

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87219488
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/87219488/large
LITERAL ELEMENT	LADIES NITE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_1-737420436-20180314194610093864_.1565_LADIES_NITE_Response_to_Office_Action_14_Mar_2018_final.pdf
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ORIGINAL PDF FILE	evi_1-737420436-20180314194610093864_.Exhibit_1_Dictionary.com_Definition_of_Parlor_Game.pdf
CONVERTED PDF FILE(S)	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0012.JPG

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ORIGINAL PDF FILE	evi_1-737420436-20180314194610093864_.Exhibit_2_Collins_Definition_of_Parlor_Game.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0015.JPG
ORIGINAL PDF FILE	evi_1-737420436-20180314194610093864_.Exhibit_3_Dictionary.com_Definition_of_Casino.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0016.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0017.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0018.JPG
ORIGINAL PDF FILE	evi_1-737420436-20180314194610093864_.16-1565_LADIES_NITE_Declaration_of_Adam_Felman_executed_.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0019.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0020.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0021.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\872\194\87219488\xml8\RFR0022.JPG
DESCRIPTION OF EVIDENCE FILE	(1) The actual argument text attached within the Evidence section; (2) Exhibit 1 Dictionary.com Definition of Parlor Game; (3) Exhibit 2 Collins Definition of Parlor Game; (4) Exhibit 3 Dictionary.com Definition of Casino; (5) Declaration of Mr. Adam Felman
GOODS AND/OR SERVICES SECTION (009)(current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
computer software for gaming machines, namely, slot machines; computer gaming software	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/22/2015
FIRST USE IN COMMERCE DATE	At least as early as 12/22/2015
GOODS AND/OR SERVICES SECTION (009)(proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
computer software for gaming machines, namely, slot machines; computer gaming software; all of the aforementioned for use in casinos and not as parlor games	
FINAL DESCRIPTION	
computer software for gaming machines, namely, slot machines; computer gaming software; all of the aforementioned for use in casinos and not as parlor games	
FILING BASIS	Section 1(a)

FIRST USE ANYWHERE DATE	At least as early as 12/22/2015
FIRST USE IN COMMERCE DATE	At least as early as 12/22/2015
GOODS AND/OR SERVICES SECTION (028)(current)	
INTERNATIONAL CLASS	028
DESCRIPTION	
slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/22/2015
FIRST USE IN COMMERCE DATE	At least as early as 12/22/2015
GOODS AND/OR SERVICES SECTION (028)(proposed)	
INTERNATIONAL CLASS	028
TRACKED TEXT DESCRIPTION	
slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor; all of the aforementioned for use in casinos and not as parlor games	
FINAL DESCRIPTION	
slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor; all of the aforementioned for use in casinos and not as parlor games	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/22/2015
FIRST USE IN COMMERCE DATE	At least as early as 12/22/2015
GOODS AND/OR SERVICES SECTION (041)(current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/30/2013
FIRST USE IN COMMERCE DATE	At least as early as 04/30/2013

GOODS AND/OR SERVICES SECTION (041)(proposed)	
INTERNATIONAL CLASS	041
TRACKED TEXT DESCRIPTION	
entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games; all of the aforementioned consisting of casino-style games and not parlor games	
FINAL DESCRIPTION	
entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games; all of the aforementioned consisting of casino-style games and not parlor games	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/30/2013
FIRST USE IN COMMERCE DATE	At least as early as 04/30/2013
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Eric R. Moran/
SIGNATORY'S NAME	Eric R. Moran
SIGNATORY'S POSITION	Attorney of record, Illinois bar member
SIGNATORY'S PHONE NUMBER	3129133302
DATE SIGNED	03/14/2018
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Mar 14 20:08:36 EDT 2018
TEAS STAMP	USPTO/RFR-XX.XX.XXX.XX-20 180314200836982586-872194 88-51013c8476afe46efa3e02 4123ff147e8889e6597985ecf 21c2b4ac8b5a9c63-N/A-N/A- 20180314194610093864

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OMB No. 0651-0050 (Exp 09/20/2020)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **87219488** LADIES NITE(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/87219488/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of (1) The actual argument text attached within the Evidence section; (2) Exhibit 1 Dictionary.com Definition of Parlor Game; (3) Exhibit 2 Collins Definition of Parlor Game; (4) Exhibit 3 Dictionary.com Definition of Casino; (5) Declaration of Mr. Adam Felman has been attached.

