

Brand Battles: 'Game Of Thrones,' Rockstar Games, Boeing

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Color Mark Showdown

This week in nonconventional trademarks: "Orange-colored geosynthetic fabric."

An Ohio firm called Dandy Products Inc. sells "sediment control products," items designed to keep dirt dug up during construction from finding its way into a city's water system through storm runoff. All its products are made of orange geosynthetic fabric, and Dandy claims common law trademark rights in the material.

The company wasn't happy to learn, then, that the trademark office had finally published a registration from industrial textile maker Nicolon Corp. for orange-colored "geosynthetic fabric," which it plans to use for, among other things, "erosion control fabric."

There's a backstory with these two: For years, Nicolon allegedly manufactured the orange fabric that Dandy used for its sediment control products. Now, both companies are claiming that they have trademark rights for the brightly colored fabric.

Nicolon's application was refused multiple times, but was finally published to the principal registry back in February, and Dandy filed a notice of opposition this week.

"The public has come to associate orange-colored geosynthetic fabric as a designation of origin for Dandy's storm water management, inlet protection and sediment control products," the filing said. "Orange-colored geosynthetic fabric has not become distinctive of the applicant's goods."

Strangely enough, Dandy also seems to make an argument in same filing that undercuts its own trademark rights in the material: that it's too functional for trademark protection.

"An orange-colored geotextile fabric is functional because it makes geotextiles more visible and less hazardous when used in drainage," the filing said.

Dandy is represented by Bass Berry & Sims PLC. Nicolon is represented by Cantor Colburn LLP. --Editing by Katherine Rautenberg. All Content © 2003-2015, Portfolio Media, Inc.

