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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re LGC Wireless, Inc.

Serial No. 78039039

John P. Yung of Bartel Eng & Schroder for LGC Wireless,
Inc.

Steven R. Berk, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).¹

Before Seeherman, Holtzman and Rogers, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

LGC Wireless, Inc. has appealed from the final refusal
of the Trademark Examining Attorney to register INTERREACH
as a trademark for the following goods:

Telecommunication equipment, namely
radio frequency hubs, optical hubs,
multiplexers, and termination equipment
for telecommunication networks;
computer hardware and software for
monitoring and optimizing radio,
cellular, mobile, wireless or cordless

¹ A different Examining Attorney handled the initial examination
phase of this application.

telecommunication networks, network statistical analysis, frequency allocation, traffic control and network parameter management.²

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 mark INTEREACH, previously registered for "providing multiple-user access to a global computer information network"³ that, when used on the identified goods, it is likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs. Applicant did not request an oral hearing.

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*

² Application Serial No. 78039039, filed December 18, 2000, based on an asserted bona fide intention to use the mark in commerce. On August 29, 2003, applicant filed an amendment to allege use, subsequently accepted by the Examining Attorney, asserting first use and first use in commerce as early as May 29, 2001.

³ Registration No. 2401428, issued November 7, 2000. This registration also includes the service of "designing web sites for others" in Class 42. However, it is clear that the Examining Attorney has based her finding of likelihood of confusion only on the Class 38 services, e.g., "It is common for the same party to provide both telecommunication goods and access to the services." Office action mailed June 27, 2002.

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 turn first to a consideration of the goods and services, because it is this factor, as well as the factors of channels of trade and classes of customers, on which applicant focuses its arguments that confusion is not likely. In particular, applicant asserts that its goods and the registrant's services are so different that they would not generally be offered by the same entity, and would be offered to a different group of purchasers, such that they would not interface in the marketplace.

Applicant has explained that its goods are telecommunication equipment for the wireless telecommunication industry:

Applicant's [sic] sell its goods to wireless operators and not to the general public. Applicant sells specialized wireless telecommunication equipment to assist wireless carriers in bringing radio frequency signals into buildings and other structures.

...Registrant's service and Applicant's goods are not likely to be encountered by the same consumers under normal circumstances. They do not compete with each other [nor] do they advertise through the same trade journals. ...A consumer will not find the Registrant's services or Applicant's products in the same store or in the same trade publication since their respective products and services serve different markets and have different target audiences.

Response filed November 15, 2001.

Applicant has further described its goods as follows:

Applicant's goods are marketed, for example, to cellular radio, mobile or other wireless system phone companies whose managers place applicant's equipment inside buildings to increase wireless signal strength, coverage, capacity and clarity. Applicant's goods transfers and forwards [sic] carrier signals from base stations to remote antennas and performs [sic] complex routing based on, inter alia, signal strength at various sites, density of multiple discrete signals and site saturation based on heavy use or localized system failure.

For example, as a mobile phone user enters into a shopping mall, the signal of the cell phone is transferred from the base stations to remote units inside the mall based on the variables such as the person's location, signal strength, number of people using the system at that time and in that vicinity, etc. All of the complex hardware and technology which allows a shopper to use his/her cell-phone is unknown to the shopper--but certainly not to purchasers of applicant's equipment.

Applicant's complex telecommunications hardware and software have nothing to do with the services provided in web hosting or web design. Applicant's machinery is purchased by owners and operators of radio, cellular, mobile and wireless networks for placement **only in buildings to facilitate communication signal processing and nowhere else.** Applicant's equipment is neither found, used or needed in web hosting or web design nor is it required by web service providers. Response filed November 1, 2002. (emphasis in original)

It is clear from applicant's identification of goods, as well its explanation of its goods, that its identified telecommunications equipment is not sold to the general public, but only to purchasers who would operate, or need to operate, radio, cellular and other wireless telecommunications networks. Such purchasers are clearly discriminating and sophisticated. The question, thus, is whether these purchasers, who would be the only people exposed to both applicant's goods and the cited registrant's internet access services, are likely to be confused by applicant's use of the mark INTERREACH on its goods.

The Examining Attorney has attempted to demonstrate that confusion is likely among such purchasers by submitting third-party registrations and website materials.

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 referred to specific registrations in his brief to highlight any that list both the goods identified in applicant's application and the services identified in the cited registration. What is highlighted in the registrations themselves are the words "telecommunication," "hardware," "software" and "access." However, reviewing these registrations carefully, we find very few that could be said to include goods and services of the specific types at issue herein. For example, in Registration No. 2623061, although the words "telecommunications hardware" are highlighted, the actual goods are "mounting racks for computer hardware and telecommunications hardware." In Registration No. 2721329, although the word "access" is highlighted several times, it is in the phrase "providing access to and use of database of emergency information by emergency administration personnel and public services access providers."

