

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79146303
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p style="text-align: center;"><u>Request for Reconsideration Under 37 C.F.R. § 2.64 (b)</u></p> <p>This request for reconsideration is submitted in response to the final Office Action of December 17, 2014.</p> <p style="text-align: center;"><u>REMARKS</u></p> <p>The Examiner has maintained and made final her refusal to register Applicant's mark "DEATH OF MANKINID" under Section 2(d) based on the citation for the Registration Nos. 4304828 for FATE OF MANKIND and 3848186 for MANKIND. Applicant respectfully requests reconsideration of the refusal based on the following arguments.</p> <p><u>A. Examiner's Position</u></p> <p>The Examiner has maintained her refusal stressing that Applicant's mark is confusingly similar to the prior registered marks set forth above. She argues that the "marks may be considered confusingly similar in view of the fact that "OF MANKIND" and/or "MANKIND" are the dominant parts of the respective marks.</p> <p>She further argues that the respective parties' marks cover similar goods (US Reg. No. 4604828) as "<i>dice games</i>" (<u>Registrant's Goods</u>) and some items within Applicant's specification of goods, "<i>amusement game machines, automatic and coin-operated; apparatus for electronic games other than those adapted for use with an external display screen or monitor; arcade video game machines; balls for games; bats for games; counters for games; gaming machines for gambling; marbles for games; toy mobiles; paper party hats; play balloons; play balls; playing cards; plush toys; portable hand-held games with liquid crystal displays; radio-controlled toy vehicles; ring games; scale model kits; scale model vehicles; slot machines; spinning tops; stuffed toys; toy vehicles; home video game machines</i>" (<u>Applicant's Goods</u>), are "often used in tandem when playing games". She concludes that the goods are, thus, having "complementary uses, are often used together or otherwise purchased by the same purchasers for the same or related purposes," which would lead to consumer confusion.</p> <p>With respect to US Reg. No. 3848186, she further argues that since the identification set forth in this application has no restrictions as to nature, type, channels of trade, or classes of purchasers, it is presumed that Applicant's services travel in all normal channels of trade, and are available to the same class of purchasers. In</p>	

addition, she argues, Applicant live show performance could include wrestling performance in the nature of registrant's performances.

B. Applicant's Position and Request for Reconsideration

Applicant respectfully disagrees with the Examiner's assessment and kindly requests that she reconsider in view of the proposed amendment to the specification of goods in Class 28 and the proposed amended description of services in Class 41. Applicant incorporates its arguments and documents previously submitted in its Office Action response of May 22, 2014 by way of reference in support of this request for reconsideration. Applicant reiterates and stresses that its mark is sufficiently dissimilar from the cited marks so as to not cause consumer confusion, specifically in view of the proposed amended specification of goods and services.

1. US Reg. No. 4304828

a. Dissimilarity of the goods

Applicant designs video games and is not a toy maker. In that regard, DEATH OF MANKIND is first and foremost a video game. The amended specification of goods in Class 28 now covers "*arcade videogame machines*". Applicant, thus, stresses that the Examiner's position that the respective parties' goods are having "complementary uses, are often used together or otherwise purchased by the same purchasers for the same or related purposes" is no longer tenable as "*dice games*" and "*arcade video game machines*" are easily and clearly distinguishable products that will not likely be purchased together or for the same or related purposes.

b. Dissimilarity of the marks

Applicant makes reference to the arguments set forth in its response dated May 22, 2014 including all exhibits and reiterates that the respective marks are dissimilar in appearance, sound and connotation. As previously stressed the terms DEATH and FATE are clearly different and, thus, distinguishable. Consequently, Applicant's mark conveys a very different appearance than Registrant's mark. The respective marks convey a very distinct and different connotation and, thus, overall different commercial impression that consumers will not likely confuse.

c. Different Channels of Trade

Applicant would further like to reiterate that Registrant's goods and Applicant's amended goods travel in different channels of trade. As already pointed out in previous submissions, Applicant's and Registrant's goods are clearly distinguishable. "*Arcade video game machines*" on the one hand and "*dice games*" on the other are typically not sold in the same outlets or stores. In other words, if the goods of one party are sold to one class of buyers in a different marketing context than the goods of another seller, the likelihood that a single group of buyers will be confused by similar trademarks is less than if both parties sold their goods through the same channel of distribution. See *Field Enterprises Educational Corp. v. Cove Industries, Inc.*, 297 F. Supp. 989, 161 U.S.P.Q. 243 (E.D.N.Y. 1969) (different channels of encyclopedia distribution: door-to-door sales versus department store sales); *Telex Corp. v. Sound Ear, Inc.*, 169 U.S.P.Q. 255 (T.T.A.B. 1971) (hearing aids and listening device for TVs and radios both used by hard-of-hearing persons); *Applebaum v. Senior*, 154 Cal. App. 2d 371, 316 P.2d 410, 115 U.S.P.Q. 243 (1st Dist. 1957)(orthopedic shoes versus ordinary shoes).

Applicant, thus, concludes that the respective parties' goods travel in different channels of trade, which would further negate a likelihood of confusion.

d. Conclusion

In view of the amendments to Applicant's specification of goods in Class 28, and these comments, Applicant stresses that the marks are distinguishable, cover goods that are distinguishable and will not cause consumer confusion in view of the fact that they also travel in different channels of trade.

Applicant would like to reiterate that the office did not find its previous application for the mark DEATH OF MANKIND, which had a priority filing date of June 15, 2012, confusingly similar to US Reg. No. 4304828, and was, thus, not cited by the office as a potential obstacle to the registration of the cited mark although the filing date of Applicant's mark did predate the application for FATE OF MANKIND.