Original PDF file:

[evi_1-737420436-20180314194610093864_.1565_LADIES NITE Response to Office Action 14 Mar 2018 final.pdf](#)

Converted PDF file(s) (10 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

Original PDF file:

[evi_1-737420436-20180314194610093864_.Exhibit 1 Dictionary.com Definition of Parlor Game.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_1-737420436-20180314194610093864_.Exhibit 2 Collins Definition of Parlor Game.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

Original PDF file:

[evi_1-737420436-20180314194610093864_.Exhibit 3 Dictionary.com Definition of Casino.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_1-737420436-20180314194610093864_.16-1565_LADIES NITE Declaration of Adam Felman_executed_.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for computer software for gaming machines, namely, slot machines; computer gaming software

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/22/2015 and first used in commerce at least as early as 12/22/2015 , and is now in use in such commerce.

Proposed:

Tracked Text Description: computer software for gaming machines, namely, slot machines; computer gaming software; [all of the aforementioned for use in casinos and not as parlor games](#)

Class 009 for computer software for gaming machines, namely, slot machines; computer gaming software; all of the aforementioned for use in

casinos and not as parlor games

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/22/2015 and first used in commerce at least as early as 12/22/2015 , and is now in use in such commerce.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 028 for slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor
Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/22/2015 and first used in commerce at least as early as 12/22/2015 , and is now in use in such commerce.

Proposed:

Tracked Text Description: slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor; [all of the aforementioned for use in casinos and not as parlor games](#)

Class 028 for slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor; all of the aforementioned for use in casinos and not as parlor games

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/22/2015 and first used in commerce at least as early as 12/22/2015 , and is now in use in such commerce.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 041 for entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games
Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 04/30/2013 and first used in commerce at least as early as 04/30/2013 , and is now in use in such commerce.

Proposed:

Tracked Text Description: entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games; [all of the aforementioned consisting of casino-style games and not parlor games](#)

Class 041 for entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games; all of the aforementioned consisting of casino-style games and not parlor games

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 04/30/2013 and first used in commerce at least as early as 04/30/2013 , and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Eric R. Moran/ Date: 03/14/2018

Signatory's Name: Eric R. Moran

Signatory's Position: Attorney of record, Illinois bar member

Signatory's Phone Number: 3129133302

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 87219488

Internet Transmission Date: Wed Mar 14 20:08:36 EDT 2018

TEAS Stamp: USPTO/RFR-XX.XX.XXX.XX-20180314200836982
586-87219488-51013c8476afe46efa3e024123f
f147e8889e6597985ecf21c2b4ac8b5a9c63-N/A
-N/A-20180314194610093864

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
MBHB 16-1565**

In re Application of:)	
)	
Digital Gaming Corporation Ltd.)	
)	Law Office 104
Serial No.: 87219488)	
)	Examining Attorney:
Filing Date: October 28, 2016)	
)	Verna Beth Ririe
Trademark: LADIES NITE)	

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

RESPONSE TO OFFICE ACTION

Dear Examining Attorney Ririe:

The September 14, 2017, Office Action has been received and its contents carefully noted. The Applicant, Digital Gaming Corporation Ltd., by its attorneys, respectfully responds to the pending Office Action as set forth below in three parts: (i) a description of the amendments to the goods and services identifications, (ii) the Applicant's arguments setting forth a lack of a likelihood of confusion, and (iii) the Applicant's clarifications regarding the specimen submitted in class 9, including the Declaration of Mr. Adam Felman.

Amendment of the Goods and Services Identifications

The application stands refused under section 2(d) in light of the following U.S. registration, specifically directed to parlor games (not "games" generally):

Cited Mark No.	Reg. No.	Trademark	Goods Descriptions
1	4418379	LADIES NIGHT	Class 28: Parlor games.

