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EWH
Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Network Resources, Inc.

Serial No. 75/734,838

J. Scott Evans for Network Resources, Inc.

Deirdre R. Gillis, Trademark Examining Attorney, Law
Office 107 (Thomas Lamone, Managing Attorney).

Before Hanak, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

Network Resources, Inc. (applicant) seeks to register NRI NETWORK RESOURCES, INC. and design in the form shown below for "employment placement service, namely, placing temporary and permanent technical support employees in government agencies and large corporations to assist with computer hardware, computer software and computer network projects." The application was filed on June 23, 1999 with a claimed first use date of June 18, 1998.

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The Examining Attorney has refused registration pursuant to Section 2(d) of the Trademark Act on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with two marks previously registered to the same entity. The first mark is NRI in typed drawing form for "employment agency services." Registration No. 1,005,926. The second mark is NRI STAFFING RESOURCES and design in the form shown below for "temporary employment agency services; personnel placement and recruitment services." Registration No. 1,993,844.

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When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the goods or services and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA

1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.").

Considering first the services, one fundamental principle must be recognized. In Board proceedings, "the

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question of likelihood of confusion must be determined based

on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-a-vis the goods and/or services recited in [registrant's] registration, rather than what the evidence shows the goods and/or services to be." Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815

(Fed. Cir. 1987). The services for the mark NRI are very broadly described as simply "employment agency services." This broad description of services would include employment agency services of all types. Moreover, except for differences in terminology, employment agency services and employment placement services (applicant's services) are the same, and applicant does not argue

otherwise. Likewise, the services for the mark NRI STAFFING RESOURCES and design are very broadly described as "temporary employment agency services; personnel placement ... services." This would include temporary employment agency services and personnel placement services of all types.

In arguing that there is no likelihood of confusion, applicant states at page 2 of its reply brief that it "amended its recitation of services to limit itself to a far

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more narrow market" than served by registrant. Applicant notes that it provides its employment placement or agency services "to a small, specialized market" limited as to clientele (government agencies and large corporations) and type of personnel (those versed in computers). (Applicant's reply brief page 2).

What applicant fails to appreciate is that while its recitation of services may indeed be narrow, the recitation of services for the two cited registrations are broad enough to encompass applicant's narrow recitation of services. For example, the services of the

NRI registration (employment agency services) are broad enough to include placing temporary and permanent technical support employees in government agencies and large corporations to assist with computer projects (applicant's services). Likewise, the services of the NRI STAFFING RESOURCES and design registration (temporary employment agency services and personnel placement services) are broad enough to include placing temporary and permanent technical support employees in government agencies and large corporations to assist with computer projects (again, applicant's services). Thus, pursuant to the teachings of Canadian Imperial Bank, we

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must, in our likelihood of confusion analysis, find that applicant's services are legally identical to the services of both of the cited registrations.

Considering next the marks, we note at the outset that when the services are legally identical as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir.

1992). Marks are compared in terms of visual appearance, pronunciation and connotation. In terms of visual appearance, the initials NRI are decidedly the most prominent portion of applicant's mark. Thus, the most prominent portion of applicant's mark is identical to the cited mark NRI, and likewise is identical to the most prominent portion of the cited mark NRI STAFFING RESOURCES and design.

At page four of its brief, applicant argues that because the letter "I" in the NRI portion of its mark is in lower case, that this gives applicant's mark "a very different visual impression from the marks listed in the cited registrations." While the placement of the letter "I" in the lower case does cause applicant's mark to be somewhat

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different in terms of visual appearance from the two cited marks, we find that it does not cause applicant's mark to have "a very different visual impression" as contended by applicant. At no time has applicant ever argued that the first and most dominant part of its mark (NRI) would not be perceived as the initialism NRI.

Thus, in terms of visual appearance, we find that applicant's mark is quite similar to the cited mark NRI per se, and is extremely similar to the cited mark NRI STAFFING RESOURCES and design in that both applicant's mark and the second cited mark depict the initials NRI in a very prominent fashion on one line, and then depict on a second line the words NETWORK RESOURCES (applicant's mark) or STAFFING RESOURCES (the second cited mark).

In terms of pronunciation, applicant's mark is quite similar to the two cited marks in that in pronouncing all three marks, one would first have to pronounce the initials NRI. Moreover, given the extreme prominence of the initials NRI in applicant's mark, we find that a significant number of consumers would shorten applicant's mark and pronounce it as simply NRI. Of course, such a pronunciation would make applicant's mark identical to the cited mark NRI per se.

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Likewise, with regard to the cited mark NRI STAFFING RESOURCES and design, we find that a significant number of consumers would likewise pronounce this mark as simply NRI. When so pronounced, the second cited mark would be

identical in terms of pronunciation to applicant's mark when applicant's mark is likewise pronounced simply as NRI.

Finally, in terms of connotation, we find that the most prominent portion of applicant's mark (NRI) is identical to the cited mark NRI per se in that considered simply by themselves, these initials lack any connotation. As for a comparison of applicant's mark with the cited mark NRI STAFFING RESOURCES and design, applicant argues at page five of its brief that "it is clear that the presence of the additional wording NETWORK RESOURCES, INC. [in applicant's mark] eliminates any possible likelihood of confusion between applicant's mark and the cited NRI STAFFING RESOURCES mark." We respectfully disagree. To begin with, the connotation of applicant's mark NRI NETWORK RESOURCES, INC. and the second cited mark NRI STAFFING RESOURCES are quite similar in that the dominant portion of both marks is the same (NRI), and moreover, the third portion of both marks is the same, namely, the word RESOURCES. When both

agency/placement services, we find that consumers, even sophisticated consumers, would often not make distinctions between the connotations of NRI NETWORK RESOURCES, INC. and NRI STAFFING RESOURCES.

In sum, given the fact that applicant's services are legally identical to the services of the two cited registrations, we find that applicant's mark is similar enough to both of the cited marks in terms of visual appearance, pronunciation and connotation such that there is a likelihood of confusion.

Decision: The refusal to register is affirmed.