dolls, water squirting toys, mechanical toys, basketballs, baseballs, soccer balls, flying discs, playground balls, handballs, and inflatable beach balls.

This changes to the description does not expand the scope of Applicant's description of goods under IC Class 028, and should therefore be adopted by the Examining Attorney.

New Identification of Goods under IC Class 028:

Games, playthings, and sporting articles, namely, puzzles, toy jewelry, balloons, dolls and plastic character toys, action figures, collectable toy figures, plush and stuffed toys, inflatable toys and dolls, water squirting toys, mechanical toys, basketballs, baseballs, soccer balls, flying discs, playground balls, handballs, and inflatable beach balls.

2. SPECIMEN

a. Class 28

Applicant disagrees with the examining attorney's finding that the specimens do not satisfy the requirements to show the applied-for-mark in use in commerce for class 28. The examining attorney claims "the specimens do not show use with any of the listed goods in International Class 028." Examples of what may serve as an acceptable specimen include "photographs that show the mark on the actual goods or packaging". *See* TMEP Sections 904.03 *et seq.*

Applicant's supplied specimens satisfy the requirements to show the applied-for-mark in use in commerce for class 28. Specifically, the specimens depict photographs of the mark on applicant's listed goods by showing the mark on toys, playthings and sporting articles – including inflatable toys, handballs, water bottles and playground balls.

b. Class 41

Applicant disagrees with the Examining Attorney's finding that the specimens do not satisfy the requirements to show the applied-for-mark in use in commerce for class 41. The examining attorney claims "the specimens . . . does not show use with the provision of amusement arcade services, in International Class 041." Examples of what may serve as an acceptable specimen include "displays associated with the actual goods [or services] at their points of sale" (*See* TMEP Sections 904.03 *et seq.*) and "webpages ... when they include a picture or textual description of the goods associated with the mark and the means to order the goods." (TMEP Section 904.03(i))

Applicant's supplied specimens satisfy the requirements to show the applied-for-mark in use in commerce for class 41. Specifically, the specimens depict brochures supplied on-line and in-person to potential customers at the point where amusement arcade services are rendered. The specimens describe amusement services by stating "unlimited maze and ride bracelets" as well as arcade services by stating "\$7 game card" and "\$10 game card & 300 tickets" while providing a means to purchase the services either via the phone number, address and/or website at the bottom with the words "Book Online!".