

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77589147
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The examining attorney has refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), finding that Applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2,945,623 as to be likely to cause confusion, to cause mistake, or to deceive. Applicant respectfully disagrees. Not only are the marks at issue dissimilar in appearance, sound, and connotation, the overall commercial impressions created by each of the marks are so dissimilar as to militate against any likelihood of confusion. Additionally, the goods travel in different channels of trade.</p> <p style="margin-left: 40px;">I. No likelihood of confusion due to the differences in appearance, sound, connotation, or overall commercial impression.</p> <p>When compared in their entireties, Applicant's mark is not so similar to the registrant's mark in appearance, sound, connotation, or overall commercial impression as to be likely to cause confusion, to cause mistake, or to deceive. First, the marks at issue are dissimilar in both sight and sound. Though both marks contain the component BOMB SQUAD, Applicant uses entirely different words for its first components. This is significant because when comparing marks, the Trademark Trial and Appeal Board has held that the first word, prefix, or syllable in a mark is typically the dominant portion. <i>Presto Products v. Nice-Pak Products, Inc.</i>, U.S.P.Q.2d 1895 (TTAB 1988). In fact, with respect to the first word, prefix or syllable of a mark, the Board articulated the following:</p>	

“[i]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered when making purchasing decisions involving the services of the applicant and registrant.” *Id.* at 1897.

These differences in the appearance and sound of the marks at issue lower the likelihood of confusion.

Second, the marks create differing commercial impressions. While “the general rule is that a subsequent user may not avoid likely confusion by appropriating another’s entire mark and adding descriptive or non-distinctive matter to it,” an exception exists “where the marks in their entireties convey quite different meanings.” 4 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 23:50 (4th ed.) The Trademark Trial and Appeal Board found that the mark CATFISH BOBBER for “fish” created an entirely different commercial impression from the mark BOBBER for “restaurant services” despite the descriptiveness of the component CATFISH and the fact the applicant disclaimed CATFISH. *In re Farm Fresh Catfish Co.*, 231 U.S.P.Q. 495 (TTAB 1986). While the mark CATFISH BOBBER suggested the dictionary meaning of a bobber which is a fishing bob or a float, the term BOBBER when applied to restaurant services was completely arbitrary and created a separate commercial impression.

Similarly, in this case, Registrant’s mark, BOMB SQUAD, when applied to clothing is completely arbitrary. However, consumers encountering the mark TYBEE ISLAND BOMB SQUAD will conjure an image of the TYBEE ISLAND BOMB. A bomb has been buried off of Tybee Island from in Wassaw Sound since 1958. See Exhibit A, http://en.wikipedia.org/wiki/1958_Tybee_Island_B-47_crash. The component SQUAD merely calls to mind a comical image of the laidback residents of Tybee Island actually taking action with respect to the bomb, such as detonation, when the bomb has been there since 1958 without being removed and most likely will be buried for years to come without much, if any, protest or concern from the residents or tourists. Registrant’s mark has no such meaning or significance and creates a separate commercial impression.

The lack of similarity between the appearance, sound, and commercial impressions of Applicant’s and Registrant’s marks decreases any likelihood of confusion.

II. No likelihood of confusion exists due to the differences in the trade channels in which the goods travel.

The differences in the trade channels through which Applicant's goods and Registrant's services are sold and the customers who ultimately purchase those goods and services further decrease any likelihood of confusion. This likelihood of confusion factor should not be considered in a vacuum but rather in the context of the actual, established channels of trade in which these goods travel and are likely to continue to travel. T.M.E.P. 1201.1. Where one party sells its goods and services to a class of buyers in a different marketing context than another seller sells its goods, the likelihood that a group of buyers will be confused by similar trademarks is less than if both parties sold their goods through the same channel of distribution. 4 J. Thomas McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 24:15 (4th ed. 2005). In this case, Applicant markets its goods to a restricted and narrow segment of the buying population, and its goods would never be sold through the same channels as Registrant's.

Applicant sells its goods to retail stores that cater to tourists and locals interested in Tybee Island, Georgia. As such, the t-shirts and clothing that are the subject of the application at issue are sold only to retail stores in the tourist industry. While the goods listed in the cited registration do not include a trade channel limitation, it is obvious that they are sold to customers in the extreme sports industry. Applicant's goods and Registrant's goods will not be found in the same store and will not be sold to the same class of purchasers.

