

**DECISION  
of the Fifth Board of Appeal  
of 30 April 2019**

In case R 412/2019-5

**Heinz-Alexander Drews**

Ellerndamm 17  
21423 Winsen (Luhe)  
Germany

Applicant / Appellant

v

**Hyperion Entertainment**

Tervurenlaan 34  
1040 Brussel  
Belgium

Opponent / Defendant

represented by MONARD LAW, Tervurenlaan 270, 1150, Brussels, Belgium

APPEAL relating to Opposition Proceedings No B 3 011 692 (European Union trade mark application No 17 159 377)

**THE FIFTH BOARD OF APPEAL**

composed of V. Melgar, acting as a single Member having regard to Article 165(2) and (5) EUTMR, Article 36 EUTMDR and Article 7 of the Decision of the Presidium on the organisation of the Boards of Appeal as currently in force, and to the Fifth Board's Resolution No 1 of 2 February 2015 on decisions by a single Member.Registrar:

Registrar: H. Dijkema

gives the following

## Decision

### Summary of the facts

- 1 By an application filed on 30 August 2017, Heinz-Alexander Drews ('the applicant') sought to register the word mark

### Amiga

for the following list of goods and services:

Class 9 - Computers; Components for computers; Computer modules; Computer hardware; Software; Programming units (Computer -); Peripherals adapted for use with computers; Computer operating systems; Interfaces for computers; Firmware; Computers and computer hardware; Computer operating programs;

Class 42 - Computer design services; Computer software programming services; Software design and development; Design of computer hardware; Computer hardware development; Design and development of computer hardware; Development of computer peripherals; Design and development of computer peripherals.

- 2 The application was published on 20 September 2017.
- 3 On 19 December 2017, Hyperion Entertainment ('the opponent') filed an opposition against the registration of the published trade mark application for all the above goods and services.
- 4 The grounds of opposition were those laid down in Articles 8(1)(a) and 8(1)(b) EUTMR.
- 5 The opposition was based on the following four earlier rights:

- a) European Union Trade mark registration No 16 733 024 **AmigaOS** filed on 18 May 2017 and registered on 31 January 2018 for the following goods:

Class 9 - Computer operating system software.

- b) Benelux trade mark registration No 19 642 **Amiga Forever** filed on 7 February 2017 and registered on 24 April 2017 for the following goods and services:

Class 9 - Computer operating programs; Computer operating programmes; Computer operating software; Computer operating system software; Integrated software packages; Operating software; Operating system programs; Operating system software; Firmware for computer peripherals; Computer game cartridges; Computer game programmes; Computer game discs; Computer game programs; Computer game software; Computer game software for use with on-line interactive games; Computer games; Computer games entertainment software; Computer games programmes for simulating financial securities trading [software]; Computer games programmes downloaded via the internet; Computer games programmes downloaded via the internet

[software]; Computer games programmes [software]; Computer games programs downloaded via the internet [software]; Computer games programs recorded on tapes [software]; Computer games programs [software]; Computer games software; Computer gaming software; Computer programmes for playing games; Computer programs for playing games; Computer video game software; Downloadable computer game programs; Downloadable computer game software; Downloadable computer game software via a global computer network and wireless devices; Downloadable electronic game programs; Downloadable game related software applications; Downloadable interactive entertainment software for playing computer games; Downloadable interactive entertainment software for playing video games; Downloadable software in the nature of a mobile application for playing games; Downloadable video game programs; Electronic game programs; Electronic game software; Electronic game software for handheld electronic devices; Electronic game software for wireless devices; Electronic game software for mobile phones; Game programs for arcade video game machines; Games software for use with computers; Games software; Games (cartridges for computer - ) [software]; Games software for use with video game consoles; Interactive multimedia computer game program; Interactive multimedia computer game programs; Interactive video game programs; Programmed video games contained on cartridges [software]; Programs (Computer game -); Recorded computer game programs; Recorded computer game software; Recorded programs for hand-held games with liquid crystal displays; Software programs for video games; Video and computer game programs; Video game computer programs; Video game programs; Video game software; Video games [computer games] in the form of computer programs recorded on data carriers; Video games on disc [computer software]; Video games programs [computer software]; Video games software; Virtual reality game software;

