

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

Mailed: November 10, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re GeoMet, Inc.

Serial No. 76286578

H. Graham Beene of Burr & Forman LLP for GeoMet, Inc.

Marlene Bell, Trademark Examining Attorney, Law Office 105  
(Thomas Howell, Managing Attorney).

Before Seeherman, Quinn and Bottorff, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

GeoMet, Inc. has appealed from the final refusal of  
the Trademark Examining Attorney to register GEOMET, INC.  
and design, as shown below, for the following services:<sup>1</sup>

Public utility services in the nature  
of natural gas and coalbed methane gas  
distribution (Class 39);

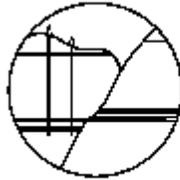
<sup>1</sup> Application Serial No. 76286578, filed July 17, 2001, and  
asserting first use as of July 5, 1985 and first use in commerce  
as of September 1, 1985.

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Oil and gas well treatment; gas production services, namely, natural gas and coalbed methane gas production services (Class 40); and

Geophysical exploration for the oil and gas industries; management and design of oil and gas well drilling; oil and gas well prospecting, namely, well logging and testing; coalbed methane resource assessment; development of coalbed methane resources (Class 42).

Applicant has disclaimed rights to the exclusive use of the term "INC."



**GeoMet, Inc.**

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the marks GEOMET<sup>2</sup> and GEOMET and design,<sup>3</sup> as shown below, previously registered by the same company for "environmental research services; namely, energy conservation and monitoring indoor air

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<sup>2</sup> Registration No. 1767756, issued April 27, 1993; Section 8 affidavit accepted; Section 15 affidavit received; renewed. In the identification of this registration, the term "randon" appears instead of "radon." This is an obvious typographical error, and we have treated the services as "radon mitigation and life cycle assessment," the way they are identified in Registration No. 1772035.

<sup>3</sup> Registration No. 1772035, issued May 18, 1993; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

quality, ambient emission control, and technological research with respect to geographic information systems, electromagnetic fields, weather characterization and meteorological [sic] systems for utilities, radon mitigation and life cycle assessment" that, as used in connection with applicant's services, it is likely to cause confusion or mistake or to deceive.<sup>4</sup>



Thus, the Examining Attorney has refused registration with respect to all three of the classes identified in applicant's application.

The appeal has been fully briefed, but applicant did not request an oral hearing.<sup>5</sup>

We reverse the refusal of registration.

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<sup>4</sup> The identification in Registration No. 1772035 uses the language "environmental research services including energy conservation" rather than "environmental research services namely energy conservation." The minor difference in language has no effect on our analysis of the issue of likelihood of confusion, and we therefore have treated the identifications in both of the cited registrations as being the same.

<sup>5</sup> During the course of prosecution and in its briefs applicant has cited certain Board cases which have been marked "Not citable as precedent." No consideration has been given to these cases. See TBMP §1203.02(f), (2d ed. rev. 2004), and cases cited therein.

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As often stated, our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We have no doubt that applicant's mark is similar to the marks in the cited registrations. However, because of the differences in the services, the customers for those services, and the sophistication of those customers, we find that, despite the similarity of the marks, confusion is not likely to occur.

It is the Examining Attorney's position that the services are related because "the services of both parties relate to energy." Brief, p. 4.

The Board and our primary reviewing Court have said on numerous occasions that simply because a term may be found

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that may generically describe both parties' goods or services is not a sufficient basis for finding goods or services to be related. See *General Electric Company v. Graham Magnetics Incorporated*, 197 USPQ 690 (TTAB 1977); *In re Cotter and Company*, 179 USPQ 828 (TTAB 1973); *Spe-De-Way Products Co., Inc. v. The Stanley Works*, 159 USPQ 677 (TTAB 1968). Here, the Examining Attorney has not even shown that there is such a general word for both applicant's and registrant's services, only that there are environmental considerations that may apply to applicant's services.

However, the Examining Attorney does not rely solely on this general terminology. In order to demonstrate that the services are related, the Examining Attorney has made of record evidence taken from the LEXIS/NEXIS data base, Internet evidence, and evidence of third-party registrations. She also points to a statement made in applicant's specimens. We shall examine these categories of evidence in turn.

With respect to the excerpted articles, the Examining Attorney asserts that they "indicate that oil, gas and coal producers must comply with established environmental standards and requirements during each phase of its operation that include exploration, production, distribution and cleanup." Brief, p. 4. The Examining

Attorney also states that the articles show that "oil, gas and coal producers actually conduct environmental research services." Id.

