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Mailed: January 28, 2005
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AMI Semiconductor, Inc.

Serial No. 78134399

Mark Kusner of Kusner & Jaffe for AMI Semiconductor, Inc.

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Office 112 (Janice O'Lear, Managing Attorney).

Before Hairston, Chapman and Drost, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

AMI Semiconductor, Inc. has filed an application to
register the mark shown below,

The logo for ASTRIC features the word "ASTRIC" in a bold, sans-serif font. Above the letter "I" is a stylized graphic consisting of a central asterisk-like shape surrounded by three concentric, slightly irregular circles, resembling a signal or a starburst.

for integrated circuits, semiconductors and microprocessors in class 9."¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to the identified goods, would so resemble the mark ASTRIX, which is registered for "semiconductors,"² as to be likely to cause confusion.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) of the Act is based on an analysis of all the facts in evidence which are relevant to the factors bearing on the issue of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (TTAB 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks.

¹ Application Serial No. 78134399, filed on June 10, 2002, based on applicant's allegation of a bona fide intention to use the mark in commerce.

² Registration No. 2,629,332 issued October 1, 2002.

At the outset, we note that applicant does not dispute that the respective goods are identical in part (semiconductors) and otherwise related.³ Thus, we focus, as have applicant and the examining attorney, on the similarities/dissimilarities in the marks and the conditions under which and buyers to whom sales are made.

We consider first whether applicant's mark and the cited registered mark, when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056,

³ In this regard, we note applicant's statement at page 11 of its brief: "The applicant acknowledges that some of applicant's goods and registrant's goods may overlap."

224 USPQ 749 (Fed. Cir. 1985). Moreover, as our primary reviewing court, the Court of Appeals for the Federal Circuit, pointed out, “[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

In this case, applicant seeks to register the mark shown below.



The cited registered mark is ASTRIX.

In terms of appearance and sound, we find that that the marks are highly similar. The dominant feature of the applicant’s mark is the term ASTRIC. The term ASTRIC dominates over the design feature, and it is this term that purchasers will remember and use in calling for the goods. *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Here, the dominant portion of applicant’s mark and the registered mark are substantially similar in terms of sound, differing by only one letter (“c” versus

"x" which, in the marks at issue, sound very much alike). Moreover, because the registered mark appears in typed drawing form, the registrant is free to depict its mark in any reasonable manner, including the stylized lettering used by applicant. See Phillips Petroleum Co. v. C. J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). In addition, we find that both marks have the same meaning or connotation, namely an "asterisk." The design element in applicant's mark reinforces this connotation. Accordingly, we find that when applicant's and registrant's marks are considered in their entirety, they are substantially similar in overall commercial impression.

We turn next to a consideration of the conditions under which and buyers to whom sales are made. Applicant argues that the kinds of goods involved in this case "are typically purchased by professional buyers who are highly skilled engineers with backgrounds in the fields of electrical and/or computer engineering... [and] who consult a 'data handbook' that provides detailed product specifications." (Brief, pp. 11-12).

We recognize that because of the technical nature of the involved goods, they are purchased by knowledgeable buyers who exercise care in the selection of such goods. Nonetheless, even careful purchasers are not immune from

source confusion. We find that to be especially the case here where the marks are substantially similar and the goods are identical and otherwise related. See *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990); *Wincharger Corporation v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289 (CCPA 1962) and *Hydrotechnic Corporation v. Hydrotech International, Inc.*, 196 USPQ 387 (TTAB 1977).

Finally, applicant argues that marks containing "ASTR" are weak marks which are therefore entitled to only a limited scope of protection. In support of its contention in this regard, applicant submitted copies of seven third-party registrations of marks that begin with "ASTR."

The probative value of this evidence is very limited in our determination of the specific issue of likelihood of confusion in this case. As pointed out by the examining attorney, third-party registrations are entitled to little weight on the question of likelihood of confusion. See *In re Hub Distributing, Inc.*, 218 USPQ 284 (TTAB 1983). Such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, and the existence on the register of arguably similar marks cannot aid an applicant in its effort to register another mark which so resembles a registered mark as to be likely

to cause confusion. See *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973). Moreover, we note that only one of the third-party registrations covers goods of a type involved in this appeal, namely Registration No. 2,066,570 for the mark ASTRID for integrated circuits. The other registrations are for products removed from the kinds of goods involved in this appeal.⁴ Therefore, the third-party registrations do not establish that marks which include "ASTR" are weak marks in the field of integrated circuits, semiconductors, and microprocessors.

In sum, we find the respective marks to be quite similar, and we have no reason to conclude that the registered mark is weak. Further, we find the respective goods to be identical and otherwise related.

Accordingly, we conclude that purchasers and prospective purchasers familiar with registrant's ASTRIX mark for semiconductors would be likely to believe, upon encountering applicant's ASTRIC and design mark for integrated circuits, semiconductors and microprocessors, that such identical and related goods emanate from or are otherwise sponsored by or associated with a common source.

⁴ For example, the other registrations cover plasma generators, various computer software programs, electric business computers,

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Decision: The refusal to register under Section 2(d)
is affirmed.

and an electrical/electronic apparatus for use in metal pre-treatment process.