

TTAB

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February 17, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Christopher Wade v. Riles & Company
Cancellation # 21,869
Disposition 9/6/01

Gentlemen,

The undersigned represented Riles & Company in the above cancellation proceedings. The disposition in those proceedings dated 9/6/01 currently is not citable as precedent of the TTAB. A copy of the Disposition is enclosed. At the time of the disposition, it was believed that this was an appropriate determination. Therefore, the undersigned did not request publication.

However, over the passage of the last few years, it has become apparent to the undersigned that there are few if any determinations by the TTAB concerning two of the issues in the above matter. First, among the evidence submitted in support of the opposition to the petition on its merits were newspaper media articles demonstrating source recognition of the 3-Peat trademark. The use of these articles was recognized as non-hearsay (Disposition at page 10, second paragraph). The use of such articles as a source indicator is not found often in the TTAB decisions.

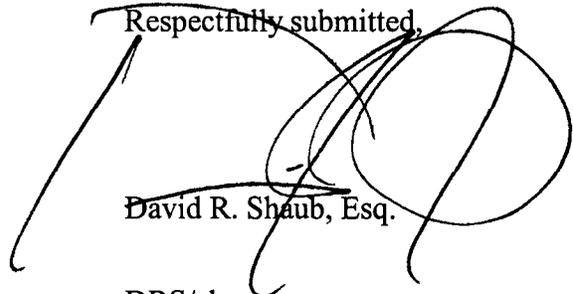
At a conference of the AIPLA in 2004 that the undersigned attended, one of the speakers from the USPTO itself indicated that she had found very few decisions, not only on the above issue, but also on the issue of whether or not a mark is generic. This was the second issue addressed in the opinion. The issue was raised because the phrase 3-Peat had been coined as a description of the repetition of a sporting event result on three successive occasions. This, however, as the TTAB found, did not mean that the product itself having been properly identified as bearing the mark at issue would be diminished by that particular adaptation. (Disposition at pages 9-10)

For these reasons, the undersigned now believes that the above disposition should be citable as precedent. A similar type of evidentiary precedent is found in *In Re Omaha National Corp*, 819 Fed.2d 1117 (Fed.Cir. 1987) in reference to articles from general and business publications probative as to descriptive usage, but not, as here, as a source indicator.



UNITED STATES PATENT AND TRADEMARK OFFICE
Page two
February 17, 2005

Respectfully submitted,



David R. Shaub, Esq.

DRS/eb
Enclosure