

THIS DISPOSITION IS  
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OF THE TTAB

Mailed: December 12, 2005

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Crossroads LLC

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Serial No. 76561691

Serial No. 78405956

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Julie L. Dalke of Latham & Watkins LLP for Crossroads LLC.

Pamela N. Hirschman and Tasneem Hussain,<sup>1</sup> Trademark  
Examining Attorneys, Law Office 105 (Thomas G. Howell,  
Managing Attorney).

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Before Quinn, Hohein and Chapman, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

Crossroads LLC (a California limited liability  
company) has filed the two applications involved herein to  
register on the Principal Register the marks XROADS

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<sup>1</sup> Gretta Yao, Trademark Examining Attorney, Law Office 105, wrote the first Office action and the Final Office action in both applications. However, Pamela N. Hirschman wrote the appeal brief in application Serial No. 76561691, and Tasneem Hussain wrote the appeal brief in application Serial No. 78405956. For purposes of simplicity, the Trademark Examining Attorneys will be referred to in this decision by the singular "Trademark Examining Attorney."

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CONSULTING ("consulting" disclaimed) (Serial No. 76561691 filed November 10, 2003) and XROADS SOLUTIONS GROUP ("solutions group" disclaimed) (Serial No. 78405956 filed April 21, 2004), both for services amended to read as follows: "business consulting services; business consulting related to operations management services" in International Class 35; and "financial analysis and consulting" in International Class 36. Each application is based on applicant's assertion of a bona fide intention to use the respective mark in commerce.

The Examining Attorney has refused registration in each application for both classes of services under Section 2(d) of the Trademark Act, 15 U.S.C. §§1052(d), on the ground that applicant's marks, XROADS CONSULTING and XROADS SOLUTIONS GROUP, when used in connection with applicant's identified services, would so resemble the registered mark CROSSROADS FINANCIAL GROUP ("financial group" disclaimed) for "insurance brokerage in the field of life, health and annuity insurance products" in International Class 36,<sup>2</sup> as to be likely to cause confusion, mistake or deception.

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<sup>2</sup> Registration No. 2734880, issued July 8, 2003.

Applicant appealed in each application to the Board. Briefs have been filed, and applicant did not request an oral hearing.

In view of the common questions of law and fact which are involved in these two applications, and in the interests of judicial economy, we have consolidated the applications for purposes of final decision. We specifically note that the records in the two applications are virtually identical. Thus, we have issued this single opinion.

Preliminarily, we will determine two evidentiary matters. In each application applicant submitted new evidence in and with its appeal brief. Also, contained within each appeal brief (p. 18), applicant requested that the Board reverse the Examining Attorney's refusal to register, or, alternatively, remand the application for reconsideration by the Examining Attorney. The Board sent the applications files to the Examining Attorney for preparation of the appeal briefs. The Examining Attorney, in each application, objected to applicant's inclusion of new evidence at the appeal brief stage. Applicant could have requested a remand under Trademark Rule 2.142(d), but chose not to do so until the appeal brief stage. The Examining Attorney's objections are well-taken as the

evidence is untimely under Trademark Rule 2.142(d). Accordingly, the objections are sustained. The new evidence submitted by applicant for the first time in each appeal brief has not been considered herein. We add, however, that even if considered, the new evidence would not alter our decision herein.

Applicant's alternative requests that the applications(s) be remanded to the Examining Attorney for reconsideration are denied. If applicant wished to introduce additional evidence after it had appealed, it should have filed a separate written request to do so in each application. See TBMP §1207.02 (2d ed. rev. 2004). However, applicant did not do so. Rather, applicant's requests are contained within the narrative of the briefs on the cases (p. 18). When a request for remand is not made by separate notice, it is administratively extremely difficult, if not impossible, for the Board to note the request, and take timely action thereon. The administrative difficulties arise whether an applicant files paper documents or electronic submissions to the Board.

Finally, in application Serial No. 76561691, the Examining Attorney requested in her brief (footnote 1) that the Board take judicial notice of the fact that "x" is

commonly used to mean "cross," as established by her attachment from the Acronym Dictionary. The Examining Attorney's request for judicial notice of this fact is granted. See TBMP §704.12 (2d ed. rev. 2004).

We turn now to the merits of the refusal to register in each of these two applications. Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, 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).

