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Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Agdata, Inc.**

Serial No. 75/**567,010**

**Nancy Talavera Wood and Francis M. Pinckney of Kennedy Covington
Lobdell & Hickman for Agdata, Inc.**

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(Meryl Hershkowitz, Managing Attorney).

Before **Cissel, Hohein and Chapman**, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Agdata, Inc. has filed an application to register the
mark "MEDDATA" for "providing an on-line database in the field
of managed health care insurance coverage, namely, providing on-
line referrals and data management services for use by office
administrative staff for submitting referrals on-line to
specialists and insurance providers in compliance with the
referral and authorization rules and regulations of the
insurance companies' managed care plans" in International Class

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35 and "providing an on-line database in the field of managed health care insurance coverage, namely, providing insurance plan information including on-line eligibility verification for insurance plans, deriving historical reports, obtaining feedback on patients' care, and Medicare and Medicaid referral tracking" in International Class 36.¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its services, so resembles the mark "MEDDATA," which is registered for, inter alia, "providing personal and medical information to medical professionals in emergency situations" in International Class 42,² as to be likely to cause confusion, mistake or deception.³

¹ Ser. No. 75/567,010, filed on October 7, 1998, which is based on an allegation of a bona fide intention to use the mark in commerce.

² Reg. No. 2,057,098, issued on April 29, 1997, which sets forth a date of first use anywhere and first use in commerce of January 13, 1993. Although such registration also covers "identification cards containing microprocessed images with information pertaining to personal and medical profiles, information essential for the care of the individual, and information regarding notification of appropriate persons in case of emergency" in International Class 9 and "cooperative advertising and marketing" services in International Class 35, the final refusal is considered to be limited to the services in International Class 42, as set forth above, since neither the final refusal nor the Examining Attorney's brief argues that there is a likelihood of confusion as to any of the other goods and services listed in the cited registration.

³ While, initially, registration was also refused under Section 2(d) on the basis of two other registrations, owned by different registrants, for the mark "MEDATA" for "medical cost control services--namely,

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

The determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). Here, inasmuch as the respective marks are identical, the primary focus of our inquiry is accordingly on the similarities and dissimilarities in the respective services, although other factors, including purchaser sophistication and the highly suggestive nature of the marks also play a role in our determination of the issue of likelihood of confusion.

The Examining Attorney, citing *Ancor, Inc. v. Ancor Industries, Inc.*, 210 USPQ 70 (TTAB 1981) as a "controlling case," argues that "since applicant's and registrant's marks are

recording, assessing and evaluating billing information" (Reg. No. 1,287,180, issued on July 24, 1978 and setting forth a date of first use anywhere of July 10, 1975 and a date of first use in commerce of July 28, 1975; combined affidavit §§8 and 15) and the mark "MED-I-DATA" for "computer programs for use in analyzing and storing data in the health care field, including patient and employee records and medical administrative information" (Reg. No. 1,723,312, issued pursuant to ownership of a foreign registration on October 13, 1992 and later canceled for failure to file the required §8 affidavit), such refusals, along with a refusal under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground of mere descriptiveness, were subsequently withdrawn in the final Office Action.

identical, the relationship between applicant's services ... and the registrant's services ... need not be as close to support a finding of likelihood of confusion" In this case, the Examining Attorney contends that the respective services, rather than being completely different as asserted by applicant in its brief, are sufficiently "related in that they both concern providing personal and medical information for the determination of the proper healthcare services to be administered."⁴ The Examining Attorney insists, in this regard, that the record includes "numerous [use-based third-party] registrations submitted by the prior examining attorney which clearly indicate that the services at issue emanate from a single source" and thus "[i]t is clear that the public has been exposed to the notion that providing health and medical information and providing a database containing medical histories for referral purposes are marketed under the same name."

Specifically, the Examining Attorney maintains in light of the record that:

⁴ Although the Examining Attorney, in her brief, goes so far as to argue that, "[s]ince the identification of the registrant's ... services is very broad, it is presumed that the registration encompasses all ... services of the type described, including those in the applicant's more specific identification," we fail to see how registrant's services of "providing personal and medical information to medical professionals in emergency situations" can reasonably be said to encompass applicant's services of variously "providing an on-line database in the field of managed health care insurance coverage"

As evidenced, it is common that the personal and medical information provided by Registrant may include insurance plan coverage and eligibility information, patient referral information, and reasons for doctor referral, all information needed by medical personnel to perform transactions concerning patients in emergency and non-emergency situations. Furthermore, eligibility for many insurance plans depends on the health of the patient and personal and medical information must be submitted to insurance companies in order for insurance companies to determine whether an individual should be covered, or if eligible to be covered, to whom the individual should be allowed to seek medical services from. As a result, potential purchasers would be likely to assume, upon seeing applicant's services sold under a mark identical to that of the registrant, that they originated from a common source.

