

This Opinion is Not
Citable as Precedent
of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re G-Net Media, LLC

Serial Nos. 76301508 and 76301509

Edward A. Sokolski, Esq. for G-Net Media, LLC.

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

Before Seeherman, Hanak and Rogers,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

G-Net Media, LLC has applied to register the mark G-
NET and the stylized mark  for services
ultimately identified as "cable and satellite television
programming services in the field of TV video games and
interactive television; and providing online video games
and information related to video games via a website on a
global computer network," in Class 41. The applications

are based on applicant's stated bona fide intention to use the marks in commerce for the identified services.

The examining attorney has refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). The examining attorney concluded that when applicant's marks are used for the identified services, there will be a likelihood of confusion among consumers, or that consumers will be mistaken or deceived as to the source of the services, in view of the prior registration of GNET GWINNETT NEWS & ENTERTAINMENT TELEVISION for "cable television broadcasting services" in Class 38. The registration includes a disclaimer of all terms except GNET.

When the examining attorney made the refusal of registration final in each case, applicant appealed.¹ Applicant and the examining attorney filed briefs, but applicant did not request an oral hearing. We affirm the refusal of registration in each case.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are

¹ The examining attorney also made final a requirement that applicant amend its recitation of services. In each brief, the applicant essentially adopted the examining attorney's suggestion and the examining attorney has not argued in his brief that this recitation is unacceptable. Accordingly, we consider the examining attorney to have accepted the amendment and we have changed Office records to reflect the amended recitations.

relevant to the factors bearing on the likelihood of confusion issue. See *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003), and *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion presented by this case, key considerations are the similarities of the marks and the related nature of the services. *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").

Turning first to the marks, the examining attorney contends, in regard to the cited registration, that the disclaimed matter GWINNETT NEWS & ENTERTAINMENT TELEVISION consists of a geographically descriptive designation (GWINNETT)² and a generic designation for registrant's services (NEWS & ENTERTAINMENT TELEVISION); that these

² We take judicial notice of the following: "GWINNETT COUNTY 435 sq mi/1127 sq km, pop. 352,910, in N Georgia. Lawrenceville is its seat. ...At the NE edge of the Atlanta metropolitan area, the county contains suburbs and exurbs, mostly in its SW, and poultry and dairy farms in the E and N." The Cambridge Gazetteer of the United States and Canada 264 (1995). We also note that the cited registration issued to Rockdale Citizen Publishing Company of Lawrenceville, Georgia.

elements have little, if any, source designation capacity; and that they must, therefore, be considered subordinate to GNET, which is arbitrary and occupies the dominant, initial location in registrant's overall mark. Under relevant precedent, the examining attorney argues, it is appropriate to accord less significance to the disclaimed matter and give greater weight to the mark's dominant feature, when determining likelihood of confusion. The argument is a sound exposition of the law. *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). See also, *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1845 (Fed. Cir. 2000), and *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983).

Applicant, in essence, argues that the disclaimed phrase remains a significant element of the mark in the cited registration; that GNET merely "represents the first letter in each of the [disclaimed] terms," and that the average person would more readily remember the phrase and consider GNET only as the embodiment of that phrase. Applicant's briefs, p. 2. In addition, applicant argues "that GNET is not a highly distinctive mark but is in use now and has been in use in the past for at least ten different product lines and services." *Id.* As support for

this statement, applicant cites to a list of federal and state registrations and applications, for marks listed in a TRADEMARKSCAN database search report as GNET, G-NET or G/NET, for various goods or services. Applicant therefore concludes that each GNET, G-NET or G/NET mark "can only be deemed to provide identity for a very specific line of services." Applicant's briefs, p. 4.

In his brief, the examining attorney argues that the third party registrations were not properly made of record and are not, therefore, entitled to consideration (and, he notes, were not considered). We agree that the authorities on which the examining attorney relies hold that third party registrations cannot be made of record by introduction of a search report from a private database and that registrations, contrary to applicant's argument, are not evidence of use of the marks in the marketplace or that the public is familiar with them and therefore able to distinguish among otherwise similar marks. Accordingly, applicant's TRADEMARKSCAN search report has not been considered.³

³ We note, too, that applicant's search report lists only eight federal filings among the 10 results obtained by its search, and that four of those eight are listed as "abandoned," "cancelled," or only "pending." Moreover, we note that none of the four live federal registrations deals with television programming services of any kind, nor do the dead registrations or pending applications.

We agree with the examining attorney that GNET would be perceived as the dominant and source indicating portion of the registered mark. We disagree with applicant's conclusion that consumers of registrant's services would be more likely to use a long, descriptive phrase to call for or refer to registrant's services, when GNET would be the more distinctive and convenient to use term. While we do not discount the disclaimed matter, we think it entirely appropriate to give more weight to the GNET portion of the mark in the comparison of applicant's marks and the registered mark. Applicant's typed mark and this dominant element of the registered mark are, but for applicant's use of a hyphen, identical in sight and sound. Applicant's stylized mark and the dominant element of the registered mark also would be pronounced the same and might even be presented in similar typefaces, because the registered mark is registered in typed form and we must consider that it can be displayed in any reasonable form, including a form the same as or similar to the presentation of applicant's stylized mark. See *INB National Bank v. Metrohost Inc.*, 22 USPQ2d 1585, 1588 (TTAB 1992), citing *Phillips Petroleum Co. v. C. J. Webb, Inc.*, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971).

Applicant asserts that the marks will be perceived as having differences in connotation. Primarily, applicant relies on its asserted use of its marks with its company name. The company name is not, however, part of the marks applicant seeks to register and cannot be relied on to establish the absence of a likelihood of confusion. *INB National Bank, supra*, 22 USPQ2d at 1588 ("The fact that [a party] in practice may use its registered mark 'with an associated house mark is not controlling.'"), *citing Frances Denney v. Elizabeth Arden Sales Corp.*, 263 F.2d 347, 120 USPQ 480, 481 (CCPA 1959). In any event, we believe any differences in connotation will be outweighed by the virtually identical sight and sound of applicant's marks and registrant's term GNET.

Turning to the respective services, there clearly is a relationship between applicant's "cable... television programming services in the field of TV video games and interactive television" and registrant's "cable television broadcasting services." Registrant's recitation of services is not limited and must be read to include broadcasting of any of the types of programming identified in applicant's recitation. *See Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that

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the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed"). Moreover, because the registration is geographically unrestricted, we must assume that the mark is or can be used anywhere in the United States. Consumers of registrant's cable broadcasting services, were they subsequently to encounter applicant's programming, would likely be confused about whether the services had a common source or common sponsorship.

Applicant argues that there is no evidence of actual confusion. However, applicant's applications are based on its intention to use its marks in commerce and there is nothing in either application record to indicate that either mark is now in use or that there have been any opportunities for actual confusion to occur. Accordingly, the absence of actual confusion is not a factor in these cases.

Finally, we note that we resolve any doubt about likelihood of confusion in favor of registrant and against applicant, which could have selected marks further afield

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from that of the registrant. *See, e.g., Kimberly-Clark Corp. v. H. Douglas Enterprises, Ltd.*, 774 F.2d 1144, 227 USPQ 541 (Fed. Cir. 1985).

Decision: The refusals of registration under Section 2(d) of the Trademark Act are affirmed.