

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

November 17, 2006
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

ESPN, Inc.
v.
Kurt Luttermoser

Opposition No. 91158096

Motion for Reconsideration

Robert L. Raskopf, Claudia T. Bogdanos and Jessica A. Rose
of Quinn Emanuel Urquhart Oliver & Hedges, LLP for ESPN,
Inc.

Jeffrey H. Greger of Lowe Hauptman Gilman & Berner LLP for
Kurt Luttermoser.

Before Hairston, Bucher and Zervas, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Opposer has filed a motion for reconsideration of the
Board's July 7, 2006 decision dismissing its opposition to
registration of applicant's mark. Applicant has filed a
brief in response thereto and opposer has filed a reply
brief.

Opposer argues that the Board erred in (1) sustaining
applicant's objections to certain of the rebuttal testimony

Opposition No. 91158096

of opposer's witness Ms. Campbell; and (2) failing to find that opposer's X GAMES mark is famous for likelihood of confusion purposes.

Opposer's arguments concerning the evidentiary objections amount to little more than a rehash of the arguments previously made in opposer's reply brief on the case. We find no error in our decision in this regard.

Insofar as opposer argues that the Board erred in failing to find that opposer's X GAMES mark is famous for likelihood of confusion purposes is concerned, we clarify our decision in this regard as follows. So as to be clear on this matter, from the evidence properly of record, we find that opposer's X GAMES mark has achieved a degree of recognition as a mark for action sports competitions. Nonetheless, we cannot conclude on this record that consumers have been so exposed to the X GAMES mark, or that they are so aware of it, that it can be considered a famous mark.

Lastly, as we stated, even if we had found that opposer's mark was famous, we would still find no likelihood of confusion in this case based on the dissimilarities in the marks.

In view of the foregoing, opposer's motion for reconsideration is denied.