Turning first to a consideration of the respective services, it is well settled that goods and/or services need not be identical or even competitive to support a finding of likelihood of confusion; it being sufficient, instead, that the goods and/or services are related in some manner or that the circumstances surrounding their

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marketing are such that they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are associated with the same source. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Peebles Inc.*, 23 USPQ2d 1795 (TTAB 1992); and *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

It has been repeatedly held that, when evaluating the issue of likelihood of confusion in Board proceedings regarding the registrability of marks, the Board is constrained to compare the goods and/or services as identified in the application with the goods and/or services as identified in the cited registration(s). See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). As the Court of Appeals for the Federal Circuit stated in *Octocom*, supra, 16 USPQ2d at 1787:

The authority is legion that the question of the registrability of an applicant's mark must be decided on the basis of the identification of goods [or services] set forth in the application regardless of what the record may reveal as to the particular

nature of applicant's goods [or services], the particular channels of trade or the class of purchasers to which sales of the goods [or services] are directed.

And later the Court reiterated in *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000):

Proceedings before the Board are concerned with registrability and not use of a mark. Accordingly, the identification of goods/services statement in the registration, not the goods/services actually used by the registrant, frames the issue.

Applicant argues that there is no likelihood of confusion "because the services [of applicant and the cited registrant] are not identical nor related" (briefs, p. 12); that applicant's services and the cited registrant's services "might be characterized as 'financial-related'" (briefs, p. 12 and p. 13, respectively), but that even if they are in the same general category, it does not automatically follow that they are related; and that even if one considers the normal field of expansion for registrant's services, "Applicant's services are not confusingly similar to [registrant's] services" (briefs, p. 12.)

The Examining Attorney argues that the issue is not likelihood of confusion between the services, but rather whether there is a likelihood of confusion as to the source

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of the services; that here the involved services are all financial services; that courts have held insurance related services are "related" and "complementary" to non-insurance financial services; that registrant's normal field of expansion must be considered; and that consumers would believe applicant's services (business consulting and financial analysis) are within that zone of expansion because it is extremely common for the same source to provide both insurance brokerage services and business and financial consulting services.

The Examining Attorney submitted printouts of numerous third-party registrations, based on use in commerce, to show that the identified services of applicant and registrant may emanate from a single source and be offered under the same mark. See, for example, Registration No. 2902461 for, inter alia, "business information management on the subject of investments," "business research and surveys," "financial analysis and consultation," "financial management," "financial planning" and "insurance brokerage services"; Registration No. 2874225 for, inter alia, "financial analysis and consultation," "financial management," "financial planning" and "insurance brokerage, consultation, subrogation and actuarial services in the fields of life, health, accident, fire, ..."; Registration

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No. 2858834 for, inter alia, "financial analysis and consultation," "financial management," "financial planning" and "insurance brokerage"; Registration No. 2886237 for, inter alia, "financial analysis," "financial management," "financial planning" and "insurance brokerage services"; and Registration No. 2830379 for, inter alia, "financial planning and financial consulting" and "insurance brokerage services."

When considering the third-party registrations submitted by the Examining Attorneys, we are aware that such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them. Such third-party registrations nevertheless have some probative value to the extent they may serve to suggest that such services are of a type which emanates from the same source. See *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214, 1218 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988).

Purchasers aware of registrant's insurance brokerage services in the field of life, health and annuities, who then encounter applicant's business consulting services and its financial analysis and consulting services, would be

likely to believe that, if offered under the same or similar marks, applicant's services emanate from or are sponsored by or affiliated with registrant.

When the respective services are compared in light of the legal principles cited above, we find that applicant's business consulting services and financial analysis services and registrant's insurance brokerage services are related within the meaning of the Trademark Act.

As our primary reviewing Court stated in *Recot Inc. v. M.C. Becton*, 214 F.3d 1332, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000): "Even if the goods [or services] in question are different from, and thus not related to, one another in kind, the same goods [or services] can be related in the mind of the consuming public as to the origin of the goods [or services]. It is this sense of relatedness that matters in the likelihood of confusion analysis." The same Court reiterated in the case of *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) as follows: "Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services."

Applicant argues that the trade channels of the respective services are "entirely different" as shown by applicant's and registrant's websites (briefs, p. 13); and that the purchasers are sophisticated, careful consumers.

