



BOX ITU - NO FEE
Docket No. 39041.0002.0122

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
XM SATELLITE RADIO INC.)
Serial No. 76/281215)
Filed: July 6, 2001)
Mark: FRED)

Attn: Monique C. Miller, Esq.
Trademark Law Office 108

AMENDMENT AND REQUEST FOR RECONSIDERATION AND
FOR WITHDRAWAL OF FINAL REFUSAL OF REGISTRATION

The Honorable Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Madam:

Please amend the above-captioned application as follows:

IN THE STATEMENT:

Delete the description of services in its entirety and substitute therefor the following:

--CLASSIC ALTERNATIVE ROCK MUSIC DELIVERED VIA DIGITAL
AUDIO RADIO SERVICES, in International Class 41.--

REMARKS

This will respond to the official communication dated June 12, 2003 in the above-captioned application. The Examining Attorney issued a final refusal of registration on the ground that Applicant's mark is confusingly similar to the mark FRED TV shown in Registration No. 2,490,822. Applicant incorporates by reference all of the arguments set forth



in its prior response filed May 12, 2003. In order to preserve its rights in this application, Applicant is filing a Notice of Appeal concurrently herewith.

The Examining Attorney found that the subject application and cited registration "both involve talk programs distributed through the same media, namely via satellite and via the Internet." Applicant has amended the recitation of services to specify that its mark is used in connection with classic alternative rock music rendered through digital audio radio services.¹ The format of Applicant's classic alternative rock music program is entirely different than the talk/interview show offered by the Registrant. Although both the subject application and cited registration identify satellite as a means of delivery, Applicant's music transmissions are part of a radio service broadcast only to consumers who purchase special hardware and pay a subscription fee to Applicant. Therefore, consumers are fully aware that Applicant is the source of the alternative rock music programming services.

The well-understood and ubiquitous acronym TV, as part of the mark FRED TV, suggests, first and foremost, that the Registrant's mark is used in connection with television broadcast and programming services. Applicant's services are not related to television broadcasting, transmission or programming, and Applicant has specified in the amended description of services that it uses the mark FRED in connection with digital audio radio services. Consumers are not likely to be misled into believing that Applicant, a provider of classic alternative rock music delivered through a digital audio radio service, is the source of services rendered under the mark FRED TV.

¹ Applicant previously filed an Amendment to Allege Use demonstrating its use of the mark FRED in connection with classic alternative rock music delivered via digital audio radio services, which has been approved.

With the entry of the above amendment, it is believed that the application is in condition for publication and such action is requested.

XM SATELLITE RADIO INC.

Date: December 10, 2003

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