2. US Reg. No. 3848186

a. Dissimilarity of the Services

Applicant's amended specification now merely covers "*game services provided on-line from a computer network*" In other words, Applicant has dramatically reduced the scope of its application, which now covers services in Class 41, and which are clearly distinguishable from those covered under the cited mark.

Registrant covers "*entertainment services, namely, wrestling exhibitions and performances by a professional wrestler and entertainer; providing wrestling news and information via a global computer network*", which appears to make reference to a specific wrestler, namely, Mick Foley, who is a retired American professional wrestler who has worked with several organizations, namely, the WWF (WWE), WCW, ECW, TNA and NWA. See ExH 1.

Applicant stresses that its amended services, which are now limited to "*game services provided on-line from a computer network*" are clearly distinguishable from a pro wrestling character. Applicant stresses that it is clearly not engaged in wrestling entertainment. Applicant refers to its website located at www.frozenbyte.com and makes reference to the exhibits that were enclosed in its previous response.

Based upon the clear difference between Applicant's amended services and those covered by the cited mark consumers will not likely mistake Applicant's services for those of Registrant, Applicant concludes and consumer confusion will not likely occur.

b. Dissimilarity of Channels of trade

Given the aforementioned limitation of the description of services, Applicant reiterates its argument that the respective parties' services do not travel in the same channels of trade. While registrant provides wrestling news and information via a global computer network, these will be accessible to the interested public via very different and distinct platforms and specifically not through Applicant's website or video game related websites.

Applicant, therefore, concludes that the respective parties' services travel through different and distinct channels of trade.

c. Coexistence with other marks.

Applicant stresses that there are currently 17 live marks in Class 41, all of which include the term MANKIND. TMEP § 1207.01(d)(x) state that the Examining Attorney must consider conflicting marks owned by different parties as the existence of several similar marks that appear to be owned by more than one registrant, he or she should consider the extent to which dilution may indicate that there is no likelihood of confusion

All of these marks coexist with Registrant's mark in Class 41 without causing consumer confusion. Applicant

believes that its mark should be able to peacefully co-exist with the cited marks. Since these marks co-exist containing the common component MANKIND on the USPTO register and have co-existed in the market place without causing consumer confusion, Applicant stresses that its mark is merely one other mark in an already existing field of marks currently used in the market.

Consumers will, therefore, not likely be confused between any two of these marks and may have learned to carefully pick out one from the other. See *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 U.S.P.Q. 383, 385 (T.T.A.B. 1976); *Miss World (UK), Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 8 U.S.P.Q.2d 1237, 1241 (9th Cir. 1988).

d. Conclusion

Based upon these comments, Applicant opines that its mark is distinguishable from the cited registration, covers services that are distinguishable and will not cause consumer confusion in view of the fact that the parties are active in clearly distinguishable fields of business. Applicant, therefore, kindly requests that the objection be withdrawn.

C. Conclusion

In sum, Applicant has shown that the dissimilarities of the marks in terms of appearance, sound, connotation, and commercial impression, the clear difference between the amended goods/services of its application in classes 28 and 41 as well as the existence of third party marks that co-exist peacefully on the register without causing consumer confusion all serve to negate a finding of likelihood of confusion between Applicant's mark and the cited registrations.

In view of the foregoing, Applicant respectfully requests the Examiner to reconsider her position and submits that the present application is in condition for allowance following the amendments of the covered goods and services in classes 28 and 41 respectively and, therefore, requests that the Applicant's mark be approved for publication.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20925270107-20150529105830382868_._DoM_ExH_1.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\463\79146303\xml11\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\463\79146303\xml11\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\463\79146303\xml11\RFR0004.JPG
DESCRIPTION OF EVIDENCE FILE	screen shot of Wikipedia entry for wrestler Mick Foley

GOODS AND/OR SERVICES SECTION (009)(no change)

GOODS AND/OR SERVICES SECTION (028)(current)

INTERNATIONAL CLASS	028
DESCRIPTION	
Amusement game machines, automatic and coin-operated; apparatus for electronic games other than those adapted for use with an external display screen or monitor; arcade video game machines; balls for games; bats for games; counters for games; gaming machines for gambling; marbles for games; toy mobiles; paper party hats; play balloons; play balls; playing cards; plush toys; portable hand-held games with liquid crystal displays; radio-controlled toy vehicles; ring games; scale model kits; scale model vehicles; slot machines; spinning tops; stuffed toys; toy vehicles; home video game machines	
GOODS AND/OR SERVICES SECTION (028)(proposed)	
INTERNATIONAL CLASS	028
TRACKED TEXT DESCRIPTION	
Amusement game machines, automatic and coin-operated; Arcade video game machines; apparatus for electronic games other than those adapted for use with an external display screen or monitor; balls for games; bats for games; counters for games; gaming machines for gambling; marbles for games; toy mobiles; paper party hats; play balloons; play balls; playing cards; plush toys; portable hand-held games with liquid crystal displays; radio-controlled toy vehicles; ring games; scale model kits; scale model vehicles; slot machines; spinning tops; stuffed toys; toy vehicles; home video game machines	
FINAL DESCRIPTION	Arcade video game machines
GOODS AND/OR SERVICES SECTION (041)(current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; film production, other than advertising films; game services provided on-line from a computer network; game services provided on-line from a computer network, namely, providing on-line computer games; layout services, other than for advertising purposes; photographic reporting; presentation of live show performances; production of music; production of radio and television programs; production of television shows; providing amusement arcade services; providing on-line non-downloadable electronic publications, namely, books and electronic books, journals, texts, other than publicity texts in the field of news, comedy, variety, entertainment, video games; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; television entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; toy rental; videotape editing; videotape film production; videotaping	
GOODS AND/OR SERVICES SECTION (041)(proposed)	
INTERNATIONAL CLASS	041
TRACKED TEXT DESCRIPTION	
Entertainment in the nature of on-going television programs in the field of news, comedy, variety,	

