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THE T.T.A.B.

Mailed: October 29, 2007

Hearing: June 26, 2007

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Sungard Reference Data Solutions, Inc.

Serial No. 78212906

David W. Lee for Sungard Reference Data Solutions, Inc.

Tanya L. Amos, Trademark Examining Attorney, Law Office 113  
(Odette Bonnet, Managing Attorney).

Before Holtzman, Zervas and Wellington, Administrative  
Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Sungard Reference Data Solutions, Inc. has appealed from the final refusal of the trademark examining attorney to register the mark REFERENCEPOINT (in standard character form) on the Principal Register for the following goods and services, as amended:

"computer software used to aggregate, manage, and distribute financial market, reference, and historical data, and used for database management, all for use by energy traders, public utilities and other energy providers, and by commodities, futures, stock, and bond traders,

and accompanying manuals sold as a unit," in International Class 9; and

"providing temporary access to non-downloadable software used to aggregate, manage, and distribute financial market, reference, and historical data, and used for database management, all for use by energy traders, public utilities and other energy providers, and by commodities, futures, stock, and bond traders" in International Class 42.<sup>1</sup>

The examining attorney has refused registration 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 previously registered mark REFERENCE POINT (in typed form) for "providing information in the field of financial services regarding mortgage loans, mortgage-backed securities, and mortgage and debt related securities" in International Class 36,<sup>2</sup> as to cause confusion or mistake or to deceive.

After the refusal was made final, applicant appealed. An oral hearing was conducted on June 26, 2007. Upon careful consideration of the arguments advanced by applicant and the examining attorney, we conclude that confusion is likely.

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<sup>1</sup> Application Serial No. 78212906, filed February 10, 2003, asserting a claim of a bona fide intention to use the mark in commerce for the goods and services in both International Classes.

<sup>2</sup> Registration No. 2905557, issued November 30, 2004.

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 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).

The Marks

Turning first to the *du Pont* factor regarding the similarity or dissimilarity of the marks, we find that the marks are identical in sound, meaning and commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). In terms of appearance, the marks differ only in that applicant's mark does not have a space between REFERENCE and POINT, which exists in registrant's mark. This difference is insignificant, and applicant has

not contended otherwise. Thus, this factor weighs against applicant.

The Goods and Services

We next consider the *du Pont* factor regarding the similarity or dissimilarity and nature of the goods and services as described in the application and registration. It is not necessary that the goods or services of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. Rather, it is sufficient for purposes herein that the respective goods or services of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods or services are such that they would or could be encountered by the same persons under circumstances that could because of the similarity of the marks used therewith, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Registrant's identification of services specifies that its information services include information regarding "mortgage backed securities" and "debt related securities." "Mortgage backed security" is defined in the *Dictionary of*

*Real Estate Terms* (6<sup>th</sup> ed. 2004) as "a bond or other financial obligation secured by a pool of mortgage loans" and in the online version of the *Penguin International Dictionary of Finance* (1999) as "[a] security, normally a bond or note, the servicing of which is provided by the returns on mortgages (or housing loans). A portfolio of mortgages, insured against default and held by a trustee, constitutes the security or collateral to the bond or note issue." Also, "security" is defined in the online version of *The American Heritage Dictionary of the English Language* (2000) as "a document indicating ownership or creditorship; a stock certificate or bond."<sup>3</sup> Thus, bonds and notes are included within "mortgage backed securities" and "debt related securities."

Indeed, the evidence of record establishes that registrant issues bonds or notes. One web page from registrant's website introduced into the record by applicant states that registrant offers two types of securities, debt securities which are "[s]ecurities issued by Freddie Mac to raise funds [where t]he issuer promises

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<sup>3</sup> From the website credreference.com. The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002). See also *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

[to pay] interest and to repay the debt on a specified date"; and mortgage-backed securities. Further, under the heading "Our Role Within the Secondary Market," registrant's website states: "[We] guarantee timely payment of principal and interest to MBS investors and finance these purch[ases] issuing debt and mortgage securities."

Additionally, the evidence of record establishes that registrant's *Reference Point* publication discusses the notes and bonds issued by registrant. Specifically, the July 2005 issue of *Reference Point* submitted by applicant with its response to the second Office action, in addition to providing financial figures regarding registrant's "Reference Bills & Discount Notes," "Medium Term Notes" and "Reference Notes," states as follows:

The supply of agency bullet debt in the market has diminished during the past three years (see Exhibit 1). The reduced pace of new issuance has had the effect of improved valuations of our Reference Notes Securities ("ReferenceNotes") versus Treasuries and swaps across the range of our funding curve.

Further, registrant's Associate General Counsel, in a declaration filed when prosecuting the REFERENCE POINT application, which applicant in this case has made of record, stated: "The mark is being used in connection with a quarterly publication for the investor and dealer

community which features information regarding financial products in Applicant's suite of debt securities including Reference Notes<sup>®</sup>, Reference Bills<sup>®</sup> and Reference Bonds<sup>®</sup>."

