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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 Location, Inc. Group Corporation

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Serial No. 78097953

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Mark E. Tetreault of Barlow, Josephs & Holmes, Ltd. for Location, Inc. Group Corporation.

Blake Lovelace, Trademark Examining Attorney, Law Office 117 (Loretta C. Beck, Managing Attorney).

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Before Quinn, Grendel, and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Location, Inc. Group Corporation filed a use based application for the mark HOMETOWN GUIDES for “providing a website on a global computer network featuring interactively searchable demographic information related to cities within the United States, namely demographic information relating to climate, character, economic climate, local schools, stores, government, recreation and employment opportunities in a particular chosen geographic area and featuring the ability to interactively compare various results” (as amended).<sup>1</sup> Registration was refused on the ground of likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). The Trademark

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<sup>1</sup> Application Serial No. 78097953, filed December 12, 2001, claiming dates of first use of April 1, 1998. Applicant disclaimed the exclusive right to use “Guides.”

Examining Attorney cited Registration No. 2,843,506 for the mark THE HOME TOWN GUIDE for a “magazine providing maps, information, and advertisements of local area” as a bar to registration.<sup>2</sup> When the refusal was made final, applicant appealed. The applicant and the examining attorney filed briefs. We affirm.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 UPSQ2d 1201, 1203 (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. *Han Beauty Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 UPSQ2d 1557, 1559 (Fed. Cir. 2001); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

A. The similarity or dissimilarity of the marks.

With respect to the marks, we must determine whether applicant’s mark and registrant’s mark, when compared in their entirety, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. *In re E.I. du Pont de Nemours & Co., supra*. Contrary to the applicant’s position, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their commercial impression that confusion as to the source of the goods and services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally

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<sup>2</sup> Registration No. 2,843,506, issued May 18, 2004.

Serial No. 78097953

retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); *Winnabago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980).

Applicant's mark HOMETOWN GUIDES is virtually identical to the registered mark THE HOME TOWN GUIDE. The word "The" in the registered mark does not have any trademark significance. "The" is a definite article. When it is used before a noun, it denotes a particular person or thing. *Dictionary.com Unabridged* (v 1.1) based on the Random House Unabridged Dictionary (2006).<sup>3</sup> *See In re Universal Package Corporation*, 222 USPQ 344, 345 (TTAB 1984); *Conde Nast Publications, Inc. v. The Redbook Publishing Company*, 217 USPQ 356, 357 (TTAB 1983). Thus, as used in THE HOME TOWN GUIDE, the word "The" simply emphasizes the dominant element of the mark, the words "Home Town Guide."

"Hometown" is the equivalent of "Home Town." *See, In re L.C. Licensing Inc.*, 49 USPQ2d 1379, 1381 (TTAB 198)(LIZ SPORT and LIZSPORT engender the same commercial impression); *In re Strathmore Products, Inc.*, 136 USPQ 81, 82 (TTAB 1962) (the contraction of a term does not alter the essential identity of the character and meaning between the full word and its contraction).

Also, the word "Guide" is the equivalent of the word "Guides." *Wilson v. Delaunay*, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957)(there is no material difference, in a trademark sense, between singular and plural forms of a word).

In view of the foregoing, we find that the marks are similar in appearance, sound, meaning, and commercial impression.

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<sup>3</sup> We may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

B. The similarity or dissimilarity of the goods and services.

Applicant contends that the services it renders under the mark HOMETOWN GUIDES, namely, providing a searchable website in the field of demographic information for cities, are different than a magazine with information regarding information about cities. Specifically, applicant argues that the registrant's magazines are Class 16 products while applicant's services are in Class 35; and that the examining attorney has improperly referenced registrations for two national magazines as evidence that registrant's magazine encompasses online publications.

At the outset, we note that classification is wholly irrelevant to the issue of registrability under Section 2(d) of the Lanham Act, which makes no reference to classification. The classification system was established for the convenience of the Trademark office rather than to indicate that goods in the same class are related and that goods in different classes are not related. *Jean Patou Inc. v. Theon Inc.*, 9 F.3d 971, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993); *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 n.6 (TTAB 1990). Thus, our analysis focuses on whether the goods and services at issue (not the assigned International Classes) are related in such a way as to mislead consumers into believing that the applicant's services and the registrant's magazine emanate from a single source.