~~entertainment, video games; Game services provided on-line from a computer network; film production, other than advertising films; game services provided on-line from a computer network, namely, providing on-line computer games; layout services, other than for advertising purposes; photographic reporting; presentation of live show performances; production of music; production of radio and television programs; production of television shows; providing amusement arcade services; providing on-line non-downloadable electronic publications, namely, books and electronic books, journals, texts, other than publicity texts in the field of news, comedy, variety, entertainment, video games; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; television entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; toy rental; videotape editing; videotape film production; videotaping~~

FINAL DESCRIPTION	Game services provided on-line from a computer network
SIGNATURE SECTION	
RESPONSE SIGNATURE	/R Peter Spies/
SIGNATORY'S NAME	R Peter Spies
SIGNATORY'S POSITION	Attorney of record, MI bar member
SIGNATORY'S PHONE NUMBER	3123381000
DATE SIGNED	05/29/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Fri May 29 11:09:02 EDT 2015
TEAS STAMP	USPTO/RFR-209.252.70.107-20150529110902488390-79146303-5308936cf76132328a4d47164bf45b24ea673e7055237a4d4591a728a585c19a7-N/A-N/A-20150529105830382868

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **79146303** has been amended as follows:

ARGUMENT(S)

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

Request for Reconsideration Under 37 C.F.R. § 2.64 (b)

This request for reconsideration is submitted in response to the final Office Action of December 17, 2014.

REMARKS

The Examiner has maintained and made final her refusal to register Applicant's mark "DEATH OF MANKINID" under Section 2(d) based on the citation for the Registration Nos. 4304828 for FATE OF MANKIND and 3848186 for MANKIND. Applicant respectfully requests reconsideration of the refusal based on the following arguments.

A. Examiner's Position

The Examiner has maintained her refusal stressing that Applicant's mark is confusingly similar to the prior registered marks set forth above. She argues that the "marks may be considered confusingly similar in view of the fact that "OF MANKIND" and/or "MANKIND" are the dominant parts of the respective marks.

She further argues that the respective parties' marks cover similar goods (US Reg. No. 4604828) as "*dice games*" (Registrant's Goods) and some items within Applicant's specification of goods, "*amusement game machines, automatic and coin-operated; apparatus for electronic games other than those adapted for use with an external display screen or monitor; arcade video game machines; balls for games; bats for games; counters for games; gaming machines for gambling; marbles for games; toy mobiles; paper party hats; play balloons; play balls; playing cards; plush toys; portable hand-held games with liquid crystal displays; radio-controlled toy vehicles; ring games; scale model kits; scale model vehicles; slot machines; spinning tops; stuffed toys; toy vehicles; home video game machines*" (Applicant's Goods), are "often used in tandem when playing games". She concludes that the goods are, thus, having "complementary uses, are often used together or otherwise purchased by the same purchasers for the same or related purposes," which would lead to consumer confusion.

With respect to US Reg. No. 3848186, she further argues that since the identification set forth in this application has no restrictions as to nature, type, channels of trade, or classes of purchasers, it is presumed that Applicant's services travel in all normal channels of trade, and are available to the same class of purchasers. In addition, she argues, Applicant live show performance could include wrestling performance in the nature of registrant's performances.

B. Applicant's Position and Request for Reconsideration

Applicant respectfully disagrees with the Examiner's assessment and kindly requests that she reconsider in view of the proposed amendment to the specification of goods in Class 28 and the proposed amended description of services in Class 41. Applicant incorporates its arguments and documents previously submitted in its Office Action response of May 22, 2014 by way of reference in support of this request for reconsideration. Applicant reiterates and stresses that its mark is sufficiently dissimilar from the cited marks so as to not cause consumer confusion, specifically in view of the proposed amended specification of goods and services.

1. US Reg. No. 4304828

a. Dissimilarity of the goods

Applicant designs video games and is not a toy maker. In that regard, DEATH OF MANKIND is first and foremost a video game. The amended specification of goods in Class 28 now covers “*arcade videogame machines*”. Applicant, thus, stresses that the Examiner’s position that the respective parties’ goods are having “complementary uses, are often used together or otherwise purchased by the same purchasers for the same or related purposes” is no longer tenable as “*dice games*” and “*arcade video game machines*” are easily and clearly distinguishable products that will not likely be purchased together or for the same or related purposes.

b. Dissimilarity of the marks

Applicant makes reference to the arguments set forth in its response dated May 22, 2014 including all exhibits and reiterates that the respective marks are dissimilar in appearance, sound and connotation. As previously stressed the terms DEATH and FATE are clearly different and, thus, distinguishable. Consequently, Applicant’s mark conveys a very different appearance than Registrant’s mark. The respective marks convey a very distinct and different connotation and, thus, overall different commercial impression that consumers will not likely confuse.

c. Different Channels of Trade

Applicant would further like to reiterate that Registrant’s goods and Applicant’s amended goods travel in different channels of trade. As already pointed out in previous submissions, Applicant’s and Registrant’s goods are clearly distinguishable. “*Arcade video game machines*” on the one hand and “*dice games*” on the other are typically not sold in the same outlets or stores. In other words, if the goods of one party are sold to one class of buyers in a different marketing context than the goods of another seller, the likelihood that a single group of buyers will be confused by similar trademarks is less than if both parties sold their goods through the same channel of distribution. See *Field Enterprises Educational Corp. v. Cove Industries, Inc.*, 297 F. Supp. 989, 161 U.S.P.Q. 243 (E.D.N.Y. 1969) (different channels of encyclopedia distribution: door-to-door sales versus department store sales); *Telex Corp. v. Sound Ear, Inc.*, 169 U.S.P.Q. 255 (T.T.A.B. 1971) (hearing aids and listening device for TVs and radios both used by hard-of-hearing persons); *Applebaum v. Senior*, 154 Cal. App. 2d 371, 316 P.2d 410, 115 U.S.P.Q. 243 (1st Dist. 1957)(orthopedic shoes versus ordinary shoes).

