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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Oxford Global Resources, Inc.

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Serial Nos. 76589185 and 76589186

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Kevin M. Hayes of Klarquist Sparkman, LLP for Oxford Global Resources, Inc.

Curtis W. French, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

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Before Seeherman, Zervas and Walsh, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

On September 11, 2006, the Board issued a decision affirming the Examining Attorney's refusals of registration with respect to the services in Class 35 in the above-identified applications.<sup>1</sup> Because the appeals presented common issues and evidence, we decided both in a single opinion.

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<sup>1</sup> The applications also included services in Class 42, but the Examining Attorney did not refuse registration with respect to this class, so the registrability of applicant's marks in Class 42 was not at issue in the appeals.

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On October 16, 2006, with a certificate of mailing dated October 10, 2006, applicant timely filed requests for reconsideration of that decision. Although separate requests were filed for each application, because the requests make the same arguments (the differences in the arguments being largely based on the specific marks involved), we again decide both requests in a single decision.

Applicant argues, essentially, that the Board improperly dissected applicant's and the registrant's marks in its finding that the marks are similar; that it did not give appropriate weight to the visual aspects of the respective marks and the differences in wording; that it erroneously found the factor of consumer sophistication not to favor applicant; and that it gave insufficient weight to the evidence of coexistence of applicant's marks and that of the registrant.

We deny the requests for reconsideration.

Applicant's marks are OXFORD & ASSOCIATES and OXFORD INTERNATIONAL; the cited registration is for the mark OXFORD LEGAL ASSOCIATES and design, as shown below.



Applicant asserts that the Board relied too heavily on the disclaimers of descriptive matter in considering whether the marks are similar, pointing out that disclaimed elements of a mark are relevant to the assessment of similarity because purchasers will not be aware that certain words have been disclaimed. However, while we noted in our decision that the words LEGAL ASSOCIATES had been disclaimed in the cited mark, and ASSOCIATES and INTERNATIONAL had been disclaimed in applicant's marks, it was not the fact of the disclaimers that caused us to give less weight to these elements, but the fact that the disclaimed words were descriptive and have little or no source-indicating significance. Applicant has pointed out that the Board erroneously indicated that the ampersand in applicant's mark was disclaimed: "The elements '& ASSOCIATES' and 'INTERNATIONAL' in applicant's mark, which applicant has disclaimed." Applicant is correct, but this

misstatement does not affect the finding of likelihood of confusion. Again, it is not the fact of whether a disclaimer appears in the record of an application or registration, but the significance of a term in a mark. The ampersand in applicant's mark, like the word ASSOCIATES, has virtually no source-indicating significance. Although & ASSOCIATES and INTERNATIONAL provide some additional descriptive information about the nature of the services or the company, it is the word OXFORD to which consumers will look as the source-identifying element, and therefore deserves far greater weight in the likelihood of confusion analysis.

As the Board pointed out in its decision, it is a well-established principle that, in articulating reasons for reaching a conclusion on the issue 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 of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). See also, In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In its opinion the Board discussed why, in the present case, the word OXFORD is deserving of greater

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weight than the words & ASSOCIATES and INTERNATIONAL in applicant's marks, and LEGAL ASSOCIATES and the design in the registered mark, and we will not repeat those reasons here. Suffice it to say that we did not treat applicant's marks or the registrant's mark as OXFORD per se. Rather, we acknowledged that "a direct comparison between applicant's marks and the registered mark shows specific differences" and took such differences into account. However, these differences, which applicant has discussed in some detail, are not sufficient to distinguish the marks.

Applicant also asserts that the Board did not give sufficient weight to the design element in the cited mark because it is "interleaved" with the literal elements, and that the Board was not consistent in its treatment of the visual elements of applicant's marks and the registrant's mark. Specifically, applicant points out that the Board, in considering the effect of the words LEGAL ASSOCIATES in the registered mark, found it to have a "minimal visual presence." Therefore, applicant claims that "the Decision considers the significance of visual differences when they support the Decision's conclusion, but dismisses them when they do not." Request for recon, p. 5.

We are not persuaded by this argument, and see no inconsistency in the Board's treatment of the visual differences. As stated above, and in the decision as well, the Board recognizes that there are some differences in the marks, due to the presence in applicant's marks of the words INTERNATIONAL and & ASSOCIATES, and the presence in the registrant's marks of LEGAL ASSOCIATES and the design. However, these differences are not sufficient to avoid the likelihood of confusion. The word OXFORD is the dominant element of the cited mark because, although it also includes other words, those words LEGAL ASSOCIATES are descriptive and appear in much smaller letters. Further, while there is a design element in that mark, the word OXFORD has a more prominent appearance. In addition, those who refer to the mark orally (such as individuals who are happy with the employment placement services and recommend them to friends) will not articulate the design portion.

In sum, we find no error in our finding that applicant's marks are confusingly similar to the registrant's mark. We also reiterate our previous statement that when, as here, the marks appear in connection with virtually identical services, the degree of similarity necessary to support a conclusion of likely confusion declines. See Century 21 Real Estate Corp. v.

Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant also argues that the Board erred in not finding in its favor on the factor of consumer sophistication and/or care, saying that the Board employed circular reasoning in finding that because the marks are likely to cause confusion, even sophisticated consumers would be confused. Applicant also asserts that the individuals who would seek employment through an employment agency would exercise great care in selecting the provider of their employment services.

The Board stated in the opinion:

Moreover, we do not see how the asserted sophistication of these consumers would avoid confusion. Applicant's services and those of the registrant are for the most part identical and otherwise closely related. The registrant's mark, as far as this record is concerned, is a strong mark. In these circumstances, even sophisticated consumers are likely to believe that when applicant's marks, which are so similar to the registrant's, are used in connection with such services, the services come from a single source.

Consumer sophistication is a factor that favors a finding of no likelihood of confusion if such consumers are familiar with the marketplace, and, for example, would be aware that certain goods or services would not normally

emanate from a single source. Or they might be aware of a practice in their industry in which many different companies use similar marks, and vary them by including words such as INTERNATIONAL or ASSOCIATES, such that they would ascribe importance to even subtle differences in marks. Sophisticated purchasers such as employees of personnel offices or human relations specialists would also be careful purchasers who would not purchase services on impulse, and would pay attention to trademarks. However, in the present case, the services are identical, and there is no evidence in this record that companies in this industry differentiate their services by the presence or absence of a design, or the use of different descriptive words. On the contrary, as we pointed out in our decision, on this record the registrant's mark is a strong mark. Thus, while sophisticated consumers may note the specific differences in the marks, they will not ascribe the differences to different sources of the services. Therefore, the sophistication of applicant's consumers in the present case does not serve to avoid a likelihood of confusion.

However, even if we were to consider this factor to favor applicant in terms of the sophistication of human relations specialists/personnel offices, applicant's

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customers are also the individuals who would avail themselves of applicant's temporary employment and job placement services. Applicant asserts that such individuals would "exercise great care in selecting the provider of services related to their own employment--i.e., the activity that provides them with food, clothes, and shelter. In that respect they should be considered sophisticated." Request for reconsideration, Ser. No. 76589185, p. 7, Ser. No. 76589186, p. 6. We disagree with both of applicant's assertions. Even if an individual is careful about a purchase, that does not necessarily make him a sophisticated purchaser, since sophistication involves knowledge of the product or industry. Nor do we accept applicant's position that individuals looking for employment, including temporary employment, will exercise great care in selecting an employment agency, as opposed to the company where he ultimately chooses to work.

Thus, we cannot consider such individuals to exercise any more than ordinary care in deciding to obtain employment agency services. As we said in our opinion,

Rather, someone looking for a job might hear from a friend of a good experience with OXFORD LEGAL ASSOCIATES. Upon being contacted by or seeing an advertisement from OXFORD & ASSOCIATES or OXFORD INTERNATIONAL, that person might, because of the fallibility of

memory, think that this was the same name that had been mentioned by the friend, or think that these marks are variations of OXFORD LEGAL SERVICES.

Thus, we adhere to the finding in our opinion that the factor of the sophistication/care of purchasers does not favor a finding of no likelihood of confusion. We should also add that, even if this factor were to favor applicant, the other du Pont factors, and particularly the factors of the identity of the services and the similarity of the marks, clearly outweigh the probative effect of this factor. See *In re Shell Oil*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed.Cir. 1993) (the various du Pont factors "may play more or less weighty roles in any particular determination").

Finally, applicant asserts that the Board accorded too little weight to the evidence of coexistence of applicant's marks and the registrant's mark. In our opinion, we pointed out the problems with applicant's evidence going to the factor of coexistence:

However, although applicant has stated the length of time it has used its marks, it has not provided any information about the extent of such use, including whether the mark has been used or advertised in the same market area as the registrant's mark. For that matter, we have no information whatsoever about the registrant's activities, such as the area in which

the registrant renders its services, or the extent of its business activity or its advertising. Nor do we have any information from the registrant as to its experience with actual confusion.

Applicant now states that there is some evidence of the registrant's use because the fact of the registration shows that registrant's mark has been used in interstate commerce. From this basis, applicant contends that "the nature of placement and recruiting services is that recruits are sought and placed wherever they may be and wherever they may be needed." Request for recon, p. 7. Applicant also asserts that "individuals often move all over the country to pursue their careers," and extrapolates from this that "marks used in interstate commerce for placement and recruiting services would be encountered by the same consumers and would have been confused if confusion is likely." Ser. No. 76589186, p. 7.

We find applicant's arguments to be highly speculative and not supported by the record. The fact that the cited registration is based on use in interstate commerce is not evidence that the mark is in use in all states in the United States, nor has applicant submitted evidence that it operates in all states, or that the areas in which applicant operates overlap with the areas where registrant operates, let alone that applicant and registrant have made

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extensive use in any supposed areas of overlap, such that we could conclude that there has been an opportunity for confusion to occur. Applicant's general statement that the United States has a mobile workforce is not sufficient for us to find that a significant number of consumers have been exposed to both applicant's and registrant's marks.

Accordingly, we find no error in our conclusion that the factor of absence of evidence of actual confusion is neutral, and does not favor a finding of no likelihood of confusion.

Decision: The requests for reconsideration are denied. We adhere to our affirmance of the Examining Attorney's refusals of registration for the applications in Class 35.