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THIS DISPOSITION IS NOT
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Paper No. 26
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Computer People Inc. (by assignment from Alpine Computer
Systems, Inc.)

Serial No. 74/619,905

Anthony R. Masiello and Thomas W. Brooke of Gadsby & Hannah
LLP for Computer People Inc.

David H. Stine, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Simms, Bucher and Bottorff, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Computer People Inc. seeks registration on the Principal
Register of the mark ALPINE, for services recited in the
application as follows:

"Computer network system installation and
maintenance support services," in
International Class 37; and,
"Computer consulting services in the fields of
physical infrastructure systems, security
and disaster planning," in International
Class 42.¹

¹ Application Serial Number 74/619,905, filed by Alpine Computer
Systems, Inc., on January 10, 1995, was based upon applicant's
allegation of a *bona fide* intention to use the mark in commerce. On
March 16, 1995, an amendment to allege use was filed claiming as to
both classes dates of first use anywhere and dates of first use in
commerce as of January 1989. The assignment records of the United
States Patent & Trademark Office reflect an assignment of this
application to Computer People Inc. as of February 28, 1998.

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 USC §1052(d) on the ground that applicant's mark, when used on applicant's goods, so resembles the mark ALPINE which is registered for:

computer keyboard terminals; floppy disk drives; mobile computers; office computers; personal computers; computer programs used to create and develop computer software, and used to support creating and developing micro-computers, recorded on cards, tapes, and disks; modems; computer and facsimile interfaces; and mobile facsimile machines and parts thereof,²

as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusal was made final, applicant appealed. Applicant and the Trademark Examining Attorney have filed main briefs. Applicant did not request an oral hearing. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E.I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between

² Registration No. 2,055,630, issued April 22, 1997.

the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

In this case, the marks are absolutely identical. The fact the marks are identical "weighs heavily against applicant." In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Indeed, the fact that applicant has selected a mark identical to registrant's mark "weighs [so] heavily against the applicant" that applicant's use of the mark on "goods ... [which] are not competitive or intrinsically related [to registrant's goods] ... can [still] lead to the assumption that there is a common source." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688-89 (Fed. Cir. 1993).

Inasmuch as the marks herein are identical in all respects, the issue of likelihood of confusion essentially depends upon whether the respective goods and services are sufficiently related.

It is well settled, in this regard, that goods and/or services need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods and services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks employed in connection

therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). Also, confusion in trade can occur from the use of the same marks for products on the one hand and for services involving those products on the other hand. See In re Hyper Shoppes (Ohio) Inc., 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); Safety-Klean Corporation v. Dresser Industries, Inc., 518 F.2d 1399, 186 USPQ 476 (CCPA 1975); and Steelcase Inc. v. Steelcare Inc., 219 USPQ 433 (TTAB 1983), and cases cited therein.

Applicant argues, however, that its highly specialized services are offered to sophisticated customers.

Specifically, applicant maintains that:

... [A]pplicant's customers expect that applicant's services will be offered in a context filled with products coming from a wide variety of other sources. Applicant's services, by its [sic] nature, is to solve technical problems regardless of the source of the customer's hardware and software. That is what the customers expect of their experts... The applicant's customer, considering the services offered, knows that what is offered is *expertise* rather than goods. (applicant's brief, p. 3, emphasis in original).

The Examining Attorney, on the other hand, notes that the issue of likelihood of confusion must be determined on the basis of the goods and services as they are identified in the cited registration and the application, and notes that neither

contains any limitations as to nature, type, channels of trade or class of purchasers. As to the sophistication of the customers, the Trademark Examining Attorney correctly points out that the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983).

We agree with the Trademark Examining Attorney that in determining the question of likelihood of confusion, the Board is constrained to compare the services recited in applicant's application with the goods as identified in the cited registration. If registrant's goods and applicant's services are described broadly enough to encompass overlapping markets, then applicant cannot properly argue that, in reality, the actual services of the applicant and the goods of the cited registrant are not similar. See *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983); and *Peopleware Systems, Inc. v. Peopleware, Inc.*, 226 USPQ 320 (TTAB 1985).

We find the evidence of record sufficient to conclude that applicant's services are related to the goods identified

in the cited registrations, and applicant has provided no evidence to the contrary. Nor are we convinced otherwise by applicant's arguments regarding the specific nature of its services or registrant's goods. We note that both applicant's services and registrant's goods are broadly identified. Further, we must presume that applicant's services and registrant's goods are sold in all of the normal channels of trade to all the normal purchasers of such goods. In re Elbaum, 211 USPQ 639 (TTAB 1981).

Applicant's consulting, installation and maintenance services are directed to entities having large, integrated computer networks. Registrant's goods include a variety of components of computer hardware and software. In this context, we certainly agree with applicant that not everything involving the use of computers is necessarily related. See Reynolds & Reynolds Co. v. I.E. Systems Inc., 5 USPQ2d 1749 (TTAB 1987). Accordingly, under the facts of the Reynolds case, the Board concluded that applicant's asynchronous data communications software and the opposer's tax preparation forms and services were targeted to two distinctly different, narrow markets.

By contrast, in the instant case, applicant's services are targeted broadly to applicant's clients having computer network systems. It is basic to the infrastructure of a

computer network that individual workstations - made up of hardware and local software of the type described in registrant's identification of goods - comprise critical components of such an integrated computer network. According to applicant's web pages, which have been made of record, its services include working toward "upgraded desktops" for its clients. To the extent that a large entity had purchased desktop computer hardware and software from registrant in the past, applicant may well later offer its networking services to the same network engineers, designers and managers who purchased components for its desk-top workstations from registrant. Consequently, applicant's services would be sold through the same channels of trade to the same classes of purchasers - including its large-entity clients already familiar with registrant's goods.

Consequently, we find that the respective goods and services involved in this case are, on their face, so closely related that, when sold under the identical (and arbitrary) mark ALPINE, confusion as to their source or sponsorship is likely to occur, even among engineers, designers and managers of information technologies making up applicant's client base.

Based on the identity of the marks, the relatedness of registrant's goods and applicant's services, and the similarity of the trade channels and purchasers, we find that there is a likelihood that the purchasing public would be

confused when applicant uses ALPINE as a mark for its networking services.

Decision: The refusal to register under Section 2(d) is affirmed.