Applicant, thus, concludes that the respective parties’ goods travel in different channels of trade, which would further negate a likelihood of confusion.

d. Conclusion

In view of the amendments to Applicant’s specification of goods in Class 28, and these comments, Applicant stresses that the marks are distinguishable, cover goods that are distinguishable and will not cause consumer confusion in view of the fact that they also travel in different channels of trade.

Applicant would like to reiterate that the office did not find its previous application for the mark DEATH OF MANKIND, which had a priority filing date of June 15, 2012, confusingly similar to US Reg. No. 4304828, and was, thus, not cited by the office as a potential obstacle to the registration of the cited mark although the filing date of Applicant’s mark did predate the application for FATE OF MANKIND.

2. US Reg. No. 3848186

a. Dissimilarity of the Services

Applicant's amended specification now merely covers " *game services provided on-line from a computer network* " In other words, Applicant has dramatically reduced the scope of its application, which now covers services in Class 41, and which are clearly distinguishable from those covered under the cited mark.

Registrant covers " *entertainment services, namely, wrestling exhibitions and performances by a professional wrestler and entertainer; providing wrestling news and information via a global computer network*", which appears to make reference to a specific wrestler , namely, Mick Foley, who is a retired American professional wrestler who has worked with several organizations, namely, the WWF (WWE), WCW, ECW, TNA and NWA. See ExH 1.

Applicant stresses that its amended services, which are now limited to " *game services provided on-line from a computer network*" are clearly distinguishable from a pro wrestling character. Applicant stresses that it is clearly not engaged in wrestling entertainment. Applicant refers to its website located at www.frozenbyte.com and makes reference to the exhibits that were enclosed in its previous response.

Based upon the clear difference between Applicant's amended services and those covered by the cited mark consumers will not likely mistake Applicant's services for those of Registrant, Applicant concludes and consumer confusion will not likely occur.

b. Dissimilarity of Channels of trade

Given the aforementioned limitation of the description of services, Applicant reiterates its argument that the respective parties' services do not travel in the same channels of trade. While registrant provides wrestling news and information via a global computer network, these will be accessible to the interested public via very different and distinct platforms and specifically not through Applicant's website or video game related websites.

Applicant , therefore, concludes that the respective parties' services travel through different and distinct channels of trade.

c. Coexistence with other marks.

Applicant stresses that there are currently 17 live marks in Class 41, all of which include the term MANKIND. TMEP § 1207.01(d)(x) state that the Examining Attorney must consider conflicting marks owned by different parties as the existence of several similar marks that appear to be owned by more than one registrant, he or she should consider the extent to which dilution may indicate that there is no likelihood of confusion

All of these marks coexist with Registrant's mark in Class 41 without causing consumer confusion. Applicant believes that its mark should be able to peacefully co-exist with the cited marks. Since these marks co-exist containing the common component MANKIND on the USPTO register and have co-existed in the market place without causing consumer confusion, Applicant stresses that its mark is merely one other mark in an already existing field of marks currently used in the market.

Consumers will, therefore, not likely be confused between any two of these marks and may have learned to carefully pick out one from the other. See *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 U.S.P.Q. 383, 385 (T.T.A.B. 1976); *Miss World (UK), Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 8 U.S.P.Q.2d 1237, 1241 (9th Cir. 1988).

d. Conclusion

Based upon these comments, Applicant opines that its mark is distinguishable from the cited registration, covers services that are distinguishable and will not cause consumer confusion in view of the fact that the parties are

active in clearly distinguishable fields of business. Applicant, therefore, kindly requests that the objection be withdrawn.

C. Conclusion

In sum, Applicant has shown that the dissimilarities of the marks in terms of appearance, sound, connotation, and commercial impression, the clear difference between the amended goods/services of its application in classes 28 and 41 as well as the existence of third party marks that co-exist peacefully on the register without causing consumer confusion all serve to negate a finding of likelihood of confusion between Applicant's mark and the cited registrations.

In view of the foregoing, Applicant respectfully requests the Examiner to reconsider her position and submits that the present application is in condition for allowance following the amendments of the covered goods and services in classes 28 and 41 respectively and, therefore, requests that the Applicant's mark be approved for publication.

EVIDENCE

Evidence in the nature of screen shot of Wikipedia entry for wrestler Mick Foley has been attached.

Original PDF file:

[evi_20925270107-20150529105830382868_. DoM ExH 1.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 028 for Amusement game machines, automatic and coin-operated; apparatus for electronic games other than those adapted for use with an external display screen or monitor; arcade video game machines; balls for games; bats for games; counters for games; gaming machines for gambling; marbles for games; toy mobiles; paper party hats; play balloons; play balls; playing cards; plush toys; portable hand-held games with liquid crystal displays; radio-controlled toy vehicles; ring games; scale model kits; scale model vehicles; slot machines; spinning tops; stuffed toys; toy vehicles; home video game machines

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Amusement game machines, automatic and coin-operated; Arcade video game machines; apparatus for electronic games other than those adapted for use with an external display screen or monitor; balls for games; bats for games; counters for games; gaming machines for gambling; marbles for games; toy mobiles; paper party hats; play balloons; play balls; playing cards; plush toys; portable hand-held games with liquid crystal displays; radio-controlled toy vehicles; ring games; scale model kits; scale model vehicles; slot machines; spinning tops; stuffed toys; toy vehicles; home video game machines~~

