

To: Bapp, Frederick Kevin (kbapp@me.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86318137 - SUPER GOLDEN FRIENDS - N/A

Sent: 10/2/2014 11:16:50 AM

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Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)
[Attachment - 13](#)
[Attachment - 14](#)
[Attachment - 15](#)
[Attachment - 16](#)
[Attachment - 17](#)
[Attachment - 18](#)
[Attachment - 19](#)
[Attachment - 20](#)
[Attachment - 21](#)
[Attachment - 22](#)
[Attachment - 23](#)
[Attachment - 24](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86318137	
MARK: SUPER GOLDEN FRIENDS	*86318137*
CORRESPONDENT ADDRESS: BAPP, FREDERICK KEVIN 200 W 20TH ST APT 1507 NEW YORK, NY 10011-3565	CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response_forms.jsp VIEW YOUR APPLICATION FILE
APPLICANT: Bapp, Frederick Kevin	
CORRESPONDENT'S REFERENCE/DOCKET NO : N/A CORRESPONDENT E-MAIL ADDRESS: kbapp@me.com	

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 10/2/2014

TEAS PLUS APPLICANTS – TO MAINTAIN REDUCED FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see TMEP §819.02(b) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. *See* 37 C.F.R. §2.23(a)(1), (a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these three requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

Status Information and Assistance

An applicant may check the status of or view documents filed in his or her trademark and/or service mark application or registration 24 hours a day, 7 days a week using the Trademark Status and Document Retrieval (TSDR) database on the USPTO website at <http://tsdr.uspto.gov/>. To obtain this status or view these documents, enter the application serial number or registration number and click on "Status" or "Documents."

For assistance addressing the legal issues raised in this action, please contact the undersigned attorney. **For all other matters, including filing questions, status inquiries and general questions, please contact the Trademark Assistance Center at 1-800-786-9199 or 571-272-1000.**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Refusal of Registration: Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 118088, 3071682 and 2861443. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration. Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods of the applicant and registrant. *See* 15 U.S.C. §1052(d).

A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods, and similarity of the trade channels of the goods. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Similarity of the Marks

The applicant has applied to register SUPER GOLDEN FRIENDS, and the registered marks are all for "SUPER FRIENDS." Adding a term to a registered mark generally does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). *See Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (finding BENGAL and BENGAL LANCER and design confusingly similar); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (finding TITAN and VANTAGE TITAN confusingly similar); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (finding MACHO and MACHO COMBOS confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part.

Comparison of the Goods

The applicant has identified the following goods: "cartoon prints and cartoon strips." The registered marks cover comic magazines, assorted party goods and toys; and motion pictures. The attached dictionary definition and the pages from various cartoon licensing organizations makes it clear that applicant's goods and the products and services offered by the registrant are clearly related. Cartoon licensing covers a wide variety of goods and services, including magazines, party goods and movies.

Information on How to Respond to this Office Action

For this application to proceed to registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/mailling date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a private attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant's legal rights. TMEP §§705.02, 709.06.

For referral information, please consult the American Bar Association's Consumers' Guide to Legal Help: <http://www.abanet.org/legalservices/findlegalhelp/home.cfm>, an attorney referral service of a state or local bar association, or a local telephone directory. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

Status Information and Assistance

An applicant may check the status of or view documents filed in his or her trademark and/or service mark application or registration 24 hours a day, 7 days a week using the Trademark Status and Document Retrieval (TSDR) database on the USPTO website at <http://tsdr.uspto.gov/>. To obtain this status or view these documents, enter the application serial number or registration number and click on "Status" or "Documents."

For assistance addressing the legal issues raised in this action, please contact the undersigned attorney. **For all other matters, including filing questions, status inquiries and general questions, please contact the Trademark Assistance Center at 1-800-786-9199 or 571-272-1000.**

/Susan Leslie DuBois/
Susan Leslie DuBois
Examining Attorney
Law Office 111
susan.dubois@uspto.gov
571-272-9154

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailling date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Oct 1, 2014

73198417

TYPED DRAWING

Serial Number

73198417

Status

REGISTERED AND RENEWED

Word Mark

SUPER FRIENDS

Standard Character Mark

No

Registration Number

1180088

Date Registered

1981/12/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

DC COMICS PARTNERSHIP NEW YORK 1700 Broadway NEW YORK NEW YORK 10019

Goods/Services

Class Status -- SECTION 8 - CANCELLED. IC 028. US 022 023 038 050.
G & S: [Paper Party Goods-Namely, Hats and Horns]. First Use:
1977/00/00. First Use In Commerce: 1977/00/00.