In addition, the Examining Attorney maintains that confusion is likely because:

The services at issue are within a natural field of expansion of each other. The numerous third-party registrations made of record all clearly indicate that services of providing health care provider referral services and insurance plan information services, as well as services of providing personal and medical information to medical professionals, are services that are within a natural field of expansion of each other and are services sold under the same mark by one single source. This evidence also clearly demonstrates that the services identified in the registrations travel in the same channels of trade to the same consumers.

Given the identical nature of the marks at issue, the demonstrated relationship between the services is more than adequate

to create likelihood of confusion in the mind of the potential purchaser.

Applicant, on the other hand, contends that confusion is not likely from contemporaneous use of the identical mark "MEDDATA" because its services "are specifically different than and noncompetitive with" the registrant's services, stressing that the latter involve "providing personal and medical information to *medical professionals in emergency situations ...* (emphasis added)." While acknowledging that "both parties provide services in the same broad health care field," applicant maintains that its various services of "providing an on-line database in the field of managed health care insurance coverage, namely, providing on-line referrals and data management services for use by office administrative staff for submitting referrals on-line to specialists and insurance providers in compliance with the referral and authorization rules and regulations of the insurance companies' managed care plans" and "providing insurance plan information including on-line eligibility verification for insurance plans, deriving historical reports, obtaining feedback on patients' care, and Medicare and Medicaid referral tracking," are services which "are directed to office administrative staff in non-emergency situations." In consequence thereof, applicant insists that its services "are provided through different channels of trade and have nothing in

common with registrant's services." In essence, applicant contends that its services simply "provide an on-line referral management database which replaces the current manual process for submitting referrals in compliance with the rules and regulations of managed care insurance providers."

Applicant also emphasizes the fact that "the sophistication of the class of prospective purchasers of the subject services is a critical factor which weighs against a likelihood of confusion," noting that because the typical purchasers for its services "are office administrators for primary care practices," such personnel "are trained and sophisticated buyers who clearly understand the differences between the [respective] services" and thus would not be likely to confuse the source of registrant's services of providing personal and medical information to medical professionals in emergency situations with applicant's "on-line referral management database [services] (emphasis added)" and vice versa. Furthermore, while acknowledging that "past registrations do not, in and of themselves, bind the Board to follow a similar course of action," applicant argues that it is still the case that "the large number of prior registrations including the term 'Med' for goods/services in the health care industry and the existing registrations for [the marks] MEDATA, MED-I-DATA and MEDDATA suggest that consumers are not likely to be confused."

In particular, applicant reiterates that its services "are completely different from the services provided under the [cited] registrant's mark" and that the mark which applicant seeks to register "is no more likely to be confused with [the mark which is the subject of] any of the existing registrations," including the cited registration, "than such marks are likely to be confused with one another." Applicant concludes, therefore, that there is no likelihood of confusion.⁵

Upon consideration of the arguments presented and a review of the evidentiary record, we agree with applicant that a likelihood of confusion has not been shown. It is well settled, of course, that services or goods 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 services or goods 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 under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they

⁵ Although applicant also asserts that it "selected the mark [it seeks to register] in good faith and with no intent to deceive registrant or benefit from its reputation," there simply is no evidence in the record, such as an affidavit or declaration from an officer of applicant having first-hand knowledge of applicant's intent in choosing its mark, to support applicant's assertions. Accordingly, applicant's contention regarding its asserted good faith adoption of its mark will not be given further consideration.

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originate from or are in some way associated with the same entity or provider. See, e.g., *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). One way, in particular, of demonstrating such a close relationship is by making of record copies of use-based third-party registrations of marks which, in each instance, are registered for the respective services or goods at issue. While such third-party registrations are admittedly not evidence that the different marks shown therein are in use or that the public is familiar with them, they nevertheless have some probative value to the extent that they serve to suggest that the services or goods listed therein are of the kinds which may emanate from a single source. See, e.g., *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993) and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6.