Class 028 for Arcade video game machines

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 041 for Entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; film production, other than advertising films; game services provided on-line from a computer network; game services provided on-line from a computer network, namely, providing on-line computer games; layout services, other than for advertising purposes; photographic reporting; presentation of live show performances; production of music; production of radio and television programs; production of television shows; providing amusement arcade services; providing on-line non-downloadable electronic publications, namely, books and electronic books, journals, texts, other than publicity texts in the field of news, comedy, variety, entertainment, video games; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; television entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; toy rental; videotape editing; videotape film production; videotaping
Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; Game services provided on-line from a computer network; film production, other than advertising films; game services provided on-line from a computer network, namely, providing on-line computer games; layout services, other than for advertising purposes; photographic reporting; presentation of live show performances; production of music; production of radio and television programs; production of television shows; providing amusement arcade services; providing on-line non-downloadable electronic publications, namely, books and electronic books, journals, texts, other than publicity texts in the field of news, comedy, variety, entertainment, video games; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; television entertainment in the nature of on-going television programs in the field of news, comedy, variety, entertainment, video games; toy rental; videotape editing; videotape film production; videotaping~~

Class 041 for Game services provided on-line from a computer network

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /R Peter Spies/ Date: 05/29/2015

Signatory's Name: R Peter Spies

Signatory's Position: Attorney of record, MI bar member

Signatory's Phone Number: 3123381000

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: 79146303

Internet Transmission Date: Fri May 29 11:09:02 EDT 2015

TEAS Stamp: USPTO/RFR-209.252.70.107-201505291109024

88390-79146303-5308936cf76132328a4d47164

bf45b24ea673e7055237a4d4591a728a585c19a7

-N/A-N/A-20150529105830382868

Mick Foley

From Wikipedia, the free encyclopedia

Michael Francis "Mick" Foley Sr. ^{[d][2]} (born June 7, 1965)^{[d][2]} is a retired American professional wrestler, author, comedian, color commentator, actor, and voice actor. He has worked for many wrestling promotions, including World Wrestling Federation (WWF, now WWE), World Championship Wrestling (WCW), Extreme Championship Wrestling (ECW), Total Nonstop Action Wrestling (TNA), National Wrestling Alliance (NWA) as well as numerous promotions in Japan. He is often referred to as "The Hardcore Legend", a nickname he shares with Terry Funk.

Foley has wrestled under his real name and various personas, including Dude Love, Cactus Jack, and Mankind, also known as the *Three Faces of Foley*. Foley is a four-time world champion (three WWF Championships and one TNA World Heavyweight Championship), an 11-time world tag team champion (eight WWF Tag Team Championships, two ECW World Tag Team Championships, and one WCW World Tag Team Championship), a one-time TNA Legends Champion, and the inaugural WWF Hardcore Champion.

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 - 2.4 World Wrestling Federation/Entertainment
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Background

Foley was born in Bloomington, Indiana. Soon after, Foley's family moved to East Setauket, New York, where Foley attended Ward Melville High School, played lacrosse, and wrestled.^{[d][3]} Foley was a high school classmate of comic actor Kevin James. The two were on the wrestling team together.^[6] While a student at State University of New York at Cortland, he hitchhiked to Madison Square Garden to see his favorite wrestler, Jimmy Snuka, in a steel cage match against Don Muraco.^{[3][7]} Foley has said that Snuka's flying body splash from the top of the cage inspired him to pursue a career in pro wrestling.^{[3][7]} Foley had a front row seat and is visible on the video of the event.^[7]

Professional wrestling career

Training and early career (1983–1991)

Mick Foley formally trained at Dominic DeNucci's wrestling school in Freedom, Pennsylvania, driving several hours weekly from his college campus in Cortland, New York, and debuted in 1983.^{[1][8]} In addition to appearing on DeNucci's cards, Foley and several other students also took part in some squash matches as jobbers for WWF TV tapings of Prime Time Wrestling and Superstars of Wrestling, where Foley wrestled under the name, **Jack Foley** and **Nick Foley**. In one of these matches (the very first episode of Superstars), Foley and Les Thornton (another jobber) faced the British Bulldogs,



Foley, during a visit to the Center for the Intrepid in San Antonio, Texas on September 26, 2008.

Born	Michael Francis Foley June 7, 1965 Bloomington, Indiana, United States ^[1]
Residence	Long Island, New York, United States
Occupation	Professional wrestler Actor Author Color commentator Comedian Voice actor
Years active	1983–2013 (wrestler) 1999–present (author) 1996–present (actor)
Spouse(s)	Colette Christie (m. 1992)
Children	Dewey Francis Foley (born February 20, 1992) Noelle Margret Foley (born December 15, 1993) Michael Francis Foley, Jr. (born 2001) Hughie Francis Foley (born 2003)
Professional wrestling career	
Ring name(s)	Cactus Jack ^[2] Cactus Jack Manson Dude Love ^[2] Jack Foley Mankind ^[2] Mick Foley ^[2]
Billed height	6 ft 2 in (1.88 m) ^{[2][3]}
Billed weight	287 lb (130 kg) ^[3]
Billed from	Setauket, Long Island, New York ^[3] The Boiler Room Truth or Consequences, New Mexico
Trained by	Dominic DeNucci ^{[2][3]}
Debut	1983 ^[4]
Retired	2013
	Website

during which the Dynamite Kid clotheslined Foley with such force that he was unable to eat solid food for several weeks.^[9] During these squash matches, Foley also faced other top level talent at the time, such as Hercules Hernandez (who ironically, would become a jobber later in his WWF run). His run wouldn't last long, as he hadn't signed a contract with the promotion at the time. During his early WWF 80's run as a jobber, he was also strangely billed from different hometowns and weights.