Goods/Services

Class Status -- SECTION 8 - CANCELLED. IC 021. US 002 013 023 029
030 033 040 050. G & S: [Paper Plates and Cups]. First Use:
1977/00/00. First Use In Commerce: 1977/00/00.

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 037 038 050. G & S: Comic
Magazines; Napkins; Party Invitations; Chalk Boards; Paper Party Loot
Bags and Paper Trick or Treat Bags; Paper Table Covers and Placemats;
Paper Party Goods-Namely, Centerpieces and Decorative Hangings in the
Nature of Posters Made of Paper. First Use: 1976/08/26. First Use In
Commerce: 1976/08/26.

Filing Date

Print: Oct 1, 2014

73198417

1978/12/27

Examining Attorney

UNKNOWN

Attorney of Record

JANET A. KOBRIN, ESQ.

Print: Oct 1, 2014

78182026

TYPED DRAWING

Serial Number

78182026

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

SUPER FRIENDS

Standard Character Mark

No

Registration Number

3071682

Date Registered

2006/03/21

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

DC COMICS DBA OF WARNER COMMUNICATIONS INC. AND E.C. PUBLICATIONS,
INC. PARTNERSHIP NEW YORK 1700 BROADWAY NEW YORK NEW YORK 10019

Goods/Services

Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S: TOYS
AND SPORTING GOODS, NAMELY, GAMES AND PLAYTHINGS, NAMELY, ACTION
FIGURES AND ACCESSORIES THEREFOR; PLUSH TOYS; [BALLOONS; EQUIPMENT AS
A UNIT FOR PLAYING CARD GAMES;] DOLLS; FLYING DISCS; [HAND-HELD UNIT
FOR PLAYING ELECTRONIC GAMES; GAME EQUIPMENT SOLD AS A UNIT FOR
PLAYING A BOARD GAME; STAND ALONE VIDEO OUTPUT GAME MACHINES;] JIGSAW
AND MANIPULATIVE PUZZLES [; PAPER FACE MASKS; BALLS - NAMELY,
PLAYGROUND BALLS; TOY BANKS; TOY SNOW GLOBES; AND CHRISTMAS TREE
ORNAMENTS]. First Use: 2003/04/01. First Use In Commerce:
2003/04/01.

Prior Registration(s)

1180088

Filing Date

2002/11/05

Print: Oct 1, 2014

78182026

Examining Attorney
SINGLETON, RUDY R.

Attorney of Record
Janet A. Kobrin

Print: Oct 1, 2014

78182043

TYPED DRAWING

Serial Number

78182043

Status

REGISTERED AND RENEWED

Word Mark

SUPER FRIENDS

Standard Character Mark

No

Registration Number

2861443

Date Registered

2004/07/06

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

DC COMICS PARTNERSHIP NEW YORK 1700 BROADWAY NEW YORK NEW YORK 10019

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
[Motion picture films featuring comedy, drama, action, adventure
and/or animation, and motion picture films for broadcast on television
featuring comedy, drama, action, adventure and/or animation;
prerecorded vinyl records, audio tapes, audio-video tapes, audio video
cassettes,] audio video discs, and digital versatile discs featuring
music, comedy, drama, action, adventure, and/or animation[; stereo
headphones; batteries; cordless telephones; hand-held calculators;
audio cassette and CD players; CD ROM computer game discs; hand-held
karaoke players, telephone and/or radio pagers; short motion picture
film cassettes featuring comedy, drama, action, adventure and/or
animation to be used with hand-held viewers or projectors; video
cassette recorders and players, compact disc players, digital audio
tape recorders and players, electronic diaries; radios; mouse pads;
eyeglasses, sunglasses and cases therefore; audio tapes and booklets
sold as a unit featuring comedy, drama, action, adventure, animation
and music information; computer programs, namely, software linking
digitized video and audio media to a global computer information

network; game equipment sold as a unit for playing a parlor-type computer game; video and computer game programs; video game cartridges and cassettes; cellular telephone accessories, namely, hands-free accessories, cellular telephone covers and cellular telephone face covers; encoded magnetic cards, namely, phone cards, credit cards, cash cards, debit cards and magnetic key cards; and decorative magnets]. First Use: 2003/04/22. First Use In Commerce: 2003/04/22.

Prior Registration(s)

1180088

Filing Date

2002/11/05

Examining Attorney

SINGLETON, RUDY R.

Attorney of Record

Janet A. Kobrin

?!