Contrary to the Examining Attorney's position, we find that the record in the present case does not contain "numerous" use-based third-party registrations which "clearly indicate that the services at issue emanate from a single source," such that an inference could therefore reasonably be drawn that the relevant public has been exposed to encountering, under the same mark, services of the kinds which applicant intends to provide and services of the type provided by the cited registrant. Of

the many third-party registrations in the record, at best only three of those which are based on use of the subject marks in commerce even arguably cover both applicant's services and those of the cited registrant.⁶ This meager evidence is simply inadequate to establish that applicant's services of "providing an on-line database in the field of managed health care insurance coverage, namely, providing on-line referrals and data management services for use by office administrative staff for submitting referrals on-line to specialists and insurance providers in compliance with the referral and authorization rules and regulations of the insurance companies' managed care plans" and "providing insurance plan information including on-line eligibility verification for insurance plans, deriving historical reports, obtaining feedback on patients' care, and Medicare and Medicaid referral tracking" are sufficiently related to the cited registrant's services of "providing

⁶ One registration sets forth, on the one hand, "on-line computer services--namely, providing transaction services to consumers, providers, administrators and other participants in the healthcare industry via an on-line computer network, namely, insurance eligibility and verification" and "on-line computer services--namely, providing on-line medical information and on-line medical journals and medical reference databases to consumers, providers, administrators and other participants in the healthcare industry," on the other; another registration specifies both "health insurance administration" and "providing information regarding medical information, health care information and health care insurance information via a computer database," while a third registration rather ambiguously lists, in addition to "providing access to various computer data bases for the purpose of identifying insurance eligibility, insurance pre-authorization and referrals," such "network activities" as "medical

personal and medical information to medical professionals in emergency situations" as to be likely, when rendered under the identical mark "MEDDATA," to cause confusion, mistake or deception.

Instead, the respective services are on their face specifically different, with applicant's services essentially constituting an on-line database directed to administrative office staff of primary care practitioners for routine handling of patient referrals and various insurance information in the field of managed health care insurance coverage, while the cited registrant's services are focused on providing personal and medical information in emergency situations to medical professionals, which typically would include doctors, nurses and medical technicians rather than administrative office staffers. Thus, it is clear that the respective services are provided to different classes of users and there is nothing in the record which supports the Examining Attorney's contention that such services are within the natural zone of expansion of each other. It is also plain that the respective services would be purchased only after careful evaluation.

Moreover, while notably neither applicant nor the Examining Attorney has even offered to speculate as to the

laboratory order entry and resulting, pharmacy data base queries and other information medical information exchange."

actual class or classes of potential purchasers for the cited registrant's services, it is plain that if, in any event, such customers were the same as the office administrators for primary health care practitioners, which are the buyers of applicant's services, they nonetheless constitute knowledgeable, well trained and sophisticated consumers who would be well versed in both health insurance requirements and personal medical information systems and thus would be discriminating in their selections of providers of the services at issue. Such purchasers, given the obvious importance of health insurance information to patient referral eligibility and the critical nature of emergency patient medical care data, would necessarily exercise a high degree of care and deliberation in their selection of providers of the respective services.

Furthermore, even though applicant's and the cited registrant's services are offered under the identical mark "MEDDATA," it is manifest that such a mark is highly suggestive of any kind of services involving the provision of medical information and, thus, is a weak mark which is entitled to only a narrow scope of protection. Evidence thereof is shown by the fact that, at one time, the "MEDDATA" mark of the cited registration registered over and coexisted on the register with both a third-party registration for basically the same mark, "MEDATA," for "medical cost control services--namely, recording,

assessing and evaluating billing information" and a third-party registration for the substantially similar mark "MED-I-DATA" for "computer programs for use in analyzing and storing data in the health care field, including patient and employee records and medical administrative information." We consequently are constrained to agree with applicant that, if such third-party registrations could coexist with the cited registration, then applicant's highly suggestive "MEDDATA" mark for its various on-line database services in the field of managed health care coverage should also be registered inasmuch as confusion with the cited registrant's identical, and likewise weak, "MEDDATA" mark, for its specifically different services of providing personal and medical information to medical professions in emergency situations, is not likely to occur.