RealMickFoley.com
(http://www.realmickfoley.com/)

After several years of wrestling in the independent circuit, Foley began receiving offers from various regional promotions, including the UWF.^[10] He joined the Memphis-based Continental Wrestling Association (CWA) as Cactus Jack, where he teamed with Gary Young as part of the Stud Stable.^[11] Cactus and Young briefly held the CWA tag titles in late 1988.^[12] On November 20, Foley left CWA for Texas-based World Class Championship Wrestling.

In World Class Championship Wrestling (WCCW), Cactus Jack, billed as Cactus Jack Manson, was a major part of Skandor Akbar's stable. (The addition of "Manson" to Foley's name came as the result of a woman who began to stalk him at WCCW shows who went by the name Mary Ann Manson; Foley later said that the connection of that stalker's name to his, as well as its connection to Charles Manson, made him uncomfortable.)^[13] Foley also won several titles, including the company's light heavyweight and tag team titles before leaving the company, losing his last match to Eric Embry in nine seconds. He then briefly competed in Alabama's Continental Wrestling Federation before completing a brief stint with World Championship Wrestling. For much of his time there, he would team with jobbers. When the jobber would lose the match for them, Cactus Jack would attack his partner, throw them out of the ring, and deliver his infamous ring apron flying elbow drop onto the concrete floor. His biggest match at the time was against Mil Máscaras at Clash of the Champions X: Texas Shootout.^[14] It was during this period that Foley was involved in a car accident that resulted in the loss of his two front teeth, adding to the distinctive look for which he is famous.^[15] Following the short stint with WCCW, Foley then signed with Herb Abrams's Universal Wrestling Federation.^[16]^[16] In UWF, Foley teamed with Bob Orton to feud with Don Muraco, Sunny Beach, and Brian Blair.

He soon left UWF for Tri-State Wrestling (a forerunner to Extreme Championship Wrestling),^[17] whose high impact and violent wrestling style fit Foley well. On one night, known as Tri-State's Summer Sizzler 1991, Cactus Jack and Eddie Gilbert had three matches in one night: Cactus won a Falls Count Anywhere match, lost a Stretcher match, and then fought to a double disqualification in a Steel Cage match.^[18] These matches caught the attention of World Championship Wrestling promoters, and after a brief stint working in the Global Wrestling Federation, he joined WCW.^[12]^[18]

World Championship Wrestling (1991–1994)

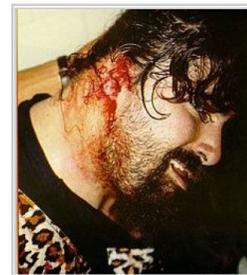
On September 5, 1991, Cactus Jack debuted as a heel and attacked Sting.^[19] After feuds with Van Hammer and Abdullah the Butcher, Cactus Jack faced Sting, then WCW champion, in a non-title Falls Count Anywhere match at Beach Blast in 1992, which Sting won.^[20] For a long time, Foley considered this the best match he ever worked.^[20] Unlike Jack's first stint in WCW, where his personality was quieter, he was now outwardly maniacal; laughing hysterically, shrieking into the air while choking his opponents, and yelling his signature catch phrase "Bang-Bang!"

After spending a year and a half with WCW as a heel, Cactus Jack transitioned into a fan favorite after engaging in a feud with Paul Orndorff, Harley Race and Big Van Vader. Jack and Orndorff wrestled each other in a match for a spot on WCW Champion Vader's team at a Clash of the Champions event. After the match, Race and Orndorff beat up Jack. At the following Clash of Champions event, Cactus Jack helped Sting's team win the match. He engaged in a feud with Orndorff, winning a falls-count-anywhere match against Orndorff at Superbrawl III. He then moved on to face Vader.

Cactus Jack wrestled Vader on April 6, 1993, winning by count-out, but being severely beaten in the process. As a result, in the rematch with Vader on April 24, the two executed a dangerous spot to sell a storyline injury. Vader removed the protective mats at ringside and powerbombed Cactus onto the exposed concrete floor, causing a legitimate concussion and causing Foley to temporarily lose sensation in his left foot.^[21] While Foley was away, WCW ran an angle where Cactus Jack's absence was explained with a farcical comedy storyline in which he went crazy, was institutionalized, escaped, and developed amnesia.^[22] Foley had wanted the injury storyline to be very serious and generate genuine sympathy for him before his return. The comedy vignettes that WCW produced instead were so bad that Foley jokes in *Have a Nice Day* that they were the brainchild of WCW executives who regarded a surefire moneymaking feud as a problem that needed to be solved.^[22]

In one of WCW's most brutal matches of all time, Cactus faced Vader in a Texas Death match at Halloween Havoc.^[23] Race won the match for Vader by using a cattle prod on Cactus, knocking him out. The level of violence involved in this feud caused WCW to refuse to book Cactus Jack against Vader on a pay-per-view again. On March 16, 1994, during a WCW European tour, Foley and Vader had one of the most infamous matches in wrestling history in Munich, Germany. Foley began a hangman—a planned move where a wrestler's head is tangled between the top two ring ropes. The spot is usually painful but safe (though in WCW the danger factor was raised slightly because their ring ropes were not actual ropes, but elevator cables encased with rubber).^[24] Unbeknownst to Foley, however, 2 Cold Scorpio had earlier complained that the ropes were too loose, resulting in the ring staff tightening the ropes to the maximum.^[24] When Foley performed the move, he found himself trapped in a position where the ropes were constricting the blood to his brain, which he realized would quickly result in cerebral anoxia, potential brain damage and even death. As Foley struggled to free himself, he tore off two-thirds of his ear and underwent surgery later that day to reattach the cartilage from the ear to his head, so that a total reconstruction would be possible in the future.^[25] Later that year, Cactus Jack and Kevin Sullivan were scheduled to win the tag team titles at Slamboree in 1994.^[26] Foley had to choose between reattaching his ear or wrestling in the pay-per-view and winning the titles. Foley chose to wrestle and won his only championship in WCW. Later on, Foley was frustrated by WCW's reluctance to work a storyline around losing his ear.