Notably, the cited registration is not directed to “games” generally, but to specific types of games, namely “parlor games”—which are specifically **games intended to be played in parlors or inside people’s houses, without special equipment, for the amusement of family and friends.**

In light of this, distinction, the Applicant has herein amended the pending goods and services descriptions to further clarify the channels of trade and intended customers for the Applicant’s goods and services. In particular, the Applicant has made clear that its LADIES NITE mark is not to be used in connection with “parlor games” or in connection with “games” generally, but instead specifically in connection with **casino** games:

- ***Class 9:*** computer software for gaming machines, namely, slot machines; computer gaming software; **all of the aforementioned for use in casinos and not as parlor games.**
- ***Class 28:*** slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor; **all of the aforementioned for use in casinos and not as parlor games.**
- ***Class 41:*** entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games; **all of the aforementioned consisting of casino-style games and not parlor games.**

The Applicant respectfully submits that, for at least the reasons set forth below, the amendments make absolutely clear that relevant consumers are not likely to be confused by the parties’ respective marks.

There Is No Likelihood of Confusion

The Applicant respectfully submits that the Applicant’s LADIES NITE mark is not likely to be confused with the cited mark, especially in light of the amended goods and

services identifications, which clarify that the Applicant's goods and services are not directed to games intended to be played in parlors for the amusement of family and friends, but to games intended to be played in casinos. The Applicant respectfully submits that the goods with which the marks are used are:

- completely different and not related (“**parlor** games,” versus “**casino** games”),
- are marketed to completely different customers (people looking to play games inside their **parlors** or **houses** with their family and friends, versus people visiting **casinos** or playing casino-style games),
- are found in completely different channels of trade (**retail stores**, versus **casinos**), and
- are **not** competing products or complementary products.

Importantly, a number of dictionary definitions for a “parlor game” confirm that the term does not simply mean “game,” but it means a game intended to be played in a **parlor** or a **house** for the **amusement of family and friends**. These definitions define the term beyond the single definition used by the Examining Attorney. For example:

- *Dictionary.com*’s definition of “parlor game” clarifies that a “parlor game” is “any game usually played indoors, especially in **the living room or parlor**, as a word game or a quiz, requiring little or no physical activity” (emphasis added). See Exhibit 1.
- An alternate *Merriam-Webster* definition of “parlor game” (different from the definition that the Examining Attorney used), clarifies that a “parlor game” is “a game . . . that you play **inside your home**” (emphasis added). See, e.g., Office Action dated September 14, 2017.
- *Collins Dictionary*’s definition of “parlor game” clarifies that a “parlor game” is “a game, **usually not requiring special equipment**, that is played indoors **for the amusement of family or friends**, as charades” (emphasis added). See Exhibit 2.

Each of the above definitions confirms the common understanding that a “parlor game” is a specific type of game—not a game generally—but **a game intended to be played**

in a parlor, living room, or house, without special equipment, for the amusement of family and friends.

In contrast, a “casino,” as defined by Dictionary.com, for example, is “a ***building*** or large room used for meetings, entertainment, dancing, etc., especially such a place ***equipped with gambling devices, gambling tables, etc.***” Exhibit 3 (emphasis added). Accordingly, the Applicant and the cited mark each identify specific types of games that are very different:

- “parlor games”: intended to be played in a parlor, living room, or house, without special equipment, for the amusement of family and friends,

versus

- casino or casino-style games: intended to be played in a building or large room equipped with gambling devices.

In light of this understanding, it is well known that some marks, such as house marks, or “famous” marks such as MONOPOLY, are registered and used in connection with a wide variety of unrelated goods. It is improper to infer that all such goods in all such classes are related under a likelihood of confusion analysis. See, e.g., *In re App. of Deutsche Calypsol-gesellschaft MBH & Co.*, 1983 TTAB LEXIS 32, at *7, 220 U.S.P.Q. (BNA) 922 (T.T.A.B. 1983) (“To infer based solely on evidence of the existence of such [house mark] registrations that goods in all classes are related from the standpoint of likelihood of confusion issues would, of course, be absurd.”).

