

Richard Minsky v. Linden Research, Inc: Parties Agree to Keep Temporary Restraining Order Action Until Trial

By Ariel Lin

Richard Minsky, the founder of The Center for Book Arts in New York City, registered the trademark "SLART" with the U.S. Patent and Trademark Office in March 2007 (approved in December 2007). He is using the SLART trademark in connection with his SLART magazine, a publication concerning virtual art, particularly art in Second Life. Mr. Minsky's trademark registration covers the publication of various types of works, art exhibitions, and educational programs concerning art.

In July 2008, Minsky filed a trademark infringement lawsuit against Linden Research, Inc. An avatar "Victor Vezina" (named as a John Doe defendant), Linden Chairman Philip Rosedale, and former Chairman Mitchell Kapor have been named in the Complaint in Albany's federal court. Minsky alleges that 'Vezina' has infringed his SLRT trademark by "using the name 'SLART Garden' for an art gallery and 'SLartists of Second Life' as the name of a group" in the Virtual World. Minsky also claims that Linden Lab is liable for direct and contributory infringement, fraud, and tortious interference. Minsky seeks:

- A declaration that his trademarks have been infringed;
- an order compelling Linden Lab to remove unlicensed uses of "SLART" from Second Life and inform Minsky of the identities and locations of alleged infringers;
- and \$1000 per day from April 24 through the termination of the action for each act of alleged infringement.

The U.S. District Court in Northern District of New York has granted a Temporary Restraining Order by Consent.

Linden Lab filed a Petition for Cancellation with the USPTO's Trademark Trial and Appeals Board seeking to cancel registration of "SLART." Linden argues that Minsky made a series of misrepresentations to the USPTO in order to secure registration of the mark and so Minsky "is not entitled to Registration of "SLART" because he committed fraud in the procurement of the subject registration." However, the USPTO Trademark Trial and Appeal Board suspended the cancellation proceeding until the district court action is decided.

Linden Lab also filed an Answer and Counterclaims respond with admissions or denials of each assertion in Minsky's "SLART" trademark infringement Complaint. In Linden's Counterclaims, it's seeking a declaration from the Court that Linden Lab would be within its rights to terminate Minsky's account. According to the Terms of Service, "Linden Lab has the right at any time for

any reason or no reason to suspend or terminate a user's Account.” Recently, Minsky and Linden Lab agrees to extend a Temporary Restraining Order covering claims of use of “SLART” in Second Life through trial.

Sources:

Richard Minsky v. Linden Research, Inc., No. 1:08-CV-819, (N.D.N.Y. 2007), *available at* <http://www.3dinternetlaw.com/Trademark/Trademark/Minsky.html>.

For further information:

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Benjamin Duranske, *SLART Lawsuit Update: Parties Agree to Temporary Restraining Order Governing Claims of Infringement*, <http://virtuallyblind.com/2008/09/15/slart-lawsuit-tro/> (last visited Nov. 04, 2008).

Benjamin Duranske, *Second Life Creator Linden Lab Files Petition to Cancel “SLART” Trademark Registration*, <http://virtuallyblind.com/2008/09/16/linden-lab-cancel-slart/> (last visited Nov. 04, 2008)

Benjamin Duranske, *Linden Lab Files SLART Answer, Counterclaims; Seeks Permission from Court to Terminate Minsky’s Account*, <http://virtuallyblind.com/2008/10/20/linden-lab-slart-answer/> (last visited Nov. 04, 2008)

Benjamin Duranske, *SLART Update: Minsky and Linden Lab Agree to Keep Temporary Restraining Order Active Until Trial*, <http://virtuallyblind.com/category/lawsuits/minsky-v-linden-lab/> (last visited Nov. 04, 2008)