

From: Estrada, Linda

Sent: 10/15/2015 9:03:54 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 86457719 - DOWNUNDER POKER - 209764.0040 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 3

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Attachment Information:

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Files: downunderpoker2.jpg, 73839396P001OF001.JPG, 74576768P001OF002.JPG, 74576768P002OF002.JPG, 75001065P001OF002.JPG, 75001065P002OF002.JPG, 76110117P001OF002.JPG, 76110117P002OF002.JPG, 76221771P001OF003.JPG, 76221771P002OF003.JPG, 76221771P003OF003.JPG, 77084377P001OF003.JPG, 77084377P002OF003.JPG, 77084377P003OF003.JPG, 77809692P001OF003.JPG, 77809692P002OF003.JPG, 77809692P003OF003.JPG, 85126537P001OF003.JPG, 85126537P002OF003.JPG, 85126537P003OF003.JPG, 85517419P001OF003.JPG, 85517419P002OF003.JPG, 85517419P003OF003.JPG, 85840093P001OF002.JPG, 85840093P002OF002.JPG, 85980469P001OF003.JPG, 85980469P002OF003.JPG, 85980469P003OF003.JPG, 86376494P001OF003.JPG, 86376494P002OF003.JPG, 86376494P003OF003.JPG, 86457719P001OF003.JPG, 86457719P002OF003.JPG, 86457719P003OF003.JPG, 86463565P001OF002.JPG, 86463565P002OF002.JPG, fpl-1.jpg, fpl-2.jpg, flcas-1.jpg, flcas-2.jpg, flv-1.jpg, flv-2.jpg, atarijack.jpg, atarnews-1.jpg, 86457719.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 86457719

**MARK:** DOWNUNDER POKER



**CORRESPONDENT ADDRESS:**

MAUREEN C KASSNER

K & G LAW LLC

602 S. BETHLEHEM PIKE, BLDG B

AMBLER, PA 19002

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Strategic Entertainment Pty Ltd

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

209764.0040

**CORRESPONDENT E-MAIL ADDRESS:**

lgenovese@kassgen.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 10/15/2015

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated May 16, 2015 are maintained and continue to be final: 1) refusal of the mark under Section 2(d) of the

Trademark Act and 2) the requirement for a disclaimer of the wording “DOWNUNDER POKER, which is depicted in unitary form in the drawing of record because the words are read together as a single unit; and they form a grammatically or otherwise unitary expression. See TMEP §§1213.05, (b), 1213.08(b). Through the Request for Reconsideration, applicant has disclaimed the wording “DOWNUNDER” and “POKER.” As such, the disclaimer is not acceptable. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant’s request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant’s analysis and arguments are not persuasive nor do they shed new light on the issues. The examining attorney also encloses additional evidence to support the refusal of the mark under Section 2(d) of the Trademark Act. This evidence consists of search results from the Office database countering applicant’s arguments that the wording in the registered mark is weak. Marks must be considered in their entireties; therefore, a disclaimer does not remove the disclaimed portion from the mark for the purposes of comparing marks in a likelihood of confusion determination. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010). The public is generally not aware of disclaimers in trademark applications and registrations that reside only in the USPTO’s records. See *In re Nat’l Data Corp.*, 753 F.2d 1056, 1059, 224 USPQ 749, 751 (Fed. Cir. 1985).

In addition, the examining attorney encloses additional third party advertising as well as third party registrations, all of which establish that the goods and services of the parties are similar, related and travel in the same channels of trade.

Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Linda M. Estrada/

Trademark Examining Attorney

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# DOWN UNDER GOLD

[Mark](#)

DOWN UNDER GOLD

[Goods and Services](#)

IC 041. US 100 101 107. G & S: Entertainment services, namely, providing on-line computer games and game applications, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an internet website portal in the field of computer games and gaming; entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes. FIRST USE: 20140401. FIRST USE IN COMMERCE: 20140401

[Standard Characters Claimed](#)

STANDARD CHARACTERS CLAIMED

[Mark Drawing Code](#)

(4) STANDARD CHARACTER MARK

[Serial Number](#)

86463565

[Filing Date](#)

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<input type="checkbox"/>	11	76110117	20000814	⊗	DOWNUNDER HORSEMAN
<input type="checkbox"/>	12	75001065	19951003	⊗	THUNDER FROM DOWN
<input type="checkbox"/>	13	74576768	19940922	⊗	DOWN UNDER BOWL
<input type="checkbox"/>	14	73839396	19891115	⊗	KENTUCKY DOWN UNDE

## About Us

Our mission is to bring a bold new vision to casual gaming by creating the most pervasive community platform where people of all ages can interact with each other, and play games together. We aim to provide our customers with innovative social games, and state-of-the-art-technology.