Moreover, Applicant would like to respectfully point out that the mark POLICE NYPD 1903 BOMB SQUAD for "t-shirts, sweat shirts, and baseball caps" was allowed to register in the face of Registrant's registration. Though now abandoned, the application for the mark TANK BOMB SQUAD for "clothing-namely-sweatshirts, sweatpants, jackets, t-shirts, shorts, caps, hats" proceeded to publication after Registrant's mark registered. Though Applicant recognizes that all applications must be judged on their own merits, Applicant submits that the registration and approval of these two marks containing the component BOMB SQUAD in the face of Registrant's mark and used in connection with substantially identical goods is evidence that negates the likelihood of confusion between Applicant's mark and Registrant's mark. Applicant respectfully submits that there is no likelihood of

confusion created by the addition of its mark to the Principal Register.

Based on the foregoing, it is clear that no substantial likelihood of confusion exists between Applicant's mark and Registrant's mark. Applicant, therefore, respectfully requests the Examiner to reconsider and withdraw his refusal to register and approve the mark for publication.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2009/10/20/20091020143807534053-77589147-001_001/evi_7214911421-141047385_._http_.en.wikipedia.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT8\IMAGEOUT8\775\891\77589147\xml1\RFR0002.JPG
	\\TICRS\EXPORT8\IMAGEOUT8\775\891\77589147\xml1\RFR0003.JPG
	\\TICRS\EXPORT8\IMAGEOUT8\775\891\77589147\xml1\RFR0004.JPG
DESCRIPTION OF EVIDENCE FILE	The evidence consists of Exhibit A, a web page explaining what the Tybee Island bomb is.

SIGNATURE SECTION

RESPONSE SIGNATURE	/Kate D. Strain/
SIGNATORY'S NAME	Kate D. Strain
SIGNATORY'S POSITION	Attorney for Applicant
DATE SIGNED	10/20/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

FILING INFORMATION SECTION

SUBMIT DATE	Tue Oct 20 14:38:07 EDT 2009
TEAS STAMP	USPTO/RFR-72.149.114.21-2 0091020143807534053-77589 147-4608d9d3064c6a1ad82d2 cbad283867d15-N/A-N/A-200 91020141047385695

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. 77589147 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The examining attorney has refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), finding that Applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2,945,623 as to be likely to cause confusion, to cause mistake, or to deceive. Applicant respectfully disagrees. Not only are the marks at issue dissimilar in appearance, sound, and connotation, the overall commercial impressions created by each of the marks are so dissimilar as to militate against any likelihood of confusion. Additionally, the goods travel in different channels of trade.

- I. No likelihood of confusion due to the differences in appearance, sound, connotation, or overall commercial impression.

When compared in their entireties, Applicant's mark is not so similar to the registrant's mark in appearance, sound, connotation, or overall commercial impression as to be likely to cause confusion, to cause mistake, or to deceive. First, the marks at issue are dissimilar in both sight and sound. Though both marks contain the component BOMB SQUAD, Applicant uses entirely different words for its first components. This is significant because when comparing marks, the Trademark Trial and Appeal Board has held that the first word, prefix, or syllable in a mark is typically the dominant portion. *Presto Products v. Nice-Pak Products, Inc.*, U.S.P.Q.2d 1895 (TTAB 1988). In fact, with respect to the first word, prefix or syllable of a mark, the Board articulated the following:

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a purchaser and remembered when making purchasing decisions involving the services of the applicant and registrant." *Id.* at 1897.

These differences in the appearance and sound of the marks at issue lower the likelihood of confusion.

Second, the marks create differing commercial impressions. While "the general rule is that a subsequent user may not avoid likely confusion by appropriating another's entire mark and adding descriptive or non-distinctive matter to it," an exception exists "where the marks in their entireties convey quite different meanings." 4 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 23:50 (4th ed.) The Trademark Trial and Appeal Board found that the mark CATFISH BOBBER for "fish" created an entirely different commercial impression from the mark BOBBER for "restaurant services" despite the descriptiveness of the component CATFISH and the fact the applicant disclaimed CATFISH. *In re Farm Fresh Catfish Co.*, 231 U.S.P.Q. 495 (TTAB 1986). While the mark CATFISH BOBBER suggested the dictionary meaning of a bobber which is a fishing bob or a float, the term BOBBER when applied to restaurant services was completely arbitrary and created a separate commercial impression.

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The lack of similarity between the appearance, sound, and commercial impressions of Applicant's and Registrant's marks decreases any likelihood of confusion.