Class 16 - Printed manuals; Printed matter for instructional purposes; Computer programs in printed form; Computer software in printed form; Computer software operating manuals; Computer reference manuals; Computer programmes in printed form; Computer manuals; Computer magazines; Computer instruction manuals; Computer hardware users guide; Computer hardware reference manuals; Computer handbooks; Computer game instruction manuals; Computer user manuals;

Class 41 - Book publishing; Electronic publication of texts and printed matter, other than publicity texts, on the Internet; Electronic publishing; Electronic publication; Multimedia publishing; Multimedia publishing of magazines, journals and newspapers; Multimedia publishing of printed matter; Multimedia publishing of books; Multimedia entertainment software publishing services.

- c) Benelux trade mark registration No 110 723 **AmigaOS** filed on 8 February 2017 and registered on 2 May 2017 for the following goods and services:

Class 9 - Computer operating programs, recorded; Computer operating programs; Computer operating programmes; Computer operating software; Computer operating system software; Computer programs for use in autonomous control of vehicles; Embedded operating software; Integrated software packages; Network access server operating software; Operating software; Operating system programs; Operating system software; Operating computer software for main frame computers; Operating and user instructions stored in digital form for computers and computer software, in particular on floppy disks or CD-ROM; Programs (Computer operating -) recorded; Recorded computer operating programs; Recorded computer software for safe vehicle driving; Vehicle autonomous driving systems featuring interactive displays;

Class 16 - Computer manuals; Computer handbooks; Computer hardware reference manuals; Computer hardware users guide; Computer instruction manuals; Computer magazines; Computer programmes in printed form; Computer programs in printed

form; Computer reference manuals; Computer game instruction manuals; Computer software in printed form; Computer software operating manuals; Computer user manuals; Manuals for computer software; Manuals for instructional purposes; Manuals for use with software; Operating manuals for use with computers; Printed books; Printed calendars; Printed matter for instructional purposes;

Class 41 - Book publishing; Electronic publication of texts and printed matter, other than publicity texts, on the Internet; Electronic publishing.

- d) Benelux National Trade Mark Registration No 119 369 **AmigaOne** filed on 12 August 2017 and registered on 23 August 2017 for the following goods:

Class 9 - computerhardware

Class 28 - electronic videogame machines

- 6 By decision of 17 December 2018 ('the contested decision'), the Opposition Division upheld the opposition in its entirety on the grounds that there was a likelihood of confusion.
- 7 On 16 February 2019, the applicant filed an appeal against the contested decision, requesting that the decision be entirely set aside.
- 8 On 22 April 2019, the applicant withdrew the appeal.
- 9 On 26 April 2019, the Registry acknowledged receipt of the withdrawal, and informed both parties, that the appeal would be forwarded to the Board for its formal closure.

### **Reasons**

- 10 All references made in this decision should be seen as references to the EUTMR (EU) No 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise in this decision.
- 11 Article 66 EUTMR provides that the appeal before the Board has suspensive effect. It follows that an appeal may be withdrawn at any moment before the decision on the appeal becomes final. The Board hereby takes note of the withdrawal of the appeal and that, as a consequence, the appeal proceedings are terminated.
- 12 As a result of withdrawal of the appeal, the decision of the Opposition Division is no longer challenged and has become final.

### **Costs**

- 13 The Board notes that there has not been any procedural activity on the opponent's part in the appeal proceedings. Pursuant to Article 109(3) EUTMR, for reasons of equity, the Board deems it appropriate not to make a ruling on the appeal costs.

**Order**

On those grounds,

THE BOARD

hereby:

**Takes note of the withdrawal of the appeal and declares the appeal proceedings closed.**

Signed

V. Melgar

Registrar:

Signed

H. Dijkema