There are some registrations with identifications which arguably include the goods and services in

applicant's application and the cited registration. For example, there is a registration for CINGULAR (No. 2596041) in six classes which includes "telecommunications transmission equipment, components, switching, and network systems comprised of--radio transmitters and receivers; antennas; switches, signal transfer point servers; signal control point services; service resource platform services; call routing servers and software for the foregoing; computers and computer software for the activation and operation of wireless telecommunications services" and which also includes "providing multiple-user access to global computer networks to transmit, receive and otherwise access and use information of general interest to consumers."⁴ Another registration, No. 2476060, owned by Williams Companies, Inc. for WILLIAMS, includes "computer hardware namely, modems, DSA/DXV units, routers, firewalls, unix servers, Ethernet hubs, power supplies, dial-up switches and cabinet therefor," and also includes "providing on-line access and electronic data interchange to multi-user global computer information networks." This registration, however, is for goods and services in ten

⁴ The other classes include advertising services, providing online brokerage, banking and payment services, and customer and employee newsletters.

classes, and includes "brokerage of electricity services," "transportation of crude and refined petroleum products, natural gas, and ethanol by pipelines and other means," and "material treatment services, namely conditioning, processing and treating natural gas." These registrations are obviously for house marks, and are of limited probative value in demonstrating that goods and services of the type identified in the subject application and cited registration are likely to be offered under the same product/service mark.

Two registrations (Nos. 2556343 and 2525452), owned by American Calcar, Inc., include both "computer hardware and computer software for use in telecommunications, weather reporting, messaging, global positioning, database access, and imaging" and "providing multiple-user access to a global computer information network for the transfer and dissemination of a wide range of information." Although "computer hardware and software for use in telecommunications" might arguably include the specific telecommunications equipment offered by applicant, the language in the third-party registrations is so general that it has little probative value in demonstrating that the specific items listed in applicant's identification are sold under the same mark as the internet access services.

As for the website evidence,⁵ some is so general that the purpose for which the Examining Attorney has made it of record is unclear. For example, the material from Sprint which was highlighted by the Examining Attorney shows only that Sprint supplies "equipment and products," a "catalog" and "wireline and wireless service." Qualcomm develops "innovative digital and wireless technology," and "QUALCOMM Enterprise Services provides strategic mobile solutions, consulting, and services that help our customers meet their business objectives and improve their competitive advantage." Qualcomm also apparently offers software under the trademark EUDORA. Verizon offers "DSL and Internet Services" as well as "phones and equipment." None of this evidence shows that these companies offer both goods such as those identified in applicant's application and the services identified in the cited registration.

The Examining Attorney has also submitted website material from Lucent Technologies and from Avaya. The language highlighted by the Examining Attorney on the Lucent website reprint advertises that Lucent provides

⁵ Although it is clear from the submissions that the material has been taken from the various companies' websites, the website addresses do not appear, nor do the dates on which the material was printed. However, because applicant has not raised any objection to the authenticity of this material, we have considered it.

"Broadband Access Connectivity When and Where Your Customers Need It"; "Broadband Access Products"--a "portfolio of products for copper, fiber, and wireless access to meet the growing demand for bandwidth capacity for a variety of services including analog voice, analog data, ISDN, DSL, ATM, and IP"; "Circuit-to-Packet Products" "to provide new packet-ready technology to combine the best of both voice and data services"; and "Core Optical Products" in which "Lucent couples intelligent optical transport network products with multi-terabit switch/routers to enable bandwidth-hungry, revenue-generating services." The Avaya website lists, as highlighted by the Examining Attorney, "communications Systems," "Connectivity Solutions" (i.e., wiring solutions) and "LAN and Backbone Switches" "to build an effective, fully-featured network to support your business requirements."

Nowhere does the Examining Attorney explain how the website evidence shows that third parties offer the same products listed in applicant's application and the internet network services identified in the cited registration. Although these companies are clearly involved in offering products and services related to communications systems, we are unable to conclude, based on the evidence of record,

that these companies offer the specific products and services, let alone that they offer them under a single mark. It is not sufficient to merely show that applicant's goods are telecommunications equipment, and the cited registrant's services are offered via telecommunications equipment. See *Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975); *In re Cotter and Company*, 179 USPQ 828 (TTAB 1973).

It must be remembered that the only customers likely to come into contact with both applicant's goods and the cited registrant's services are highly sophisticated purchasers. They are not likely to assume that products and services offered under the same mark or a confusingly similar mark emanate from the same source simply because they are all involved in the telecommunications area. On this record, we cannot say that such purchasers will assume that a company that provides multiple-user access to a global computer information network also sells, under the same mark, the specialized equipment for optimizing wireless telecommunication that is identified in applicant's application.

We also note that, while the marks involved are virtually identical in appearance and pronunciation, they do have different suggestive connotations, because of the

respective goods and services with which they are used. Applicant's mark indicates that the equipment helps calls to reach the interior of buildings, while the cited mark suggests access via the internet. Further, because the cited mark has a somewhat suggestive significance, it is not entitled to the broad scope of protection that an invented term or a totally arbitrary mark would have.

We repeat that, on a different record, we might come to a different result. However, based on the record before us, we find that the Office has not met its burden of demonstrating that the goods and services are sufficiently related that the sophisticated consumers who would come into contact with both are likely to be confused by applicant's use of the mark INTERREACH.

Decision: The refusal of registration is reversed.