Moreover, a key consideration in the likelihood of confusion analysis is the similarity or dissimilarity of the goods or services. See, e.g., *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973). “[I]f the goods or services in question are not related or marketed in such a way

that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely." See, e.g., TMEP § 1207.01(a)(i); *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 73 U.S.P.Q.2d 1350, 1355-56 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related).

As set forth above, the Applicant respectfully submits that the respective marks are used in connection with unrelated goods that are marketed in widely disparate channels of trade. Under *In re E. I. DuPont DeNemours & Co.*, a likelihood of confusion analysis must consider (i) the "similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use," and (ii) the "similarity or dissimilarity of established, likely-to-continue trade channels." 177 U.S.P.Q. at 567; see also *In re Digirad Corp.*, 45 U.S.P.Q.2d at 1842.

Even when marks are similar or even identical, confusion is not likely if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source. See, e.g., *Shen Mfg. Co.*, 73 U.S.P.Q.2d at 1355-56.

As discussed, the cited mark is registered in connection with "parlor games" in class 28. In contrast, the Applicant's goods are limited to:

- **Class 9:** computer software for gaming machines, namely, slot machines; computer gaming software; all of the aforementioned for use in casinos and not as parlor games.
- **Class 28:** slot machines; gambling machines for use with an external display screen or monitor containing software that enables gambling

machines to run; stand-alone or server linked gambling machines, other than those for use with an external display screen or monitor; all of the aforementioned for use in casinos and not as parlor games.

- **Class 41:** entertainment services, namely, providing online casino-style games and games of chance; entertainment services, namely, providing online slot machine-style games; all of the aforementioned consisting of casino-style games and not parlor games.

Accordingly, the Applicant's applied-for mark is not directed to "parlor games," as is the cited mark; and the cited mark is not directed to (i) software for use in casinos, (ii) slot or gambling machines for use in casinos, or (iii) providing online casino-style games, games of chance, or slot machine-style games consisting of casino-style games, as is the Applicant's applied-for mark.

In addition, the respective recited goods are not identical, competitive, or closely related. Not only are the Applicant's goods dissimilar to the goods in the cited registration, the Applicant's goods are not competitive with, complementary to, or intended to be used with the goods in any of the cited registrations. See, e.g., *In re Watson*, Serial No. 85775921 (T.T.A.B. Jun. 3, 2014) (finding ORGASMIC for "books in the field of sex education" not likely to cause confusion with registered ORGAZMIK for adult entertainment DVDs and other recordings, and for retail stores services in the field of adult entertainment); *In re TriVascular, Inc.*, Serial No. 77941535 (T.T.A.B. Nov. 27, 2012) (finding OVATION for vascular stents and related devices not likely to cause confusion with registered OVATION for hip prosthesis used in joint reconstruction surgery).

Further, just because the goods identified in the respective parties' applications may allegedly be sold to the same consumers (see Office Action, September 14, 2017) or may be sold through the same large retailers (see Office Action, September 14, 2017

and Attachments), "it does not necessarily follow that the consuming public would understand those products to have originated from the same source." *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244, 73 U.S.P.Q.2d (BNA) 1350, 1355-56 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related); *In re Markwort Sporting Goods Co.*, 2012 TTAB LEXIS 153, at *8 (T.T.A.B. 2012) ("the mere fact that foods can be found in the same stores of a large retailer does not mean the goods are related"); *In re Brass-Craft Mfg. Co.*, 2010 TTAB LEXIS 242, at *11 (T.T.A.B. 2010) ("We certainly cannot apply a rule that everything sold through big-box home centers like Lowe's or The Home Depot involves 'related' goods.").

Finally, the Applicant respectfully submits that the Examining Attorney's Internet evidence (see Office Action, September 14, 2017 and Attachments) does not show that the respective goods and services are related. It is well known that some marks, such as house marks, or "famous" marks such as MONOPOLY, are registered and used in connection with a wide variety of unrelated goods. It is improper to infer that all such goods in all such classes are related under a likelihood of confusion analysis. See, e.g., *In re App. of Deutsche Calypsol-gesellschaft MBH & Co.*, 1983 TTAB LEXIS 32, at *7, 220 U.S.P.Q. (BNA) 922 (T.T.A.B. 1983) ("To infer based solely on evidence of the existence of such [house mark] registrations that goods in all classes are related from the standpoint of likelihood of confusion issues would, of course, be absurd.").