WCW also shared a brief co-promotion with ECW during this time in which Foley represented WCW on ECW television as the WCW Tag Team champion, facing Sabu at Hostile City Showdown on June 24, 1994. During a promo, Foley spat on his Tag Team title belt and threw it to the ground to appeal to the hardcore fans who frowned upon the mainstream promotions.



Aftermath of the botched hangman spot resulting in the loss of Foley's ear.

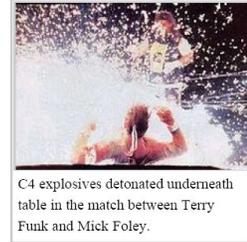
Extreme Championship Wrestling, Smoky Mountain Wrestling, and Japan (1994–1996)

After leaving WCW, Foley went to the newly formed Extreme Championship Wrestling (ECW) and began a feud with Sabu. Jack then began working the ECW tag team division on teams with Terry Funk, Mikey Whipwreck, and Kevin Sullivan. He had two ECW World Tag Team Championship reigns with Whipwreck while in ECW.^[27]

At the tail end of 1994, Foley joined Smoky Mountain Wrestling (SMW) as Cactus Jack, causing Boo Bradley to lose the SMW Beat the Champ Television Championship. He often teamed with Brian Lee to feud with Bradley and Chris Candido. Cactus Jack then began a crusade to rid Bradley of his valet Tamara Fytch. He ignited a feud between Candido and Bradley when he accused Candido of having sexual relations with Fytch. (Ironically, Candido and Fytch were a couple in real life). Cactus Jack left SMW before the feud was resolved.

In 1995, Foley went to Japan and wrestled in International Wrestling Association of Japan, where he engaged in feuds with Terry Funk and Shoji Nakamaki. During his brief stint in Japan Foley had the nickname "Tsunami Stopper." Foley, however, soon returned to ECW to feud with The Sandman. Funk returned to team up with Sandman, and during a particularly violent spot, the pair hit Cactus with a Singapore cane forty-six times. Cactus Jack then defeated Funk at Hostile City Showdown 1995. Later, he fought Sandman for the ECW championship. During the match, Cactus Jack knocked Sandman unconscious and was declared the winner. Referee Bill Alfonso, however, reversed his decision on the grounds that the title cannot change hands by knockout.

Returning to the IWA, Cactus Jack began a feud with Leatherface, whom he had betrayed during a tag team match. Foley also continued to wrestle in independent circuits, winning championships on the Ozark Mountain and Steel City circuits. On August 20, 1995, IWA organized a "King of the Death Match" tournament. Each level of the tournament featured a new and deadly gimmick: Cactus Jack's first round was a barbed-wire baseball bat, thumbtack death match, in which he defeated Terry Gordy; the second round was a barbed-wire board, bed of nails match where Cactus Jack defeated Shoji Nakamaki. The final, against Terry Funk, was a barbed-wire rope, barbed-wire and C4 board, time-bomb death match, which Cactus Jack won with help from Tiger Jeet Singh. After the match, both men were ravaged by the wire, and burned by the C4 explosions. Foley later said that he only received \$300 for the entire night^[28] but in 2010 he wrote that, "looking back that match in Honjo is probably the performance I'm proudest of."^[29] After the tournament, he teamed with Tracy Smothers for a quick run with the IWA tag team titles.



C4 explosives detonated underneath table in the match between Terry Funk and Mick Foley.

Foley then returned to ECW to team with Tommy Dreamer. According to Heyman, Hardcore style differentiated Foley from other traditional wrestlers, so in ECW, Foley wasn't unique. Cactus began a gimmick where he criticized hardcore wrestling and sought to renounce his status as a hardcore wrestling icon and used a very technical, slow wrestling to make people upset.^[30] He said that he was on a mission to save his partner from making the mistake of trying to please bloodthirsty fans. The mismatched partnership lasted until August 5, 1995, when Cactus turned on Dreamer when they were teaming with The Pitbulls against Raven, Stevie Richards and The Dudley Brothers (Dudley Dudley and Big Dick Dudley). Cactus Jack DDT'ed his partner and joined Raven's Nest, as he wished to serve Raven's "higher purpose." He remained one of Raven's top henchmen for the remainder of his time in ECW. On August 28, Cactus beat the previously undefeated 911. As part of Foley's heel gimmick, he began praising WWF and WCW on ECW television, which angered ECW fans. Their anger intensified once word began to spread that Foley was leaving to join the WWF (In *Have a Nice Day*, Foley recounted an incident where he asked an ECW roadie to sell T-shirts for him at an event held in a Queens, New York venue where he had been popular even as a heel; the man came back after being spat upon numerous times by angry fans, who made him fear for his life^[31]). Even when he tried to give sincere good-byes to the fans, Cactus Jack was met with chants of "You sold out" by the ECW fanbase everywhere he went. Cactus was booked to face WWF hater Shane Douglas, who won when he put Jack into a figure four leglock that allowed Mikey Whipwreck to hit him repeatedly with a steel chair. Foley's last ECW match was against Whipwreck on March 9, 1996, and he recounts that he was not looking forward to it due to the increasingly hostile reactions he got even when he wasn't in character. The ECW fans, who knew that this was Foley's last match, finally returned his affection. They cheered him throughout the match and chanted, "Please don't go!" After the match, Foley told the audience that their reaction made everything worthwhile and made his exit by dancing with Stevie Richards and The Blue Meanie to Frank Sinatra's song "New York, New York". Foley has said that this exit was his favorite moment in wrestling.^{[12][32]}