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likelihood of confusion. This likelihood of confusion factor should not be considered in a vacuum but rather in the context of the actual, established channels of trade in which these goods travel and are likely to continue to travel. T.M.E.P. 1201.1. Where one party sells its goods and services to a class of buyers in a different marketing context than another seller sells its goods, the likelihood that a group of buyers will be confused by similar trademarks is less than if both parties sold their goods through the same channel of distribution. 4 J. Thomas McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 24:15 (4th ed. 2005). In this case, Applicant markets its goods to a restricted and narrow segment of the buying population, and its goods would never be sold through the same channels as Registrant's.

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EVIDENCE

Evidence in the nature of The evidence consists of Exhibit A, a web page explaining what the Tybee Island bomb is. has been attached.

Original PDF file:

http://tgate/PDF/RFR/2009/10/20/20091020143807534053-77589147-001_001/evi_7214911421-141047385_.http_en.wikipedia.pdf

Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Kate D. Strain/ **Date:** 10/20/2009

Signatory's Name: Kate D. Strain

Signatory's Position: Attorney for Applicant

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, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant'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 applicant in this matter: (1) the applicant 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 applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant'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.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77589147

Internet Transmission Date: Tue Oct 20 14:38:07 EDT 2009

TEAS Stamp: USPTO/RFR-72.149.114.21-2009102014380753

4053-77589147-4608d9d3064c6a1ad82d2cbad2

83867d15-N/A-N/A-20091020141047385695

1958 Tybee Island B-47 crash

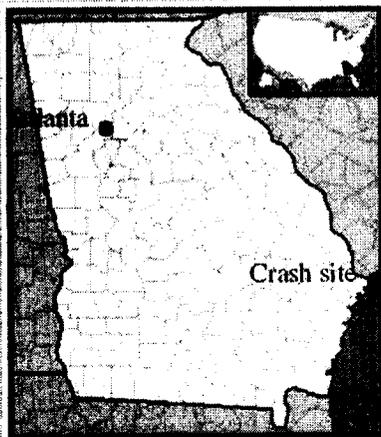
From Wikipedia, the free encyclopedia

The **1958 Tybee Island B-47 crash** was an incident on February 5, 1958 in which the United States Air Force lost a 7,600 pound (3,500 kg) Mark 15 hydrogen bomb in the waters off Tybee Island near Savannah, Georgia, USA. The bomb was jettisoned to save the aircrew during a practice exercise after the B-47 bomber carrying it collided in midair with an F-86 fighter plane. Following several unsuccessful searches, it was presumed lost somewhere in Wassaw Sound off the shores of Tybee Island.

Contents

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- 2 Recovery efforts
- 3 Bomb
- 4 Potential threat
- 5 See also
- 6 References
- 7 Footnotes
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Accident

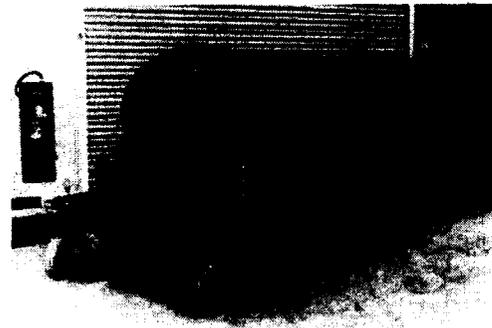


The B-47 bomber was on a simulated combat mission from Homestead Air Force Base in Florida. It was carrying a single 7,600-pound (3,400 kg) bomb. At about 2:00 AM, the B-47 collided

with an F-86. The F-86 crashed after the pilot ejected from the plane, but the B-47, despite being damaged, remained barely airworthy enough to fly. The crew requested permission to jettison the bomb in order to reduce weight and prevent the bomb exploding during an

emergency landing. Permission was granted and the bomb was jettisoned at 7,200 feet (2,200 m) while traveling about 200 knots (370 km/h). The crew did not see an explosion when the bomb impacted the sea. They managed to land the B-47 safely at Hunter Army Air Field. The pilot, Colonel Howard Richardson, was awarded the Distinguished Flying Cross after this incident for his role in piloting the B-47.

1958 Tybee Island B-47 crash



Mk15 nuclear bomb

Accident summary

Date	February 5, 1958
Type	Mid-air collision
Site	Tybee Island, Georgia 32°0′N 80°51′W

First aircraft

Type	B-47
Operator	United States Air Force
Fatalities	0

Second aircraft

Type	F-86 Sabre
Operator	United States Air Force
Crew	1
Fatalities	0
Survivors	1

Recovery efforts

Starting on February 6, 1958, the Air Force 2700th Explosive Ordnance Disposal Squadron and 100 Navy personnel equipped with hand held sonar and galvanic drag and cable sweeps mounted a search. On April 16, 1958 the military announced that the search efforts had been unsuccessful. Based upon a hydrologic survey, the bomb was thought to lie buried under 5 to 15 feet (2 to 5 m) of silt at the bottom of Wassaw Sound.