The articles which were submitted in their entireties by the Examining Attorney, are several pages long, and the Examining Attorney did not indicate the specific portions of the articles that allegedly support her position. The articles do, however, have certain phrases highlighted, and we have given these sections extra scrutiny. After carefully reviewing the articles, we find that they do not demonstrate that oil and coal producers conduct environmental research services. Rather, the article consisting of the May 2, 1996 testimony of Patricia Fry Godley, an Assistant Secretary at the U.S. Department of Energy before a Senate Committee (26 pages), printed in the "Federal Document Clearing House Congressional Testimony," refers to that government department's "oil and gas environmental research program," and her April 27, 1995 testimony (25 pages) from the same publication mentions an Environmental Research/Regulatory Impact Analysis also done by the government.<sup>6</sup>

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<sup>6</sup> Needless to say, the submission of such long reports without any discussion by the Examining Attorney of the relevant portions (and perhaps without a careful reading, since the words in bold-type are simply the words which were the subject of the search query, and do not stand for the proposition that she asserts), is

Another article deals with an agency called the Minerals Management Service, and a report it unveiled at a conference in Scotland about its offshore oil and gas program. The article included the statement that "MMS and the oil and gas industry have turned their attention to protecting the environment," and that "The organizations [unspecified] monitor the effects of offshore operations, including a growing emphasis on cutting emissions that might contribute to climate change and promoting environmental research." We cannot view this article as either demonstrating that companies that offer services such as those identified in applicant's application even promote, much less conduct, environmental research. Nor can we assume that the relevant public will be aware of such activities because of this article, which was published in the September 13, 1999 issue of "Inside Energy/with Federal Lands." The fourth, and final, article submitted by the Examining Attorney is from "Business Wire," (October 6, 1998), so there is no indication as to whether this article was ever viewed by the consuming public. In any event, it discusses a tree-planting initiative between Exxon Corp. and American Forests in

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not helpful to the Board and is a waste of judicial time and resources.

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support of the Global ReLeaf 2000 campaign, and mentions that in 1997 Exxon Corp. provided about \$1.8 million to support environmental research and conservation programs. Again, this article does not show that oil and gas producers conduct environmental research.

The Internet evidence consists of excerpts from websites of companies in the oil and gas industries. The excerpts essentially state that the companies have a policy of not harming the environment. For example, the BP website states that "BP has a simply stated goal--to do no damage to the environment," and that this "challenge stimulates us to find innovative ways to manage our environmental impact at local, regional and global levels." According to the excerpt from Chevron's website, its Pascagoula refinery has waste minimization initiatives to reduce air and water emissions and solid waste. And Exxon Mobil has an environment policy "to conduct our business in a manner that is compatible with the balanced environmental and economic needs of the communities in which we operate." This includes complying with "with all applicable environmental laws and regulations."

The mere fact that oil and gas companies' activities may have an impact on the environment, and potentially an adverse impact, and the companies therefore attempt to

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comply with applicable laws and/or attempt not to have an adverse effect, does not demonstrate that oil and gas companies offer environmental research services, namely energy conservation, nor does it show that consumers would expect such services to be rendered by such companies.

This brings us to the third-party registrations. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). The Examining Attorney has not identified which of the registrations include services which are the same as those listed in applicant's application and the cited registrations, despite the fact that applicant, in its request for reconsideration, stated that "none reflect the same business providing both Applicant's services and Registrant's services." We have been unable to identify any third-party registrations which include applicant's Class 40 and 42 services and the services listed in the cited registrations, and therefore do not find them probative evidence that the services are related.

Moreover, the services identified in Classes 40 and 42 of applicant's application would clearly be directed to

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people in the oil and gas industries who would be highly sophisticated and careful purchasers. Applicant has furnished the declaration of J. Neil Walden, Jr., its vice president, who has stated that businesses that engage in the services identified in applicant's application do not provide the services identified in the cited registrations. Thus, the purchasers of applicant's services are unlikely to assume a connection in source between applicant's services and those of the registrant, even though they are offered under very similar marks.