World Wrestling Federation/Entertainment

Three faces of Foley (1996–1998)

In 1996, Foley signed a contract with WWF and, this time, the WWF did not use Foley as "enhancement talent". He was shown several designs for a new character—a man with a leather mask and chains. However, WWF said that it was too dark and only left the mask.^[33] Foley arrived in the WWF in 1996 with a new gimmick and perhaps his most famous personality: Mankind, a mentally deranged schizophrenic who constantly squealed (even throughout his matches), shrieked "*Mommy!*", spoke to a rat named George, enjoyed pain, physically abused himself (such as by pulling out his hair), wore a mask and lived in boiler rooms; hence, his specialty match, the Boiler Room Brawl.^[1] His catch phrase was "Have a nice day." The original name that Vince McMahon had for Foley was "Mason the Mutilator", but Foley thought that Mankind would be a better name and McMahon changed it. On the 1 April 1996 edition of *Raw is War*, the day after WrestleMania XII, Mankind debuted and defeated Bob Holly, quickly moving into a feud with The Undertaker. This feud continued through King of the Ring, Mankind's WWF pay-per-view debut. During the match, Undertaker's manager, Paul Bearer, accidentally struck him with the urn, allowing Mankind to apply the mandible claw for the win. The two then began interfering in the other's matches until they were booked in the first ever Boiler Room brawl, in which the goal was to escape the arena's boiler room and reach the ring to take the urn from Paul Bearer.

The Undertaker appeared to have won, but Paul Bearer refused to hand him the urn, allowing Mankind to win, thus (for the time being) ending the relationship between Paul and The Undertaker. While Mankind was managed by Paul Bearer, he referred to him as "Uncle Paul." Mankind then earned the number one contendership to face the then WWF Champion Shawn Michaels at In Your House: Mind Games. Michaels won by disqualification via interference by Vader and The Undertaker. For several years, Foley considered this match his best ever, saying "Sure, at 280 pounds I still looked like hell, but after a brutal cardiovascular training regimen, I was able to go full-tilt for twenty-seven minutes with a smaller, quicker, better athlete than me."^[34]

The Mankind-Undertaker feud continued with the first ever Buried Alive match at In Your House: Buried Alive. Undertaker won the match, but Paul Bearer, Terry Gordy (as the Executioner), Mankind and other heels attacked The Undertaker and buried him alive. Afterward, The Undertaker challenged Mankind to a match at Survivor Series, which he won. The feud continued after another match at In Your House: Revenge of the Taker for the WWF Championship, which Undertaker had won at WrestleMania 13. Undertaker won the match and Bearer took a leave of absence, continuing the feud.

Jim Ross then began conducting a series of interviews with Mankind. During the interviews, Ross brought up the topic of Foley's home videos and the hippie-inspired character he played in them, Dude Love. Around this time, Stone Cold Steve Austin and Shawn Michaels won the WWF Tag Team Championships from Owen Hart and The British Bulldog, but Michaels was injured and could no longer compete. Mankind tried to replace him, but Austin said he wanted "nothing to do with a freak" and resigned himself to facing Hart and the Bulldog alone the next week. Halfway into the match, however, Foley debuted a new persona known as Dude Love who suddenly appeared and helped Austin take the victory, becoming the new Tag Team Champions.^[35] The following week in Halifax, Nova Scotia, Dude teamed with Austin, and Mankind's longtime nemesis, The Undertaker, to face Bret Hart. Owen Hart and Davey Boy Smith, members of villainous anti-American stable, the Hart Foundation, in a United States vs. Canada Flag Match—the first match of its kind broadcast on *Raw*. The Hart Foundation ultimately won the match due to assistance from another Foundation member, Brian Pillman.^[36] Austin and Dude vacated their tag team titles when Austin suffered a (legitimate) serious neck injury at the hands of Owen Hart at SummerSlam. Dude Love feuded with Hunter Hearst Helmsley, as the two competed in a Falls Count Anywhere match. One of Foley's most memorable vignettes aired before the match began, in which Dude Love and Mankind discussed who should wrestle the upcoming match. Eventually, "they" decided that it should be Cactus Jack, and Foley's old character made his WWF debut. Jack won the match with a piledriver through a table. Shortly thereafter, Extreme Championship Wrestling's Terry Funk joined the WWF as "Chainsaw Charlie." At the 1998 Royal Rumble, he participated under three personas, Cactus Jack, Mankind, and Dude Love. Charlie and Jack defeated the New Age Outlaws at WrestleMania XIV in a Dumpster match to win the tag team titles. The next night, however, Vince McMahon stripped them of the belts and scheduled a rematch in a steel cage, which the Outlaws won with help from their new allies, D-Generation X.

On April 6, 1998, Foley turned heel when Cactus Jack explained the fans would not see him anymore because they did not appreciate him and only cared about Stone Cold Steve Austin. Vince McMahon explained to Austin the next week that he would face a "mystery" opponent at Unforgiven. That opponent turned out to be Dude Love, who won the match by disqualification, meaning that Austin retained the title. McMahon, displeased with the outcome, required Foley to prove he deserved another shot at Austin's title with a number one contendership match against his former partner, Terry Funk. The match was both the WWF's first ever "Hardcore match" and the first time that Foley wrestled under his own name. Foley won, and after the match, a proud McMahon came out to Dude Love's music and presented Foley with the Dude Love