III. Conclusion

In light of the foregoing, the Applicant asserts that there is no likelihood of confusion between the Applicant's mark and the cited mark. As a result, the Applicant

respectfully requests the Trademark Examining Attorney to approve this application and to pass the application on to publication.

Substitute Specimen Requirement

Regarding the class 9 specimen submitted by the Applicant, in the pending Office Action, the Examining Attorney stated that:

Registration is refused because the specimen does not show the applied-for mark in use in commerce in connection with any of the goods specified in International Class 9 in the application. . . . Specifically, the screen shot does not show use of the mark in conjunction with software goods.

The Examining Attorney further stated that:

Applicant states that the original specimens include a “screen shot” showing the mark on the goods. Such a screen shot does not show the mark used in conjunction with a screen printout for downloadable computer software. Rather it appears as a gaming machine with no evidence that the software is available apart from the machine. The screen shot does not create an association between the mark and software.

The TMEP provides guidance, however, on specimens appropriate for downloadable computer software:

The computer program, video, and movie industries have adopted the practice of applying trademarks that are visible only when the goods, that is, programs or movies, are displayed on a screen (e.g., on the first several frames of a movie).

An acceptable specimen might be a photograph or printout of a display screen projecting the identifying trademark for a computer program, or a photograph of a frame(s) of a movie or video bearing the mark. ***It is not necessary that purchasers see the mark prior to purchasing the goods, as long as the mark is applied to the goods or their containers, or to a display associated with the goods, and the goods are sold or transported in commerce.*** *In re Brown Jordan Co.*, 219 USPQ 375 (TTAB 1983) (holding that stamping the mark after purchase of the goods, on a tag attached to the goods that are later transported in commerce, is sufficient use).

TMEP § 904.03(e) (emphasis added).

The Applicant has, herein, submitted the Declaration of Mr. Adam Felman. Mr. Felman is the UK Chief Financial Officer of Digital Gaming Corporation Limited, the Applicant of the above-captioned U.S. trademark application for the LADIES NITE trademark ("the LADIES NITE application"). Felman Declaration ¶ 1. Attached to the Felman Declaration, as Exhibit A, is the specimen that Applicant submitted for the class 9 goods in the allegation of use for the LADIES NITE application. *Id.* ¶ 3.

Mr. Felman has personal knowledge of how the Applicant has used and is currently using this specimen in commerce. Felman Declaration ¶ 4. In addition, Mr. Felman also has personal knowledge of how the Applicant has used the goods in class 9 ("computer software for gaming machines, namely, slot machines; computer gaming software") in commerce. *Id.*

As set forth in Mr. Felman's declaration, Exhibit A is a screen shot of a display screen showing the LADIES NITE trademark as used in connection with computer software. Felman Declaration ¶ 5. Such computer software is "for gaming machines, namely, slot machines" and for "computer gaming software." *Id.*

Further, as set forth in Mr. Felman's declaration, the computer software depicted in Exhibit A is downloadable onto a computer or gaming machine. Felman Declaration ¶ 6. Such software is available apart from the gaming machine. *Id.* For example, such software can be purchased separately from the gaming machine, and such software can be downloaded into the gaming machine after it is purchased. *Id.*

Moreover, the Applicant has used and is currently using the attached specimen to make an association between the LADIES NITE mark and the software goods. See, e.g., Felman Declaration ¶ 6. As seen in the specimen, the Applicant causes the

LADIES NITE mark to be prominently displayed at the very top of the display screen, in a way that it catches a viewer's attention. See, e.g., *id.*

Accordingly, the Applicant respectfully submits that the specimen is proper for class 9 goods. In particular, in the pending Office Action, the Examining Attorney provided examples of specimens for goods: "Examples of specimens for goods include tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, and displays associated with the actual goods at their point of sale."

Here, the Applicant submitted a screen shot (similar to a "photograph" as in the quote above) showing the mark "on the actual goods." The actual goods, as identified in the application, include "computer software for gaming machines, namely, slot machines." Accordingly, the Applicant respectfully requests that the Examining Attorney withdraw this refusal.

