TTAB

October 13, 2011

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Serial No.: 77/408993
Applicant: Markwort Sporting Goods Company
For The Mark: GAME FACE

Honorable Commissioner:

Enclosed is the following:

(1) Appellant's Reply Brief.

If it is determined that a fee is required in connection with this response, please charge to Deposit Account No. 162201.

All correspondence and telephone calls in connection with this application should be directed to: Nelson D. Nolte, (314)238-2400

Respectfully submitted,

Nelson D. Nolte

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Appl. of: Markwort Sporting Goods Company	)	Law Office 115
Serial No. 77/408993	)	Trademark Attorney:
Filed: 2/28/08	)	Katherine S. Chang
For: GAME FACE	)	

REPLY BRIEF FOR APPELLANT

I. The Goods Are Not Closely Related

The Examining Attorney states that the goods of the present application and the cited registrations are highly related. Applicant submits that such is not the case. The Examining Attorney attempts to oversimplify Applicant's and Registrant's goods to "protective masks for sports" in order to find that the goods are highly related. However, the nature of their use recited in the subject application and registration cannot be ignored. While the Examining Attorney claims that each are used in the same way for the same purpose, in fact a paintball masks necessarily incorporates facial protection that requires a paintball mask to be, essentially, goggles for eye protection due to the nature of being struck in the face by an exploding ball of paint. The goods of the present application do not work in the same way because they do not prevent liquids or paintballs from striking the face.

Only in a legal brief would anyone conclude that paintball masks and open-faced protective face mask for softball and the like are related. Consumers would not view

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Nelson D. Nolte

these goods as related any more than a paintball mask and a Halloween mask are related. Only detached from the actuality of the activity, would team sports like softball and baseball be considered related to paintball, where participants commonly dress up paramilitary style and intentionally shoot one another with paintball guns that frequently induce pain. Given these very important differences, one cannot conclude, as the Examining Attorney, has that these activities are highly related such that there is a high cross-section of purchasing public between products for both.

Goods are not related merely because they use one word in common. In the marketplace there is no overlap between brands for paintball equipment and for sporting goods for sports like softball, baseball, soccer, flag football and lacrosse such that any consumer would view similar marks used in these very separate and unrelated fields and believe that the goods came from the same manufacturer.

Therefore, Applicant contends that the goods are very dissimilar and certainly not "high related" as the Examining Attorney contends.

II. Dissimilarity of Channels of Trade

The Examining Attorney's only argument that Applicant's and Registrant's goods travel in the same channels of commerce is that they can be found in the same big box stores like Dick's Sporting Goods and Sports Authority. However, the mere fact that goods can be found in the same stores of a large retailer does not mean the goods are related. These retailers also sell bicycles, treadmills, trampolines and billiard tables which are also not highly related goods to paintball masks solely by virtual of being sold in the same stores. There is no evidence that the goods are related to one another or that the is any significant overlap between the purchasers who visit such stores for

softball equipment, for example, and paintball equipment or that such goods are ever located in the same section of the store or near one another.

Given the trend toward large retail outlets selling many types of different products, the critical focus is not whether they are sold in similar stores but whether the goods have similar marketing channels.

III. Third Party Registrations

"Game face" is a term that is a common term in sports, gaming and competition in general and third party registrations are similar to dictionaries showing how language is generally used. The term "game face" is defined as "the neutral and intense expression of a determined and serious sports player". The third party registrations support that "game face" is a common term in sports and is not entitled to a broad scope of protection.

IV. Conclusion

For the reasons set forth hereinabove, Appellant submits there is no likelihood of confusion between the present application and the cited registrations. The Board is therefore respectfully requested to reverse the Examiner's decision refusing registration of Appellant's mark.

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Respectfully submitted,

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