Finally, while we acknowledge that, as argued by the Examining Attorney, a patient's health care insurance customarily plays a major role in the level of treatment, including doctor referrals, available for elective or other non-emergency medical situations, it is not so clear that such insurance coverage likewise dictates, at least initially, the degree of care in circumstances constituting medical emergencies. Therefore, although there might be a possibility of confusion from the contemporaneous use of the mark "MEDDATA" in connection with both applicant's services and those of the

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cited registrant, in light of the specific differences in the respective services, the sophistication of the purchasers and users of such services, and the high degree of suggestiveness inherent in the mark "MEDDTA," we conclude that confusion as to source or sponsorship is not likely. As our principal reviewing court has cautioned in this regard:

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Electronic Design & Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), quoting from Witco Chemical Co., Inc. v. Whitfield Chemical Co., Inc., 418 F.2d 1403, 164 USPQ 43, 44-45 (CCPA 1969).

Decision: The refusal under Section 2(d) is reversed.

Cissel, Administrative Trademark Judge, Dissenting:

I respectfully dissent. I would affirm the refusal to register because the likelihood of confusion has been

established by the Examining Attorney in this case. She has met her burden of showing that the services set forth in the application are commercially related to those specified in the cited registration in such a way that the use of these identical marks in connection with both services would be likely to lead purchasers to conclude, mistakenly, that they are provided by a single entity.

Contrary to the majority, I find several of the third-party registrations made of record by the Examining Attorney to be persuasive evidence in establishing that the services with which applicant intends to use the mark it seeks to register (including providing an on-line database in the field of health care insurance coverage for use by administrative staff in connection with submission of referrals to specialists and insurance providers; providing insurance plan information including eligibility verification for insurance plans; and deriving historical reports) are related to the services set forth in the cited registration (which include providing personal and medical information to medical professionals in emergency situations).

I agree with the majority that one way of demonstrating that services are commercially related such that the use of similar marks in connection with them is likely to cause confusion is to make of record third-party registrations

showing marks registered for both services at issue. Citing In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993), the majority noted that while not evidence that the marks therein are in use or that the public is familiar with them, such registrations do serve to suggest that the services specified therein are of the kinds which may emanate from a single source. Whereas the majority went on to characterize the third-party registrations made of record by the Examining Attorney in the case at hand as "meager" and "inadequate" to establish that applicant's services are sufficiently related to the services in the cited registration, however, I find those registrations to be persuasive evidence that these services are related.

For example, the three registrations referred to in footnote 6 of the majority opinion appear to be Registration No. 2,394,818, which lists, on the one hand, "on-line computer services--namely, providing transaction services to ... administrators and other participants in the healthcare industry via on on-line computer network, namely, insurance eligibility and verification," and on the other, "on-line computer services--namely, providing on-line medical information ..."; Registration No. 2,078,573, which lists both "health insurance administration" and "providing information regarding medical information ... health care insurance information via a computer

database"; and Registration No. 2,182,660, listing both "providing access to various computer databases for the purposes of identifying insurance eligibility ... [and] referrals," as well as "medical information exchange."

These registrations are a sufficient basis upon which to reach the conclusion that if the identical trademark were used in connection with providing medical information by means of a computer database and providing insurance eligibility information by means of a computer database, users of these services would have reason to assume that a single entity is responsible for both services. It is reasonable to assume that a hospital or an emergency care facility, for example, would need to access a computer database in order to verify that it would be compensated for medical services that were about to be rendered to a patient, as well as to find out the details of such a patient's medical history in order to treat properly the emergency condition without running afoul of pre-existing conditions that the patient's medical history would reveal. That the medical information might be accessed by a different employee of the medical facility than the person who would review the database to determine insurance eligibility is not significant. Both such individuals would be working together for the same business entity with the same objective, getting the emergency patient authorized medical treatment, and their

recommendations to purchase the access to the databases they need are likely to be made to the same individual in the organization who handles purchasing such products. The patient would only be utilizing a single trade channel in obtaining these kinds of services.

The majority makes the point that the services involved herein would be bought only after careful consideration by discriminating purchasers, and that the record shows that the field is crowded with marks which are similarly suggestive of these types of services. While acknowledging that this is so, I am nonetheless constrained to point out that applicant intends to use the very same mark that the owner of the cited registration has already used and registered, and, as noted above, the services with which applicant intends to use it are commercially related to those specified in the cited registration. Under these circumstances, confusion would clearly be likely.

Accordingly, I would affirm the refusal to register under Section 2(d) of the Act.