However, as identified, there are no restrictions or limitations in either applicant's identifications of services or in registrant's identification of services as to trade channels. We agree with the Examining Attorney that applicant cannot place limitations on registrant's and its own unrestricted identifications of services. We are not persuaded by applicant's argument that the respective trade channels are "entirely different."

Further, there is nothing in the identifications of services of either applicant or registrant which limits the purchasers of these services. Therefore, we must presume in this administrative proceeding that the involved services are offered to all the usual classes of purchasers, which could include myriad business entities as well as individuals. See *Octocom Systems Inc. v. Houston Computers Services Inc.*, supra; and *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, supra.

We find that the channels of trade and the classes of purchasers are the same or are, at least, overlapping.

Applicant argues that the purchasers of both applicant's and registrant's services are sophisticated and would make careful purchasing decisions. The Board will assume that purchasers of business consulting services, financial analysis and consulting services and insurance brokerage services would exercise some degree of care and possible sophistication in purchasing. However, assuming sophistication of and care taken by the purchasers of these services, "even careful purchasers are not immune from source confusion." In re Total Quality Group Inc., 51 USPQ2d 1474, 1477 (TTAB 1999). See also, Wincharger Corp. v. Rinco, Inc., 297 F.2d 261, 132 USPQ 289 (CCPA 1962); and In re Decombe, 9 USPQ2d 1812 (TTAB 1988). That is, even sophisticated purchasers of these related services are likely to believe that the services emanate from the same source, when offered under similar marks. See Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840, 1841-1842 (Fed. Cir. 1990); and Aries Systems Corp. v. World Book Inc., 23 USPQ2d 1742, footnote 17 (TTAB 1992).

We consider next the marks in terms of their similarities and dissimilarities as to sound, appearance, connotation and commercial impression. It is well settled that marks must be considered in their entirety because

the commercial impression of a mark on a consumer is created by the mark as a whole, not by its component parts. This principle is based on the common sense observation that the impression is created by the purchaser's cursory reaction to a mark in the marketplace, not from a meticulous comparison of it to others to assess possible legal differences or similarities. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2005). See also, *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980). The proper test in determining likelihood of confusion does not involve a side-by-side comparison of the marks, but rather must be based on the overall similarities and dissimilarities engendered by the involved marks.

Applicant argues that the visual differences between the registered mark and each of applicant's marks outweigh the phonetic similarities; that applicant's marks each use "a distinctive 'x' as a symbol to denote the word 'cross,' invoking in consumers' minds the contemporary, state-of-the-art 'cutting edge' image advanced in such cultural icons as Generation X, ESPN's XGames,..." (briefs, p. 7); that considered in their entirety, each of applicant's marks and the registered mark share only the suffix "roads"; that the overall commercial impression of

applicant's marks is "completely different" from that created by the registered mark (briefs, p. 8); and that "commercial impression is sometimes viewed as a separate [du Pont] factor, but overall is more appropriately viewed as a summation of the sound, appearance, and meaning factors." <sup>3</sup> (Briefs, p. 8.)

The Examining Attorney argues that the first word in each of the involved marks is XROADS or CROSSROADS, and that it is frequently the first word or portion of a mark that is most likely impressed upon the minds of consumers; that applicant acknowledges that the "X" in its marks refers to "CROSS" and the Acronym Dictionary definitions of "x" show that consumers would perceive it as such; that the words XROADS and CROSSROADS are phonetic equivalents and would be the same when spoken; that the added words after XROADS or CROSSROADS in each of the involved marks ("consulting," "solutions group" and "financial group") are descriptive and have all been disclaimed; that the dominant feature of each mark is the word XROADS or CROSSROADS; and that, when considered in their entireties, applicant's

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<sup>3</sup> Regarding how the first du Pont factor is to be interpreted, see *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

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marks, XROADS CONSULTING and XROADS SOLUTIONS GROUP, are similar to registrant's mark, CROSSROADS FINANCIAL GROUP.

It is well settled that marks must be considered in their entireties as to the similarities and dissimilarities thereof. However, our primary reviewing Court has held that in articulating reasons for reaching a conclusion on the question of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature or portion of a mark. That is, one feature of a mark may have more significance than another. See *Cunningham v. Laser Golf Corp.*, supra, 55 USPQ2d at 1845; *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987); and *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985).

We agree with the Examining Attorney that the dominant feature in all three involved marks is XROADS or CROSSROADS. It is often the first term or portion of a mark which is most likely to be impressed upon the mind of a purchaser and be remembered by the purchaser. See *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988).

