

THIS OPINION IS NOT A
PRECEDENT OF THE
T.T.A.B.

Mailed: April 10, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Pictionary Inc.

v.

Spark Games LLC

Opposition No. 91167236
to application Serial No. 78407499
filed on April 24, 2004

Request for Reconsideration

Thomas A. Hallin of Harness, Dickey & Pierce, P.L.C. for
Pictionary Inc.

Dr. Parag Gupta pro se for Spark Games LLC.

Before Quinn, Kuhlke and Wellington, Administrative
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

On December 19, 2007, applicant filed a request for
reconsideration of the decision issued on November 16, 2007,
in which the Board sustained opposer's opposition to
registration of applicant's mark under Section 2(d) of the
Trademark Act.

As a preliminary matter, we note that applicant's filing included a certification that it was deposited in first class mail addressed to the USPTO on December 15, 2007. However, the filing did not include proof of service on opposer. On January 2, 2008, opposer filed a motion to extend its time to respond to the request for reconsideration inasmuch as applicant had not served the request on opposer. Opposer indicated that it became aware of the request for reconsideration upon review of the electronic file on TTABVUE. Subsequently, on January 31, 2008, opposer filed its response. Opposer's motion to extend its time to respond is granted, and although applicant has not provided proof of service on opposer, and opposer in its response has indicated that it never received service by applicant, inasmuch as opposer has responded and, in order to expedite this matter, we will consider the request at this time. Moreover, in view of the availability of the request on TTABVUE we have not forwarded a paper copy of the request to opposer.

The purpose of reconsideration is to point out errors made by the Board in rendering its decision. Reconsideration may not be used to introduce into the record additional evidence or to reargue points presented in the requesting party's brief on the case.

Applicant's request is to a large extent reargument. In addition, applicant appears to misapprehend certain portions of the decision. For example, applicant states that:

All board game [sic] will fall under the same trade channels and class of goods and purchasers. Counting this fact as a similarity does not sound logical. If this logic is applied then any two boardgames with two different marks will have three similarities (class, trade channels, purchasers) and one dissimilarity (mark). Should then similarities outweigh dissimilarity. This logic is flawed. The issue is about finding confusing similarities between two marks that are filed in the same product class. Product class itself does not become a confusing similarity.

Br. p. 4.

The Board's decision found that the similarities between the marks outweighed the dissimilarities between the marks. In addition, under our binding case law consideration of the relatedness of the goods, channels of trade and class of purchasers are all separate factors to be considered in making a determination of likelihood of confusion. *E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

After carefully considering applicant's request, we have determined that the findings and legal conclusion that a likelihood of confusion exist are clearly articulated in the Board's decision and we do not find any error in reaching those findings or legal conclusion. Moreover, applicant's request in the alternative to amend its mark is

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untimely. See *Personnel Data Systems Inc. v. Parameter Driven Software Inc.*, 20 USPQ2d 1863 (TTAB 1991); TBMP § 514.03 (2d ed. rev. 2004). In view thereof, applicant's request for reconsideration of the Board's decision is denied, and the decision of November 16, 2007 stands.