

THIS DISPOSITION IS NOT
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OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re M. Rose Jonas

Serial No. 76/047,277

Jeffrey L. Michelman of Blumfeld, Kaplan & Sandweiss, P.C.
for M. Rose Jonas.

Brian D. Brown, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Quinn and Chapman, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On May 12, 2000, applicant filed the above-identified
application to register the mark "JOB DOCTOR" on the
Principal Register for "educational services, namely
workshops, seminars, and lectures in the field of career
counseling and distribution of course materials in
connection therewith in International Class 41; and career
counseling services in International Class 42." Applicant
claimed first use of the mark in connection with both

services on September 17, 1991, and first use of the mark in interstate commerce on January 20, 1992.

In the first Office Action, the Examining Attorney refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d), on the ground that applicant's mark so resembles the mark "THE JOB DR." which is registered,¹ (with a disclaimer of the descriptive word "JOB") for "personnel placement and recruitment services in the field of computers and computer software" in International Class 35, that confusion is likely. He reasoned that the marks are essentially the same in appearance, pronunciation and connotation, and that the services identified in the cited registration are closely related to those recited in the application.

In addition to refusing registration under Section 2(d) of the Act, the Examining Attorney required applicant to disclaim the descriptive word "job" apart from the mark as shown.

Applicant timely responded to the first Office Action by amending the application to disclaim the word "job" apart from the mark as shown and by arguing that confusion with the cited registered mark is not likely. Applicant

¹ Reg. No. 2,205,772, issued on the Principal Register on November 24, 1998 to Roger T. Howland.

contended that the registered mark is not a strong mark; that no actual confusion between the marks has occurred; that she adopted her mark in good faith; and that, although the marks are "somewhat similar," differences between the services and channels of trade through which they are marketed mandate withdrawal of the refusal to register.

The Examining Attorney accepted the proffered disclaimer, but maintained and made final the refusal to register based on likelihood of confusion. He responded to each of applicant's arguments, and included copies of five third-party registrations which listed as the services with which the marks are used both "personnel placement services" and "career counseling services." He argued that this evidence shows that customers have reason to expect such services to emanate from a single source.

Applicant timely filed a Notice of Appeal. Next applicant filed a brief on appeal, attached to which were exhibits not previously made of record. The Examining Attorney filed his appeal brief, including an objection to the new evidence submitted with applicant's brief. Both counsel for applicant and the Examining Attorney presented their arguments at the oral hearing which applicant requested. At that hearing, applicant withdrew the

untimely-filed evidence to which the Examining Attorney had objected.

The sole issue before the Board in this appeal is whether confusion is likely between applicant's mark, "JOB DOCTOR," as used in connection with, inter alia, career counseling services and educational services in the field of career counseling, and the registered mark "THE JOB DR." for, among other things, personnel placement and recruitment services in the computer field. Based on careful consideration of the record before us in this appeal, the arguments presented by applicant and the Examining Attorney and the relevant legal precedents, we hold that confusion is likely and therefore that the refusal to register under Section 2(d) of the Lanham Act must be affirmed.

The test for determining whether confusion is likely is well settled. First, we must evaluate the marks themselves for similarities in appearance, sound, connotation and commercial impression. In re E. I. duPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Then, we must compare the services to determine if they are related or if the activities surrounding their marketing are such that the use of similar marks in connection with

them is likely to cause confusion. In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978).

Regarding the marks, the test for confusion is not whether the marks can be distinguished when subjected to side-by side comparison. As the Examining Attorney points out, the issue is whether the marks create similar overall commercial impressions. Visual Information Institute, Inc. v. Vicon Industries, Inc., 209 USPQ 179 (TTAB 1980). The emphasis is on the recollection of the average purchaser, who normally retains a general, rather than specific, impression of trademarks. Chemtron Corp. v. Morris Coupling & Clamp Co., 203 USPQ 537 (TTAB 1979).

We agree with the Examining Attorney that the mark applicant seeks to register creates a commercial impression which is almost indistinguishable from the commercial impression created by the cited registered mark. These two marks look alike, they sound alike when they are spoken and their suggestive connotations are the same when they are considered in connection with the services recited in the application and the cited registration, respectively. The first prong of the test for likelihood of confusion is clearly met: in terms of commercial impression, these marks are almost identical.