The Examining Attorney has also relied on applicant's specimens, and specifically the statement that "five critical requirements that GeoMet investigates before acquisitions are: Gas Content & Permeability vs. Depth... Environmental Issues...." as evidence that "researching and evaluating geological and environmental issues are an inherent part of oil, gas and coal exploration, production and distribution." Brief, p. 5. From this, the Examining Attorney concludes that "Applicant's oil, gas and coal exploration, production and distribution services are closely related to the Registrant's environmental energy research services." Id.

Applicant's specimen does discuss how applicant evaluates potential projects, and lists "Environmental

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Issues" as one of the requirements. The text goes on to explain: "minimum environmental consequences related to well drilling, installation of production facilities and disposal of produced waters." Again, the fact that applicant's services can have an environmental impact is not the same as showing that applicant performs environmental research services, namely, energy conservation, or that environmental research services in the nature of energy conservation is related to applicant's identified services, any more than the fact that eating high-fat foods may have a deleterious effect on one's health would demonstrate that ice cream and health club services or that butter and medical services are related.

This brings us to a consideration of applicant's Class 39 services. The Examining Attorney has submitted several third-party registrations, which appear to be owned by utility companies, and which include utility services, namely, the transmission and distribution of electricity and natural gas. Applicant's Class 39 services include "Public utility services in the nature of natural gas distribution." The third-party registrations which list utility services including the distribution of natural gas also make reference to energy conservation. However, none of the third-party registrations refers to environmental

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research services with respect to energy conservation (as noted above, the cited registrations list, in their identifications of services, "environmental research services; namely, energy conservation.") Instead, they list "assistance and counseling services for customers with regard to energy usage, energy safety and energy conservation" (Reg. No. 2748304); "consultation services in the field of energy use, distribution, conservation and management" (Reg. No. 2779749); "consultation in the field of energy and energy conservation and monitoring of property security systems" (Reg. No. 2373991); "consultation in the field of energy, energy conservation, and environmental issues related to energy use" (Reg. No. 2513132); and "consulting services in the field of energy use, energy management, energy conservation and telecommunications for residential, wholesale, industrial and commercial customers" (Reg. No.2280389). Obviously, there is a difference between research services regarding energy conservation and consultation services, a difference underscored by the fact that none of the third-party registrations use the term "research" in describing their energy conservation services. Accordingly, we find that the Examining Attorney has failed to establish that public utility services in the nature of natural gas distribution

and environmental research services, namely, energy conservation are sufficiently related that consumers will assume that both services emanate from the same source if offered under confusingly similar marks.<sup>7</sup>

We also note that, on this record, we cannot say that applicant's Class 39 services and the registrant's environmental research services are the types of services that are likely to be offered to the same classes of customers. Applicant's public utility services in the nature of natural gas distribution can, as identified, be deemed to be services that are offered to the general public. As a result, applicant's arguments with respect to the sophistication of purchasers would not apply to these services. However, it does not appear that the general public would obtain the environmental research services that are identified in the cited registrations. Certainly the Examining Attorney has not submitted any evidence to this effect, while applicant has submitted evidence from the registrant's website that indicates its clients are utilities, government agencies and energy industry clients. For example, the website states that registrant "has been a

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<sup>7</sup> We have limited our discussion to the environmental research services identified in the cited registrations. It is obvious that the other listed services are even less related to applicant's services, and the Examining Attorney has not even discussed them in terms of arguing likelihood of confusion.

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Commercial/Industrial Performance Program (CIPP) Contractor for NYSERDA (New York State Energy Research and Development Authority) since 1999"; that it "can be of service to energy Conservation projects in facilities and to Energy performance contractors"; that it "is a qualified Performance Contractor for DoD/Federal government Energy Savings Performance Contract (ESPC) projects"; and that "we have performed research work for both the U.S. Army Construction Engineering Research Laboratory (USACERL) and for Virginia Department of Mines, Minerals, and Energy (VDMME) under the sponsorship of the Federal Energy Management Program (FEMP)."

Accordingly, we find that, on this record, to the extent there would be any overlap in the classes of customers for applicant's and the registrant's services, the common customers would be highly sophisticated and would not assume that such services would emanate from a single source.

In view of the differences in the services, and the highly sophisticated customers for the services, we find that confusion is not likely despite the similarity of the marks involved. We also point out that we have considered applicant's argument that it and the registrant have been using their respective marks since 1985 without any

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evidence of actual confusion. We have given this duPont factor little weight because we have no information as to the registrant's experience, or any information about the extent (including geographic areas) of applicant's and the registrant's activities.

Decision: The refusal of registration is reversed with respect to all three classes in the application.