FlowPlay is a developer of browser-based virtual world technology and multi-platform games such as Vegas World and ourWorld. Vegas World, is the first social casino MMORPG that engages players with fun casino games including over 40 Slots, Hot Tub Poker, Bingo, Solitaire, Multiplayer Blackjack, and Social Video Poker. Vegas World is not a real money gambling game. Flowplay's first consumer product, ourWorld, is played by over 30 million players and is one of the most popular teen virtual worlds.

FlowPlay prides itself in being able to provide deep game and virtual world experiences in limited platforms such as web browsers and mobile devices. We have developed several technologies to do this -- chief among them are our White-Label Platform and 3D Vector Avatar System. Please find more information on our products in the [Games](#) section.

## Team



### Derrick Morton CEO

Derrick has been a games and online entertainment executive for over 20 years. He has led the development of over 200 digital entertainment projects. Over the course of the past 7 years he has been a key executive at the top online game websites - iWin, Uproar, Flipside, Virtual Vegas and GameHouse. He was the General Manager of Mobile Games for RealNetworks, a business unit he founded. At RealNetworks Derrick negotiated long-term distribution agreements with Cingular, Verizon, Virgin Mobile, and Vodafone Global among others. Additionally, he was singularly responsible for negotiating the mobile rights to South Park, MTV Cribs, and The Apprentice. Derrick was a key executive at GameHouse which was acquired in 2004 by RealNetworks. GameHouse subsequently became Real's studio for Xbox, PC, Mobile and online game development.



### Douglas Pearson CTO

Doug has more than 20 years experience as a professional software developer leading dozens of projects for organizations like Real Networks and the Department of Defense. He founded ThreePenny Software in 2002, a successful casual games studio for mobile and handheld devices which shipped more than 20 casual game titles. ThreePenny was responsible for the majority of mobile titles shipped by GameHouse and Real Networks around the time of the GameHouse acquisition by Real. He was nominated for a distinguished dissertation award for his Ph.D. thesis work in the field of Artificial Intelligence. He has published over 15 academic research papers and contributed to 2 patents. Today he is responsible for all technical aspects of FlowPlay's virtual game worlds with a particular focus on the challenges of delivering high performance, massively multi-threaded software targeting a wide range of platforms.

### Michael Schutler Board Member



**Michael Schutzler Board Member**

Michael is a seasoned leader with a proven track record of rapid growth, start-up, and turn-around management spanning nearly 30 years. As a successful Internet entrepreneur and investor he has helped launch more than a dozen companies. He has been in leadership roles in public and private companies, non-profit and public service organizations. Michael has managed teams as small as 5 people and organizations as large as 350 employees and has been an active public speaker for nearly 10 years. Previous roles include President and CEO of Classmates.com and SVP Global Games Division of RealNetworks.



FlowPlay is managed by a talented team of gaming industry pioneers, business developers, engineers, and artists offering multi-platform social games.

Games



# VegasWorld

Enjoyed by millions, Vegas World is the best social casino game where you can play for FREE! Vegas World brings synchronous multiplayer gameplay to all of its casino-based classics, including more than 40 slots, poker, blackjack, bingo, and solitaire. Vegas World players can get coins to play all of the games, and can boost up their winnings instantly with good luck Charms. Also, players can customize their avatar, and party in social environments.



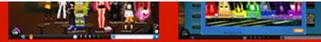
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# OURWORLD

In April 2008, FlowPlay launched ourWorld, an online virtual world where players select from over 200 of the best online game titles with genres from puzzle to action, and play to win prizes. Players can choose from over 32,000 goods, which includes clothing, furniture, and everything else players need for their virtual life. Also, players can hang out with their friends in dance clubs, coffee shops, beaches, shopping venues and their own customizable condos.





[Go To ourWorld.com »](#)

Our Games are also available on



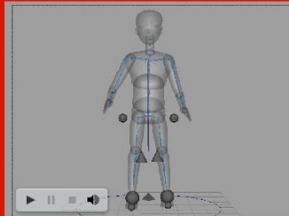
## Technology

FlowPlay prides itself in being able to provide deep game and virtual world experiences in limited platforms such as web browsers and mobile devices. We've developed several technologies to do this -- chief among them are our first social casino white-label technology and our first 3D Vector Avatar System.



### Social Casino White-Label Platform

FlowPlay now has the industry's first social casino white-label technology for businesses, game developers, online gaming networks and land-based casinos to bring social casinos to market. Customers can utilize FlowPlay's white-label platform to develop customized social casino games -- such as poker or slots, or to launch comprehensive social casinos based in virtual worlds. The dynamic platform provides the backend infrastructure and analytics for partners to launch their uniquely-branded social casino games online, on Facebook, iOS, Android tablets or mobile devices.