For these reasons, as well, the Applicant respectfully requests the Trademark Examining Attorney to approve this application and to pass the application on to publication.

Date: March 14, 2018

Respectfully submitted,

Eric R. Moran
Attorney for Applicant

Dictionary.com (<http://www.dictionary.com/>) Thesaurus.com (<http://www.thesaurus.com/>)

Dictionary.com
theday/)

(<http://www.dictionary.com/>)

definitions ▼ parlor games



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CITE

parlor game

Examples Word Origin

See more synonyms on Thesaurus.com
(<http://www.thesaurus.com/browse/parlor%20game>)

noun

1. any game usually played indoors, especially in the living room or parlor, as a word game or a quiz, requiring little or no physical activity.

Origin of parlor game

1890-1895

First recorded in 1890-95

Dictionary.com Unabridged

Based on the Random House Dictionary, © Random House, Inc. 2018.

Cite This Source

Examples from the Web for parlor game

Contemporary Examples

But blame-the-candidate is a Democratic *parlor game* played when they lose local seats they should have won by the numbers.

Woke Daily Washington (http://www.thedailybeast.com/articles/2011/09/14/new-source=dictionary)
election-a-wake-up-call-to-washington.html?source=dictionary)

John Avlon (http://www.thedailybeast.com/contributors/john-avlon.html?source=dictionary)

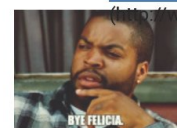
September 14, 2011

Unwrapping her many layers has become the current *parlor game* of the media and blogosphere.

The Right's Favorite Atheist (http://www.thedailybeast.com/articles/2010/06/13/se-source=dictionary)
newsweek-defends-christianity-and-atheism.html?source=dictionary)

Benjamin Cohen (http://www.thedailybeast.com/contributors/benjamin-

Others Are Reading



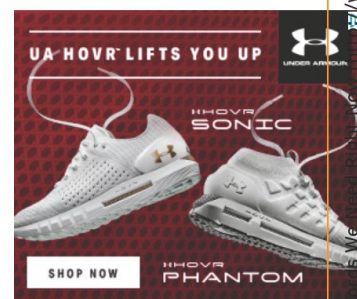
The Best (Worst) Ways to Say Goodbye

(http://www.dictionary.com/browse/goodbye-farewells-listicle/?param=DcomSERP-RR1)



The Oldest Memes in History (pre-Y2K, pre-1990)

(http://www.dictionary.com/browse/memes-original-memes-before-memes-listicle/?param=DcomSERP-RR2)



Word of the Day

circumferential (http://www.dictionary.com/browse/circumferential)
Nearby words for parlor game

parliamentary secretary (http://www.dictionary.com/browse/parliamentary-secretary)

parliamentary system (http://www.dictionary.com/browse/parliamentary-system)

parling (http://www.dictionary.com/browse/parling)

parlor (http://www.dictionary.com/browse/parlor)

parlor car (http://www.dictionary.com/browse/parlor-car)

parlor game

(http://www.dictionary.com/browse/parlor-game)

cohen.html?source=dictionary)
June 13, 2010

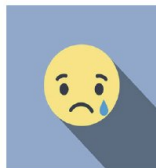
Historical Examples

However, this is no parlor game that you and I are playing, and desperate

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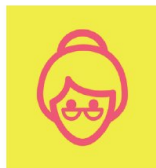
(<http://www.dictionary.com/slideshows/sad-words>)
Six words that can ruin your...
(<http://www.dictionary.com/slideshows/sad-words>)



(<http://www.dictionary.com/slideshows/sad-words>)
10 Of The Saddest Words (Or...)
(<http://www.dictionary.com/slideshows/sad-words>)



(<http://www.dictionary.com/slideshows/aged-english-words>)
The Oldest Words In The English...
(<http://www.dictionary.com/slideshows/aged-english-words>)



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This small mark has two primary uses: to signify possession or omitted letters.

How Do I Get a Word into the Dictionary?