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- cartoon set
- animated cartoon

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car·toon *noun, often attributive* \kär-tūn\

- : a drawing in a newspaper or magazine intended as a humorous comment on something
- : a series of drawings that tell a story
- : a film or television show made by photographing a series of drawings : an animated film or television show

Full Definition of CARTOON

- 1 : a preparatory design, drawing, or painting (as for a fresco)
- 2 **a** : a drawing intended as satire, caricature, or humor <a political cartoon>
b : COMIC STRIP
- 3 : ANIMATED CARTOON
- 4 : a ludicrously simplistic, unrealistic, or one-dimensional portrayal or version <the film's villain is an entertaining cartoon>
 - cartoon *verb*
 - car-toon-ing *noun*
 - car-toon-ish *adjective*
 - car-toon-ish-ly *adverb*
 - car-toon-ist *noun*
 - car-toon-like *adjective*

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— **car-toon-like**  *adjective*
— **car-toony**  *adjective*

 See **cartoon** defined for English-language learners »
See **cartoon** defined for kids »

Examples of CARTOON

- She enjoys reading the **cartoons** in the Sunday paper.
- The kids are watching **cartoons**.

Origin of CARTOON

Italian *cartone* pasteboard, cartoon, augmentative of *carta* leaf of paper — more at **CARD**

First Known Use: 1671

Related to CARTOON




Synonyms
drawing, delineation, sketch

[+] more

cartoon *noun* (Concise Encyclopedia)

Originally, a full-size drawing used for transferring a design to a painting, tapestry, or other large work. Cartoons were used from the 15th century by fresco painters and stained-glass artists. In the 19th century the term acquired its popular meaning of a humorous drawing or parody. Cartoons in that sense are used today to convey political commentary, editorial opinion, and social comedy in newspapers and magazines. The greatest early figure is **WILLIAM HOGARTH**, in 18th-century Britain. In 19th-century France, **HONORÉ DAUMIER** introduced accompanying text that conveyed his characters' unspoken thoughts. Britain's **PUNCH** became the foremost 19th-century venue for cartoons; in the 20th century **THE NEW YORKER** set the American standard. A Pulitzer Prize for editorial cartooning was established in 1922. See also **CARICATURE**; **COMIC STRIP**.

Learn More About CARTOON

-  Thesaurus: All synonyms and antonyms for "cartoon"
-  Spanish Central Translation: "cartoon" in Spanish
-  Britannica.com: Encyclopedia article about "cartoon"

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The Merriam-Webster Unabridged Dictionary



“ Seen & Heard ”


What made you want to look up **cartoon**? Please tell us where you read or heard it (including the quote, if possible).

10 comments




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
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Paramvir Singh Sahi · THAKUR TOONSKOOL ADVANCE ANIMATION ACADEMY
very few i.info no proper definition is used when asking for cartoonish character.
Reply · Like · July 5, 2013 at 12:18pm




Cynthia Betancourt
The Lady and the Unicorn - Tracy Chevalier
Reply · Like · May 19, 2013 at 7:00am



glengilbertprod (signed in using yahoo)
People were complaining that the Cartoon Strip 'Doodles' should not be in the 'cartoon' section. I maintain that most cartoons in the USA were originally political ones and it is the non-political cartoon that was added later. Obviously, knowing what this word means does not win that discussion, but it helps to know the root.
Reply · Like · March 10, 2012 at 2:18pm



Cyndi Lacefield · Pensacola, Florida
In reference to my Comp. paper.... They had a cartoonish quality about them. (I the Winged Monkeys- THE WIZARD OF OZ).
Reply · Like · November 16, 2011 at 7:52pm



Phyllis Lovell · ★ Top Commenter · Central Washington University
It was used in a book about Michelangelo. I didn't think they had cartoons back in the late 1400s so I had to find out what was meant. "In a near corner a man was grinding colors in a mortar, while along the side walls were stacked color cartoons of completed frescoes, the Last Supper of the church of the Ognissanti and the Calling of the First Apostles for the Sistine Chapel in Rome." "The Agony and the Ecstasy" by Irving Stone.
Reply · Like · October 21, 2011 at 2:03pm

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October 2, 2014

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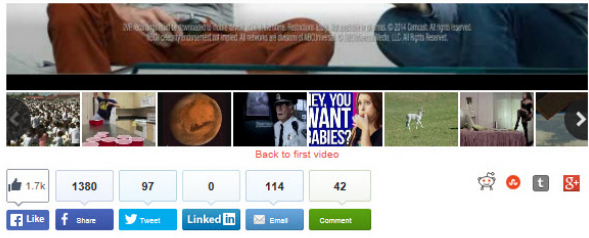
'Super Golden Friends' Reimagines 'Super Friends' As 'Golden Girls' Characters

