

Trademark Law Alert—Reversals for Reversed Marks

05.24.2023 By [Jeffrey Chery](#)



The Trademark Trial and Appeal Board (TTAB) rarely reverses an Examining Attorney’s refusal to register a mark. Yet, in two decisions issued less than two weeks apart, the TTAB reversed refusals to register marks that largely mirrored elements of registered marks, in reverse order, for overlapping goods or services. What happened?

When marks are for similar goods or services, a likelihood of confusion ordinarily is found where the primary difference in the wording is the transposition of the literal elements of the marks but the overall commercial impression does not change.

In these two cases, however, the TTAB held that the marks conveyed distinctly different commercial impressions that outweighed the overlapping goods or services.

1. BEAUTY POPS/POPBEAUTY

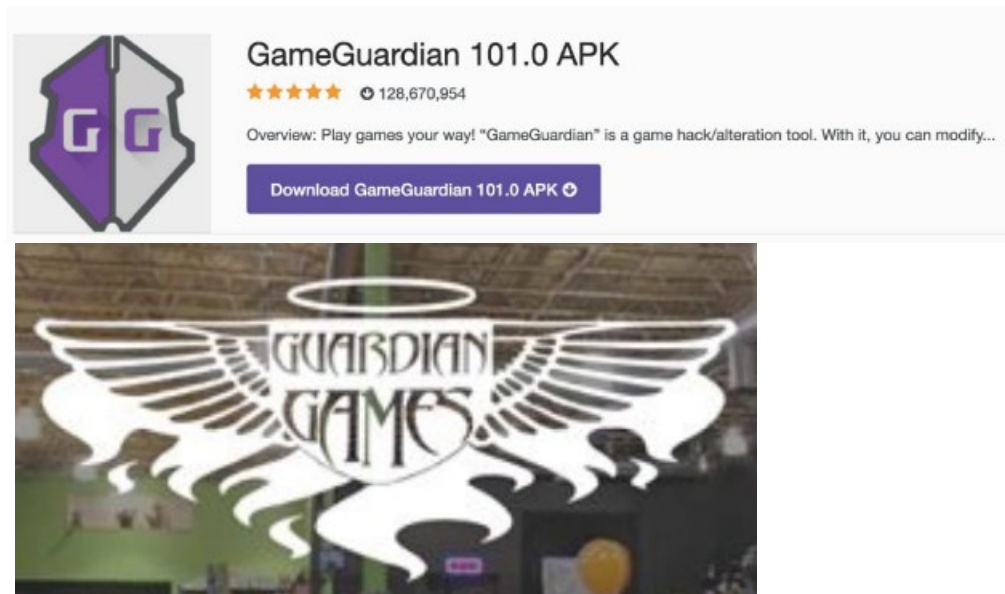


The Examining Attorney refused registration for BEAUTY POPS (standardized characters) for a “cosmetic kit . . . when the powder is mixed with water and frozen, to create an applicator that has the appearance of a lollipop” due to the registered mark POPBEAUTY (standardized characters) for cosmetics.

On appeal, the TTAB held that the goods were in part identical and that the marks looked and sounded similar. But it found that the marks were more than simple transpositions of essentially the same terms. The application’s use of the plural “pops”, with goods identified as having “the appearance of lollipops” created a commercial impression of lollipops which the TTAB found distinctly different from the registered mark which was more akin to phrases such as “pop culture, “pop music,” and “pop art.” The TTAB held that these different connotations created different commercial impressions so there was no likelihood of confusion.

[In re Lynda Truong, Application No. 90612249 \(T.T.A.B. April 13, 2023\).](#)

2. GAMEGUARDIAN/GUARDIAN GAMES



The Examining Attorney refused registration for GAMEGUARDIAN (standard characters) for downloadable software about “how to edit memory values while videogame is running,” and for providing a website about video games, due to the registered mark GUARDIAN GAMES (standard characters) for retail store services featuring games.

On appeal, the TTAB held that the respective goods and services were related, although not identical. But it found that applicant’s GAMEGUARDIAN connoted a person or thing that “guards, watches over, or protects” a game, whereas the cited GUARDIAN GAMES connoted a brand of retail stores selling multiple games. The TTAB recognized that its findings that the marks were more dissimilar than similar, but that the services were related, pointed in opposite directions, nevertheless, the TTAB held that the dissimilarity of the marks outweighed the similarity of the services.

[In re Laxamentum Technologies, LLC, Application No. 90441532 \(T.T.A.B. April 25, 2023\).](#)

Author’s Note:

How can you predict the outcome of cases like these? They seem unpredictable. The result may depend on a good lawyer who gathers sufficient evidence to support a well-presented and persuasive argument that the connotations of the respective marks are sufficiently different to avoid a likelihood of confusion regardless of the word reversal.

You should consider the same arguments and analysis when clearing a proposed mark that reverses the words in a prior mark.

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