(<http://www.dictionary.com/e/getting-words-into-dictionaries>)

People invent new words all the time, but which ones actually make it?

game)

parlor grand (<http://www.dictionary.com/b>)

parlor house (<http://www.dictionary.com/b>)

parlor pink (<http://www.dictionary.com/brc>)

parlormaid (<http://www.dictionary.com/brc>)

parlour (<http://www.dictionary.com/browse>)

Word Value for parlor game

8 10

Scrabble

Words With Friends

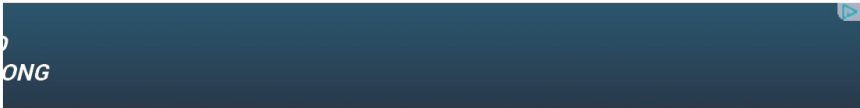
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Definition of 'parlor game'

American: parlor game

parlor game in American

a game, usually not requiring [special](#) equipment, that is played [indoors](#) for the [amusement](#) of family or [friends](#), as [charades](#)

Webster's New World College Dictionary, 4th Edition. Copyright © 2010 by Houghton Mifflin Harcourt. All rights reserved.

Nearby words of 'parlor game'

- [parlies](#)
- [parlor](#)
- [parlor car](#)
- parlor game
- [parlormaid](#)
- [parlour](#)
- [parlour game](#)
-

[All ENGLISH words that begin with 'P'](#)

Source

Definition of **parlor game** from the [Collins English Dictionary](#)



[Phrasal verbs](#)

[A phrasal verb is a type of verb that is created when a main verb is combined with either: an adverb, take off give in blow up break in a preposition, get at \(someone\) pick on \(weaker ch...](#)

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casino

[*kuh-see-noh*]

Spell Syllables

Examples Word Origin

See more synonyms on Thesaurus.com
(<http://www.thesaurus.com/browse/casino>)

noun, plural **casinos** for 1.

1. a building or large room used for meetings, entertainment, dancing, etc., especially such a place equipped with gambling devices, gambling tables, etc.
2. (in Italy) a small country house or lodge.
3. Also, **cassino** (<http://www.dictionary.com/browse/cassino>). *Cards*. a game in which cards that are face up on the table are taken with eligible cards in the hand.

Origin of casino

1780-1790

1780-90; < Italian, equivalent to *cas(a)* house + *-ino* diminutive suffix

Related forms

subcasino, noun, plural **subcasinos**.

Dictionary.com Unabridged

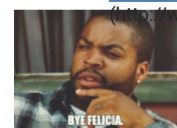
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Others Are Reading



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(<http://www.dictionary.com/browse/goodbye>)

farewells-listicle/?param=DcomSERP-RR1)



The Oldest Memes in History (pre-Y2K)

(<http://www.dictionary.com/browse/memes>)

original-memes-before-memes-listicle/?param=DcomSERP-RR2)

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February 2017

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GREATNESS AWAITS PlayStation VR

Word of the Day

Ironically, what was bad for the boys in Havana provided a shot in the arm to the *casino* crowd in Las Vegas.

(<http://www.thedailybeast.com/articles/2014/12/18/will-hyman-roth-return-to-havana-with-normalized-relations.html?source=dictionary>)
John L. Smith (<http://www.thedailybeast.com/contributors/john-l-smith.html?source=dictionary>)
December 18, 2014

By the early 1960s, Las Vegas enjoyed an influx of *casino* employees with experience in Havana.

(<http://www.thedailybeast.com/articles/2014/12/18/will-hyman-roth-return-to-havana-with-normalized-relations.html?source=dictionary>)
John L. Smith (<http://www.thedailybeast.com/contributors/john-l-smith.html?source=dictionary>)
December 18, 2014

British Dictionary definitions for casino

casino

/kəˈsiːnəʊ/

noun (pl) -nos

1. a public building or room in which gaming takes place, esp roulette and card games such as baccarat and chemin de fer
2. a variant spelling of cassino (</browse/cassino>)

Word Origin

C18: from Italian, diminutive of *casa* house, from Latin

Collins English Dictionary - Complete & Unabridged 2012 Digital Edition
© William Collins Sons & Co. Ltd. 1979, 1986 © HarperCollins
Publishers 1998, 2000, 2003, 2005, 2006, 2007, 2009, 2012
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Word Origin and History for casino

n.
1744, "public room for music or dancing," from Italian *casino*, literally "a little house," diminutive of *casa* "house," from Latin *casa* "hut, cottage, cabin," of uncertain origin. The card game (also *cassino*) is attested by that name from 1792. Specifically as "building for aristocratic gambling" by 1820, first in an Italian context.