Posted: 07/10/2012 10:12 am EDT | Updated: 07/10/2012 10:19 am EDT



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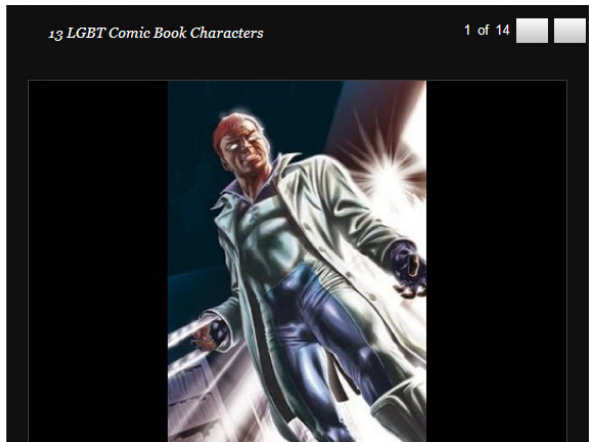


First news broke that the NYC City Council **approved over \$3 million in funding for the creation of a residence** for homeless lesbian, gay, bisexual and transgender youth that will be named after beloved "Golden Girl" actress and LGBT ally Bea Arthur.

The clip is the creation of **art director and designer Kevin Bapp** and features fifty-plus versions of Batman, Superman, Aquaman and Robin acting out the **sitcom's classic opening sequence**.

Below, see a slideshow of LGBT comic book characters:

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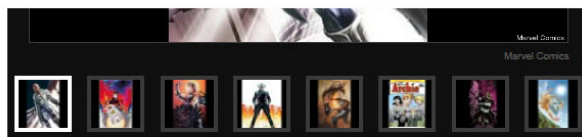


Couple Who Allegedly Had Sex On Murdered Bodies 'Couldn't Get Off'



Lauren Harrington-Cooper, Former Pa. Teacher, Sentenced For Sex Abuse Of 4 Students





MORE: [Golden Girls, Cartoons, Video, Kevin Bapp, Weird Photos and Videos, Golden Girls Superheroes, Super Friends, Bat Man, Super Golden Friends, Superman, Kevin Bapp Super Golden Friends, Bea Arthur](#)

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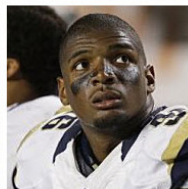
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






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





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PLAINTOM
320 Fans · Strive


Superman's Blanche walk was priceless.

10 JUL 2012 8:05 PM

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Musnt_Grumble
192 Fans · Feelings of an almost human nature.

When Robin came through the door as Sophia I nearly lost it! This show "must" be made.

10 JUL 2012 9:27 PM

119

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☆ 5



Christie R. (Ainsaade)
990 Fans · Covered in bees

I lost it at Superman/Blanche sashaying down the hall. Priceless.

11 JUL 2012 12:00 AM

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☆ 5



Dale_Chan
201 Fans · Hope is both panacea and poison.

I want this to be real!


10 JUL 2012 1:59 PM

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☆ 4



Dan B. (Pipeguy37)
33 Fans

I LOVE THIS!!!! Super fantastic!!


10 JUL 2012 10:28 AM

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Mark K. (coolbanker)
SUPER USER · 185 Fans · Dublin, CA

One of the funniest things I have seen this year!


10 JUL 2012 11:43 AM

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☆ 4



Kevin V. (kevin_sebas)
SUPER USER · 68 Fans

Win! Adult Swim? Are you watching?

10 JUL 2012 3:45 PM

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**MsMelanieee**
955 Fans · You can call me names but I won't play that game

★ 2

This is funny and I want to see more!!!
10 JUL 2012 5:31 PM

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**Jake G. (BruntLIVE)**
SUPER USER · 318 Fans · Deal with my fullboreness

★ 1

keeping looking u will (tee hee), you surely will
10 JUL 2012 6:23 PM

★ FAVE · < SHARE · ... MORE

**luisroman**
124 Fans

★ 2

So ridiculously awesome, I may not stop laughing for a week!
10 JUL 2012 11:44 AM


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**Russ Simon (Russ_Simon)**
SUPER USER · 40 Fans · Don't drunk dial freedomwoks

★ 2

I am ready for episode 1
10 JUL 2012 11:45 AM

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**bsc**
80 Fans

★ 2

awesome
10 JUL 2012 2:27 PM

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Crackberry Trademark Registrations Refused by Trademark Trial and Appeal Board – Parody not a Defense

by [Jim Pravel](#) on MARCH 14, 2012 in [DILUTION](#), [FAMOUS TRADEMARKS](#), [LIKELIHOOD OF CONFUSION](#), [OPPOSITION](#), [TRADEMARK TRIAL AND APPEAL BOARD](#), [TRADEMARKS](#)



“Word of the Year” (2006) by the staff of Webster’s New World Dictionary.