Turning to consideration of the services, then, we note that when the marks of the respective parties are identical or highly similar, as in this case, the relationship between the services of the respective parties does not need to be as close to support a finding of likelihood of confusion as it would be if the marks were different. *Amcors, Inc. v. Amcor Industries Inc.*, 210 USPQ 70 (TTAB 1981). It is significant that our determination of whether the services of applicant and the owner of the cited registration are so closely related that confusion is likely must be made based upon the specific ways that the services are identified in the application and in the cited registration, respectively, without limitations or restrictions that are not reflected therein. *Octocom Systems, Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1982).

We find that the record supports the conclusion that both classes of services set forth in the application are closely related to those specified in the cited registration. As the third-party registrations made of record by the Examining Attorney demonstrate, purchasers of career counseling services and personnel placement services have a basis upon which to expect that the use of the same or similar marks in connection with such services indicates

that they emanate from a single source. In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988).

Applicant argued in its brief and at the oral hearing that the essence of its services is education, rather than recruitment of potential employees, but we note that applicant's educational services are in the nature of workshops, seminars and lectures in the field of career counseling and that the application also specifically identifies applicant's services in International Class 42 as "career counseling services." The third-party registrations demonstrate that other businesses and I have registered their marks for personnel placement services and for career counseling services. Likewise, educational services in the field of career counseling are related to career counseling itself, as well as to personnel placement services. All of these services are related to finding employment. The use of these very similar marks in connection with these closely related services is plainly likely to cause confusion, mistake or deception within the meaning of Section 2(d) of the Lanham Act.

Applicant contends that confusion is not likely because the services set forth in the cited registration are restricted to the field of computers and computer software, but this argument is unavailing because

applicant's services, identified in the application as simply "career counseling services" and "educational services, namely workshops, seminars, and lectures in the field of career counseling and distribution of course materials in connection therewith," without restriction or limitation as to the field of commerce, encompass career counseling services in the field of computers and computer software and educational services which are specifically related to computers and computer software.

Applicant's argument concerning differences between career counseling services and personnel placement and recruitment services is not persuasive of a different conclusion on the issue of likelihood of confusion. As the Examining Attorney points out, the fact that the services set forth in the application may differ from the services recited in the cited registration is not controlling. The issue is not whether the services themselves would be confused, but rather whether the use of similar marks in connection with them is likely to lead to confusion as to the source of the services. In re Rexel Inc., 223 USPQ 830 (TTAB 1984).

Applicant argues that it is unaware of any incidents of actual infusion, but it is unnecessary to show actual confusion in order to establish that confusion is likely.

Weiss Associates, Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990). Without information as to the nature and extent of the uses by applicant and registrant of their respective marks establishing that there has been opportunity for confusion actually to have arisen, the fact that applicant is not aware of any incidents of actual confusion hardly establishes that confusion is unlikely.

Additionally, applicant argues that confusion is not likely because purchasers of the services it renders under its mark and purchasers of the services recited in the cited registration are sophisticated and knowledgeable with regard to these services. It is well settled, however, that purchasers who are sophisticated and knowledgeable in particular fields are not necessarily sophisticated or knowledgeable in the field of trademarks, nor are they immune from source confusion caused by the use of similar marks in connection with related products or services. In re Decombe, 9 USPQ2d 1812 (TTAB 1988).

Moreover, because there are no limitations or restrictions specified in the application with regard to the services applicant renders under its mark, we must presume that these services encompass all of the services of the type identified; that they move in all the normal

channels of trade for such services; and that they are available to all potential customers for them. Accordingly, any consumer, including one of the potential customers for registrant's personnel placement and recruitment services in the computer field, could be in the market for applicant's career counseling services rendered under the mark sought to be registered, or, for that matter, could also be interested in educational services related to career counseling. Such a person, if he were familiar with the use of the registered mark in connection with personnel placement and recruitment services in the computer field, would be likely, upon encountering virtually the same mark used in connection with all of these related services, to assume that a single entity provides them all.

Applicant's argument regarding her good faith adoption of her mark is similarly unavailing. That she did not intend to cause confusion by adopting a similar mark in connection with closely related services does not justify registration in spite of the likelihood of confusion. See *Hydra Mac, Inc. v. Mack Trucks, Inc.*, 507 F.2d 1399, 184 USPQ 351 (CCPA 1975).

DECISION: The refusal to register under Section 2(d) of the Lanham Act is affirmed.