[T]he term Casino [is] indiscriminately applied to a set of farm offices, a country-seat, a gambling house, and a game of cards ...
[Jane Waldie Watts, "Sketches Descriptive of Italy in the Years 1816 and 1817," London 1820]

circumferential (<http://www.dictionary.com/word-of-the-day/>)
little casino (<http://www.dictionary.com/bi>)
big casino (<http://www.dictionary.com/bi>)
card counter (<http://www.dictionary.com/bi>)
cash (<http://www.dictionary.com/bi>)
cash-out (<http://www.dictionary.com/browse/cash-out>)
croupier (<http://www.dictionary.com/browse/cro>)

Nearby words for casino

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casing (<http://www.dictionary.com/browse>)
casing knife (<http://www.dictionary.com/br>)
casing nail (<http://www.dictionary.com/bo>)
casinghead gas (<http://www.dictionary.com>)
casino (<http://www.dictionary.com>)
casita (<http://www.dictionary.com/browse/>)
casitas (<http://www.dictionary.com/browse/c>)
cask (<http://www.dictionary.com/browse/ci>)
cask of amontillado (<http://www.dictionary>)
asked (<http://www.dictionary.com/browse>)

Word Value for casino

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Scrabble Words With Friends



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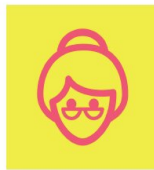
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(<http://www.dictionary.com/slideshows/six-words-that-can-ruin-your-life>)



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10 Of The Saddest Words (Or...)
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The Oldest Words In The English...
(<http://www.dictionary.com/slideshows/oldest-english-words>)



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People invent new words all the time, but which ones actually make it?



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
MBHB 16-1565**

In re Application of:)	
)	
Digital Gaming Corporation Ltd.)	
)	Law Office 104
Serial No.: 87219488)	
)	Examining Attorney:
Filing Date: October 28, 2016)	
)	Verna Beth Ririe
Trademark: LADIES NITE)	

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


DECLARATION OF ADAM FELMAN

I, Adam Felman, hereby declare and state as follows:

1. I am the UK Chief Financial Officer of Digital Gaming Corporation Limited, the Applicant of the above-captioned U.S. trademark application for the LADIES NITE trademark ("the LADIES NITE application").
2. I am familiar with the LADIES NITE application and have reviewed materials related to the application.
3. I understand that the document attached to this declaration as Exhibit A has been submitted to the U.S. Trademark Office as a specimen in class 9 in an allegation of use for the LADIES NITE application.
4. I have reviewed and have personal knowledge of the specimen in Exhibit A. I also have personal knowledge of how the Applicant has used and is currently using this specimen in commerce. In addition, I also have personal knowledge of how the Applicant has used the goods in class 9 ("computer software for gaming machines, namely, slot machines; computer gaming software") in commerce.
5. Exhibit A is a screen shot of a display screen showing the LADIES NITE trademark as used in connection with computer software. Such computer software is "for gaming machines, namely, slot machines" and for "computer gaming software."

6. Further, the computer software depicted in Exhibit A is downloadable onto a computer or gaming machine. Such software is available apart from the gaming machine. For example, such software can be purchased separately from the gaming machine, and such software can be downloaded into the gaming machine after it is purchased.
7. Moreover, the Applicant has used and is currently using the attached specimen to make an association between the LADIES NITE mark and the software goods. As seen in the specimen, Applicant causes the LADIES NITE mark to be prominently displayed at the very top of the display screen, in a way that it catches a viewer's attention.
8. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Date: 14th December 2017.



Adam Felman
UK Chief Financial Officer

EXHIBIT A

Ladies Nite



1¢
PER CREDIT



21648218
CREDITS

9
BET



PAYS