In 2004, retired Air Force Colonel Derek Duke incorrectly claimed to have found the possible resting spot of the bomb. He and his partner located the spot by trawling the area in their boat with a Geiger counter in tow. The Air Force released its report in June 2005, which stated that high radiation measurements are from naturally occurring radioactive materials, and that the location of the bomb is still unknown.^{[1][2]}

Bomb

The 12-foot (4 m) long Mark 15 bomb weighs 7,600 pounds (3,400 kg) and bears the serial number "No. 47782". It contains 400 pounds (180 kg) of conventional high explosives and highly enriched uranium.^[3] The Air Force maintains that the bomb's nuclear capsule, used to initiate the nuclear reaction, was removed prior to its flight aboard the B-47. As noted in the Atomic Energy Commission "Form AL-569 Temporary Custodian Receipt (for maneuvers)" signed by the aircraft commander, the bomb contained a simulated 150 cap (which was made of lead). However according to 1966 Congressional testimony by then Assistant Secretary of Defense W.J. Howard, the Tybee Island bomb was a "complete weapon, a bomb with a nuclear capsule," and one of two weapons lost up to that time that contained a plutonium trigger.^[4]

Potential threat

In 2001, the United States Air Force conducted a study to determine whether the bomb posed a threat to residents of the surrounding area. The study^[5] concluded that the bomb does not pose a significant threat of exploding because it is missing the nuclear capsule. The bomber pilot stated that the weapon did not have the nuclear capsule when he took off. The Air Force says with certainty that the bomb contains conventional explosives and highly enriched uranium, which could pose an environmental or proliferation threat. The Air Force determined that it was prudent to leave the bomb covered in mud at the bottom of the sea floor rather than disturb it and risk the potential of detonation or contamination.

See also

- List of nuclear accidents
- List of military nuclear accidents
- Broken Arrow

References

- "Air Force Search & Recovery Assessment of the 1958 Savannah, GA B-47 Accident". Air Force Nuclear Weapons and Counterproliferation Agency. April 12, 2001.
<http://www.af.mil/library/posture/savannah.pdf>.

- Shaughnessy, Larry (September 13, 2004). "Lost Bomb". *USA*. CNN. <http://www.cnn.com/2004/US/09/13/lost.bomb/>.
- Bell, Brett (September 14, 2004). "Savannah NOW". <http://www.savannahmorningnews.com/stories/091404/2441929.shtml>.
- Carter, Chelsea (May 3, 2004). "The Seattle Times". http://seattletimes.nwsourc.com/html/nationworld/2001918347_hbomb03.html.
- Welsh, Edward (August 21, 2001). "Common Dreams News Center". <http://www.commondreams.org/views01/0821-05.htm>.
- Michael H. Maggelet and James C. Oskins, "Broken Arrow: The Declassified History of U.S. Nuclear Weapons Accidents". ISBN 978-1-4357-0361-2.

Footnotes

1. ^ Air Force Assessment of Reported Elevated Radiation Resulting from a 1958 B-47 Accident
2. ^ Awaiting answers on lost nuke near Tybee *Statesboro Herald* March 27, 2005
3. ^ "Complete List of All U.S. Nuclear Weapons". <http://nuclearweaponarchive.org/Usa/Weapons/Allbombs.html>.
4. ^ *CounterPunch*, 15 May 2009, When We Almost Nuked Savannah: The Case of the Missing H-Bomb
5. ^ "Savannah" (PDF). US Air Force. <http://www.af.mil/library/posture/savannah.pdf>.

External links

- Informational site about the Tybee Bomb: Tybeebomb.com
- Chart of nuclear bombs, including the Mark 15: Strategic Air Command.com
- BBC News report 50 years on
- BBC audio programme on the Tybee Bomb streaming audio

Retrieved from "http://en.wikipedia.org/wiki/1958_Tybee_Island_B-47_crash"

Categories: American Cold War nuclear bombs | Military nuclear incidents | Nuclear accidents | History of Georgia (U.S. state) | Aviation accidents and incidents in 1958 | Aviation accidents and incidents in the United States | Accidents and incidents involving United States Air Force aircraft

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