In all of the marks, the additional wording is descriptive in relation to the identified services and has

been disclaimed. The descriptive words, while not ignored in our consideration, are nonetheless of less trademark significance to consumers. Further, applicant's mark XROADS SOLUTIONS GROUP and the mark in the cited registration CROSSROADS FINANCIAL GROUP share not only the XROADS / CROSSROADS feature, but they also end with the word GROUP.

The descriptive terms in each mark do not provide sufficient differences to create separate and distinct commercial impressions. See *In re Dixie Restaurants Inc.*, supra. It is the dominant word, XROADS or CROSSROADS, not the generic/descriptive words "consulting" and "solutions group" in applicant's mark and "financial group" in registrant's mark, that would be impressed into the minds of consumers.

Moreover, the differences in the marks may not be recalled by purchasers seeing the marks at separate times. The emphasis in determining likelihood of confusion, as indicated earlier, is not on a side-by-side comparison of the marks, but rather must be on the recollection of the average purchaser, who normally retains a general rather than a specific impression of the many trademarks encountered; that is, the purchaser's fallibility of memory over a period of time must be kept in mind. See *Grandpa*

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Pidgeon's of Missouri, Inc. v. Borgsmiller, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and Spoons Restaurants Inc. v. Morrison Inc., 23 USPQ2d 1735 (TTAB 1991), aff'd unpub'd (Fed. Cir., June 5, 1992).

The connotation of the word XROADS / CROSSROADS (i.e., a place where two roads intersect or a crucial place) is the same for all three of the involved marks. While the other terms are part of the involved marks, as explained previously, they are not dominant nor particularly memorable to consumers (e.g., "consulting" for consulting services, "solutions group" for business management and financial analysis and consulting services and "financial group" for financial services).

We find that the mark in the cited registration vis-a-vis each of applicant's marks, when all considered in their entirety, are similar in sound, appearance, connotation and commercial impression. See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin, supra; Cunningham v. Laser Golf Corp., supra; and In re Azteca Restaurant Enterprises Inc., 50 USPQ2d 1209 (TTAB 1999).

Applicant argues that "CROSSROAD-Containing Marks Already Coexist in Class 36 For Similar Services" (briefs, p. 16); and that a search of "crossroads financial" on the Internet revealed numerous hits therefor. However, as

explained previously herein, applicant's asserted evidence on this du Pont factor was not timely made of record and was excluded earlier in this decision.

The record does include one third-party registration which was cited by the Examining Attorney under Section 2(d), even though she later withdrew the refusal based thereon. That cited registration, Registration No. 2214154, issued December 29, 1998 for the mark "CROSSROADS" for "investment advisory services and investment management services" in International Class 36. Applicant submitted a written consent agreement between applicant and the owner of Registration No. 2214154. The Examining Attorney accepted the agreement whereby that registrant consented to applicant's "use and registration" of its marks XROADS CONSULTING and XROADS SOLUTIONS GROUP.

In any event, as often noted by the Board and the Courts, each case must be decided on its own merits. The determination of registrability of a mark in another case cannot control the merits in the case now before us. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). See also, *In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); and *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001).

Even if applicant had shown that the mark in the cited registration is weak (which applicant has not done), such marks are still entitled to protection against registration by a subsequent user of the same or similar mark for the same or related goods or services. See *Hollister Inc. v. Ident A Pet, Inc.*, 193 USPQ 439 (TTAB 1976). Registrant's ownership of its registration gives it the exclusive right to use the registered mark in connection with the services specified in the certificate of registration. See Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b).

In view of the similar marks, the related services, and the same or overlapping channels of trade and purchasers, we find that consumers seeing applicant's marks XROADS CONSULTING and XROADS SOLUTIONS GROUP (which applicant asserts it has a bona fide intention to use), may likely assume that applicant's services emanate from or are associated with or sponsored by the cited registrant.

Further, we note that any possible doubt on the question of likelihood of confusion must be resolved against applicant as the newcomer, inasmuch as applicant has the opportunity of avoiding confusion and is obligated to do so. See *TBC Corp. v. Holsa Inc.*, 126 F.3d 1470, 44 USPQ2d 1315 (Fed. Cir. 1997); and *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988).

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**Decision:** The refusal to register the mark for both classes of services in each application under Section 2(d) of the Trademark Act is affirmed.