DPMG in effect conceded that the **BLACKBERRY** and **CRACKBERRY** were highly similar by stating that Crackberry is a nickname for the Blackberry device.

After balancing factors of relatedness of goods/services, channels of trade similarity of marks, and famousness of the the **BLACKBERRY** mark, the TTAB concluded that RIM was likely to suffer impairment of the distinctiveness of its marks, and hence RIM has shown a likelihood of dilution by blurring under the Trademark Act.

In a precedential opinion, on February 27, 2012 the US Trademark Trial and Appeal Board sustained four oppositions filed by Research in Motion (RIM) against Defining Presence Marketing Group, Inc. (DPMG). [Link to Case here](#). DPMG had filed four trademark applications, each for the mark **CRACKBERRY**. Three of the **CRACKBERRY** applications were filed in 2006 and one was filed in 2007. Each application included a different class of goods/services on which the mark was to be used. As a result of the TTAB decision all four DPMG trademarks have been refused registration.

Dilution by Blurring

Dilution by blurring is an association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. Trademark Dilution Revision Act of 2005, 15 U.S.C. § 1125(c)(2)(B) [TDRA].

Over time, the gradual whittling away of distinctiveness will cause the trademark holder to suffer “death by a thousand cuts.” See *National Pork Board v. Supreme Lobster and Seafood Co.*, 96 USPQ2d 1479, 1497 (TTAB 2010) (citing Barton Beebe, “A Defense of the New Federal Trademark Antidilution Law,” 16 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1143, 1163 (2006)).

The public at large had adopted the nickname “Crackberry” for Blackberry smart phones prior to the filing date of the DPMG trademark applications. Also, as of the year 2000, “Crackberry” had achieved dictionary status as a slang term and had even been selected



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Parody

DPMG argued that **CRACKBERRY** was a legitimate satire of RIM's famous **BLACKBERRY** mark. Under Section 43 of the Lanham Act, parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner are not actionable as dilution or blurring by tarnishment. The basic problem with parody as a defense is that DPMG was using **CRACKBERRY** for goods and services that are directly related to the goods and services on which the **BLACKBERRY** mark is used.





DPMG cited for support of its parody argument the *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC* case, 507 F.3d 252, 84 USPQ2d 1969 (4th Cir. 2007). In the *Louis Vuitton* case, the defendant's used the mark **CHEWY VUITTON** for pet chew toys. The Virginia Fourth Circuit Appellate Court permitted use of **CHEWY VUITTON** as a "fair use" exception to the rule against dilution by blurring.

The TTAB gave two reasons for rejecting parody defense.

First, the term **CRACKBERRY** was adopted and popularized by the public as a nickname for **BLACKBERRY** devices. So the name does not solely – if at all – reflect DPMG's attempt to parody the **BLACKBERRY** mark.

Second, DPMG is using the **CRACKBERRY** mark on goods and services that are related to the **BLACKBERRY** mark. on the DPMG website www.crackberry.com, Blackberry user forums, and Blackberry accessories are provided. As contrasted with the *Louis Vuitton* case, the difference was in that case there was a "juxtaposition of the similar and the dissimilar": a "furry little imitation to be chewed by a dog" and the "elegance and expensiveness of a **LOUIS VUITTON** handbag, which must not be chewed by a dog. *Id.* at 1974.

RIM may have prevailed in these oppositions against DPMG and the use of **CRACKBERRY**, but as of the time of this writing, DPMG is still using **CRACKBERRY** at www.crackberry.com. It remains to be seen if RIM will pursue action against DPMG or risk a laches defense by DPMG. In view of the current annihilation of RIM's market share by Apple and Android devices, perhaps RIM should concentrate more on innovation than litigation if they intend to stay in the smart phone market to fight another day.

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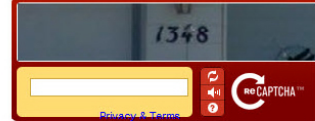
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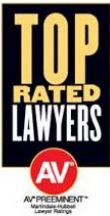
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Charles P.



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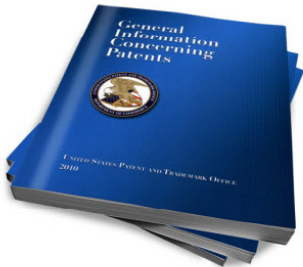
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