Thus, from the foregoing, we find that registrant issues notes or bonds, that registrant's *Reference Point* publication discusses notes or bonds, and that a fair reading of registrant's identification of services is that it broadly includes information services regarding bonds in the nature of mortgage-backed securities and debt related securities.

Applicant's identification of goods and services specifies that its computer software, and the software to which it provides temporary access, aggregates, manages and distributes financial market, reference and historical data, and is used by, among others, bond traders.

"Financial market, reference, and historical data" in applicant's identifications is broad enough to include data on bonds, and certainly would be used by bond traders.

We have stated earlier in this decision that bonds and notes are included within "mortgage backed securities" and "debt related securities" based on dictionary definitions and evidence in the present record. Because there is no limitation regarding any particular type of bonds in applicant's identification of goods and services,

applicant's identification encompasses financial market, reference and historical data regarding those types of bonds included within the registration and discussed in registrant's publication, including mortgage backed securities and debt related securities. Thus, there is an overlap in the content of applicant's and registrant's goods and services. Also, because of this overlap in content, we find that there is a commonality of users of both applicant's and registrant's goods and services, namely, bond traders who may be seeking information about particular types of bonds, i.e., mortgage-backed securities and debt-related securities. The goods and services are hence related.

The examining attorney has introduced use-based third-party registrations which show that various entities have adopted a single mark under which they provide software and financial information.<sup>4</sup> Third-party registrations which individually cover a number of different items and which

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<sup>4</sup> The examining attorney has also made of record several web pages and excerpts from the Nexis database discussing mortgages and financial information, to show that "mortgage information is encompassed in financial market information." See denial of request for reconsideration at p. 2. Even if they do show that mortgage information is encompassed within "financial information," applicant's identification also has the limitation "for use by energy traders, public utilities and other energy providers, and by commodities, futures, stock and bond traders," and the examining attorney has not established that these

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. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). See, for example:

Registration No. 2713720 for the mark BANK OF AMERICA for, inter alia, software for accessing data from one or more mainframes; and financial and investment information via global computer networks;

Registration No. 2701664 for the mark AMERITRADE and Design for, inter alia, computer software for financial investment; and electronic financial information services, namely, providing investment information over a global computer network;

Registration No. 2729993 for the mark MORGAN STANLEY and Design for, inter alia, computer software for use in investment management, investment research and analysis; and providing financial news and information via a global computer network; and

Registration No. 2908494 for the mark GLOBAL RISK for, inter alia, computer software for providing information in the field of financial markets; and providing financial market information relating to market trading quotations, trading stocks, futures, currencies, commodities and securities.<sup>5</sup>

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individuals would use or want to consider "mortgage information." Thus, this evidence has limited probative value.

<sup>5</sup> The examining attorney has made of record several use-based third-party registrations which she maintains "show that the same companies provide financial market information and mortgage information." Brief at unnumbered p. 7. Most of the registrations she relies upon identify services which are quite different from those services in issue here. We find only one registration is probative, namely Registration No. 3062589 for the mark MORTGAGEWHISPER, and that registration alone does not establish a relationship between financial market information and mortgage information.

These third-party registrations are evidence of a relationship between the goods and services.

Applicant has challenged the probative value of the third-party registrations submitted by the examining attorney. Specifically, applicant maintains that only three registrations "cover both mortgage services and computer software"; and that these three "registrations belong to the same company - Fidelity Investments - and they all cover the exact same goods and services." Brief at p. 7. Applicant also argues that "[t]he fact that the same company has registered its mark for two different products does not prove that those products have the same market or that confusion is likely." Brief at p. 8. As support for its argument, applicant has submitted several third-party registrations owned by entities such as Walmart and General Electric Company, some for computer software.

Applicant's argument is not well taken. The cited registrant's services are broader than simply "mortgage services" and encompasses information regarding "debt related securities." See discussion, *supra*. Also, it is appropriate for the examining attorney to rely on third-party registrations to establish a relationship between the

goods and/or services. The Board has, on numerous occasions, countenanced such evidence as serving to suggest that the listed goods and/or services are of a type which may emanate from a single source. See, e.g., *Albert Trostel & Sons, supra*. Also, the registrations submitted by *applicant* do not establish that it is inappropriate for the examining attorney to rely on such registrations. The marks identified in such registrations for software appear to only be used on software; there is no evidence that these marks are used on any other goods or services. Further, the General Electric Company registrations are irrelevant inasmuch as none of them concern software or information services, which are at issue in this appeal and the third-party registrations made of record by the examining attorney do not include extensive lists of goods and/or services in multiple International Classes.