### 3-D Vector System

Most developers have to make a choice between having a highly animated character or one that is highly customizable. FlowPlay's 3D Vector system provides both. Flowplay's avatar animations are built in a 3D wireframe in Maya with the coordinates exported into small files. These coordinates are then tied to a group of over 100 vector files which move, stretch and tip to enable a 3D animation in a 2D environment. This allows us to have hundreds of animations that can be created in Maya and performed by our 2D puppets. It also allows us to produce a catalog of thousands of items for our characters to wear that inherit any animations we produce.



# OURWORLD

An online virtual world where players select from over 200 of the best online game titles with genres from puzzle to action, and play to win prizes.

## Our Games



FlowPlay is a developer of browser-based virtual world technology and multi-platform games such as Vegas World and ourWorld.



Vegas World is the first social casino MMORPG that engages players with fun casino games including over 40 Slots, Hot Tub Poker, Bingo, Solitaire.



Flowplay's first consumer product, ourWorld, is played by over 30 million players and is one of the most popular teen virtual worlds.

and our world. For Turn Poker, Bingo, Solitaire, Multiplayer Blackjack, and Social Video Poker. teen virtual worlds.

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## News

**How the Fantasy Football Scandal Will Affect IPOs for DraftKings and FanDuel**  
October 13, 2015. U.S. News & World Report - Leading provider of service news and information that improves the quality of life of its readers by focusing on health, personal finance, education, news and opinion.

**Will Insider Trading Sideline Fantasy Sports?**  
October 0, 2015. TechNewsWorld- One of the largest technology news sites in the United States.

**FlowPlay launches 5 Card Draft fantasy sports game**  
October 6, 2015. Innovate Gaming - Daily information source for the latest land-based, online, mobile and social gaming news and product innovation.

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## Jobs

**Senior Actionscript Developer**  
Must have excellent object oriented design and development skills

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The advertisement features a vibrant space-themed background with a blue and purple starry sky. On the left, a blonde woman in a red sequined dress stands next to an Atari slot machine. In the center, a large red banner with a crown on top reads "ATARI JACKPOTS". Below this, a red button says "PLAY for Free" and a blue button says "Play using Facebook". To the right, a green scorpion is positioned near a planet, with a rocket ship flying nearby. The Atari logo is in the top left corner, and a "Sign In" button is in the top right. At the bottom, there are links for "Help", "Terms", and "Privacy", along with a US flag icon. A small disclaimer at the very bottom reads "For entertainment only. All rights reserved, FlowPlay, Inc."

Done

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## NEWS & UPDATES

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### ATARI® GOES ALL IN WITH DEBUT OF ATARI JACKPOTS™ SOCIAL CASINO GAME

Posted October 10, 2014

#### Atari® Goes All In With Debut of Atari Jackpots™ Social Casino Game

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Atari® Goes All In With Debut of Atari Jackpots™ Social Casino Game

*Developed by Atari and FlowPlay, Atari Jackpots is a Multi-Player Virtual Casino that Includes Asteroids®, Centipede®, Missile Command® and other Atari-Themed Casual Casino Games*

**New York – October 20, 2014 – Atari®**, one of the world's most recognized publishers and producers of interactive entertainment, in partnership with **FlowPlay**, a leader in virtual world games and technology and the creators of **Vegas World**, today announced the launch of **Atari Jackpots™**. The Atari-themed virtual world brings casino-style play to an online, multi-player game – with classic Atari brands including **Asteroids®**, **Breakout®**, **Centipede®**, and **Missile Command®**. As the first release of **Atari Jackpots**, users can expect additional games and elements in the coming months.

**Atari Jackpots** features a full suite of virtual currency casual casino games and social environments, all featuring Atari favorites. In the **Centipede®**-themed poolside area, players can chat in a giant indoor ball pit, and get up close and personal with the one and only iconic Centipede. The **Breakout®** dance club offers a social environment where players can exchange **Asteroids®** Bonus Charms, which increase virtual currency payouts while playing casino games.

Upon entering **Atari Jackpots**, players will be drawn into a virtual casino with slots branded from **Asteroids®**, **Breakout®**, **Centipede®**, **Lunar Lander®**, **Missile Command®**, **Tempest®**, **Gravitar®**, and **Crystal Castles®**. Additional single- and multi-player games have also been incorporated including blackjack, video poker, solitaire, and bingo. A **Centipede®**-branded version of solitaire, and Bonus Charms inspired by Atari favorites will be incorporated in the coming months. **Atari Jackpots** will be available worldwide in several languages including English, Portuguese, Romanian, and French.

"This first release of **Atari Jackpots** is a step into online casinos, leveraging the rapidly growing interest in social casinos to offer a fun experience," said Fred Chesnais, Chief Executive Officer, Atari, Inc. "We wanted to engage rapidly with our loyal fans, get their feedback in order to decide upon the additional features to be released to further improve the **Atari Jackpots** experience."

Atari has selected **FlowPlay**, an experienced social casino development company and the creators of **Vegas**

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