In analyzing the similarity or dissimilarity of the goods and services, we start with the well settled proposition that where the marks of the parties are substantially similar, the relationship between the goods and services need not be as close to support a finding of likelihood of confusion. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 213 USPQ2d 1698, 1701 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1992);

*In re Opus One, Inc.*, 60 UPSQ2d 1812, 1815 (TTAB 2001). It is also well settled that the services of the applicant and the products of the registrant need not be similar or even competitive to support a finding of likelihood of confusion. Likelihood of confusion may be found if the respective goods and services are related in some manner and/or if the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under conditions that could give rise to the mistaken belief that they emanate from the same source. *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1469 (TTAB 1988); *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590, 595-596 (TTAB 1978). In this regard, the question is not whether consumers would mistake the products and services, but whether they would mistake the source of the products and services. Thus, it has previously been held that relatedness may be found between goods, on the one hand, and services involving the goods, on the other. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 UPSQ2d 1025 (Fed. Cir. 1988) (BIGG'S for retail grocery store and general merchandise store services is confusingly similar to BIGGS for furniture); *In re H.J. Seiler Co.*, 289 F.2d 674, 129 USPQ 347 (C.C.P.A. 1961) (SEILER for catering services held likely to be confused with SEILER'S for smoked and cured meats); *In re Industrial Expositions, Inc.*, 194 USPQ 456 (TTAB 1977) (POLLUTION ENGINEERING EXPOSITION for programming and conducting of industrial trade shows held likely to be confused with POLLUTION ENGINEERING for a periodical magazine).

Finally, our determination of the likelihood of confusion issue is based on the identification of goods and services as they are recited in the application and registration, and we do not read limitations into those descriptions. *See, Hewlett-Packard Co. v.*

Serial No. 78097953

*Packard Press Inc.*, 281 F.3d 1261, 62 UPSQ2d 1001 (Fed. Cir. 2002); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987); *In re Elbaum*, 211 USPQ 639 (TTAB 1981).

Applicant is seeking to register its mark for “providing a website on a global computer network featuring interactively searchable demographic information related to cities within the United States, namely demographic information relating to climate, character, economic climate, local schools, stores, government, recreation and employment opportunities in a particular chosen geographic area and featuring the ability to interactively compare various results.” The registered mark is for a “magazine providing maps, information, and advertisements of local area.” The registrant’s use of the term “information” is not restricted and, therefore, it may encompass applicant’s “demographic information relating to climate, character, economic climate, local schools, stores, government, recreation and employment opportunities.”

We agree with the examining attorney that it is common knowledge that most printed publications have a corresponding website featuring the same or similar information. The two-sets of third-party registrations for NEWSWEEK and TIME magazines showing the same or similar marks used in connection paper and online magazines, while not overwhelming, provide some evidence that paper magazines and online magazines are products and services that may emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 UPSQ2d 1467, 1470 n.6 (TTAB 1988). Therefore, as here, consumers would expect that an online information service and a printed publication featuring similar information under similar marks would emanate from the same source.

We find that applicant's service of providing a website in the field of demographic information is related to registrant's "magazine providing maps, information, and advertisements of local area."

C. The similarity or dissimilarity in the channels of trade and classes of consumers.

The thrust of applicant's argument is that applicant's services and registrant's publications move in different trade channels because they are directed to different consumers. "Registrant's product is directed towards individuals that are unfamiliar with a region such as for example visitors to a locality for the purpose of promoting tourism and tourist activities" while "Applicant's goods (sic) are directed toward real estate professionals and consumers that are researching the characteristics of a neighborhood into which they may consider locating." (Applicant's Brief, p. 4).

Applicant's argument is not well taken. As indicated *supra*, our determination of likelihood of confusion is based on the identification of goods and services as they are recited in the application and registration, and we do not read limitations into those descriptions. *See, Hewlett-Packard Co. v. Packard Press Inc., supra; Octocom Systems Inc. v. Houston Computer Services Inc., supra; In re Elbaum, supra.* Applicant's description of services is for "providing a website on a global computer network featuring interactively searchable demographic information related to cities within the United States, namely demographic information relating to climate, character, economic climate, local schools, stores, government, recreation and employment opportunities in a particular chosen geographic area and featuring the ability to interactively compare various results." Since there is no restriction as to channels of trade or classes of users, it

is presumed that applicant's website is accessible and used by any persons, including tourists, who may be interested in information regarding a particular city. By the same token, since registrant's "magazine providing maps, information, and advertisements of local area" is not restricted in any way, the magazine may be distributed to and read by anybody, including persons interested in locating to a particular city or real estate professionals. Because there are no restrictions as to the channels of trade or classes of purchasers in either applicant's description of services or registrant's identification of goods, we consider the applicant's website and the registrant's magazine as if they were being sold or used in all of the normal channels of trade by all of the normal purchasers for such goods and services. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); *Toys R Us v. Lamps R Us*, 219 USPQ 340, 343 (TTAB 1983).

We find, therefore, that the channels of trade and classes of consumers are the same.

Based on our review of the relevant evidence, we find that applicant's use of the mark HOMETOWN GUIDES for "providing a website on a global computer network featuring interactively searchable demographic information related to cities within the United States, namely demographic information relating to climate, character, economic climate, local schools, stores, government, recreation and employment opportunities in a particular chosen geographic area and featuring the ability to interactively compare various results" so resembles THE HOME TOWN GUIDE for a "magazine providing maps, information, and advertisements of local area" as to be likely to cause confusion, to cause mistake, or to deceive.

Serial No. 78097953

Decision: The refusal to register is affirmed.