Applicant also maintains that the goods and services are not related because applicant's software is not used by the mortgage lending industry and that applicant's software and registrant's information are in two different fields. According to applicant, registrant's services are limited to the field of mortgage lending and debt-backed securities, "because Registrant is a congressional chartered organization ... that purchases mortgages using the

proceeds from the sale of debt-backed securities in order to increase the supply of funds that can be offered to potential homebuyers." Brief at p. 2. Those in the mortgage lending field cannot be considered the only users of registrant's services. The users of registrant's services could also include bond traders who trade in mortgage-backed securities and debt-related securities. Registrant's identification is not limited to the mortgage lending field. Applicant's understanding of and statements regarding registrant's business, if true, are not a proper basis for us to rely upon in determining the merits of this case, even if supported by certain pages from registrant's website. We are not at liberty to restrict a registration's identification of goods or services based on what applicant represents is registrant's business or on applicant's evidence of how registrant is actually using its mark. See *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods"); *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (punctuation in original), quoting *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1816 (Fed. Cir. 1987)

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("Likelihood of confusion must be determined based on an analysis of the mark applied to the ... services recited in applicant's application vis-à-vis the ... services recited in [a] ... registration, rather than what the evidence shows the ... services to be").

Thus, because (i) there is an overlap between the information provided by applicant and registrant and an overlap in the consuming public of applicant's and registrant's goods and services, (ii) the third-party registrations suggest that the consuming public would consider financial information and computer software regarding financial information marketed under the same or similar marks to originate from the same source, and (iii) the greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods or services and the registrant's goods or services that is required to support a finding of likelihood of confusion, see *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002), citing *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993) and *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983), we resolve the *du Pont* factor regarding the similarity of the goods and services against applicant.

Trade Channels

As for the *du Pont* factor regarding the similarity or dissimilarity of established, likely to continue trade channels, we agree with the examining attorney that applicant's and registrant's trade channels are related. As explained above, the information which is the subject of applicant's goods and services is the same in part as the information which registrant provides, and the same individuals, namely bond traders, could make use of the services provided by both applicant and registrant. Because applicant and registrant are providing the same information to the same persons, the trade channels would overlap in part. This *du Pont* factor therefore is resolved against applicant.

Conditions of Purchase and Purchaser Sophistication

We next turn to the *du Pont* factor regarding the conditions under which and buyers to whom sales are made. In this regard, applicant argues that applicant's software is a "highly specialized and expensive" product that is "sold to a sophisticated group of IT professionals who manage software applications for energy traders, public utilities and other energy providers, and [is] for large entities that trade commodities, futures, stocks and bonds." Brief at p. 9. As for registrant's purchasers,

applicant maintains that they are highly sophisticated professionals, consisting of "the people who create and sell multi-million dollar or billion-dollar mortgage portfolios" and "the institutional investors who purchase those mortgage packages" from applicant. *Id.* Certainly, to the extent that IT professionals, i.e., information technology professionals, are involved in purchasing decisions for applicant's goods and services, they will be sophisticated in their purchasing decisions, particularly with regard to applicant's computer software. However, because non-IT personnel are intended as the actual users of applicant's software, purchasing decisions would undoubtedly not be limited to IT professionals; the users of the software and information made available by applicant's non-downloadable software would likely be involved too.<sup>6</sup> These persons may not have the same sophistication that the IT professionals would have, and actually would more likely be familiar with registrant's services and mark. Also, with respect to those purchasers

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<sup>6</sup> For this reason, applicant's reliance on *Seaguard Corp. v. Seaward International, Inc.*, 223 USPQ 48 (TTAB 1984) is not persuasive. Also, we note that in *Seaguard*, cited by applicant, that the Board ultimately found that there was a likelihood of confusion and stated that "[e]ven sophisticated purchasers are not immune from confusing products as to source where, as here, the marks are for all practical purposes identical and are used in the same general field." *Id.* at p. 51.

who are sophisticated, such purchasers are not necessarily immune from source confusion. See *Wincharger Corporation v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289 (CCPA 1962); *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988). In this case, because of the near identity of the marks and the relatedness of the goods and services, we find that even those sophisticated purchasers involved in purchasing "a complex and expensive product" are likely to believe that applicant's and registrant's services emanate from a single source. The *du Pont* factor regarding the conditions under which and buyers to whom sales are made slightly favors applicant.

Conclusion

Upon consideration of the relevant *du Pont* factors discussed above, as well as the evidence of record and the arguments of the examining attorney and applicant, we conclude that when purchasers who are familiar with registrant's mark for its claimed services encounter applicant's virtually identical mark on related goods and services, they are likely to be confused. Although we have stated that the *du Pont* factor regarding the conditions under which and buyers to whom sales are made weighs slightly in applicant's favor, it is not sufficient to outweigh our findings on the other *du Pont* factors, all of

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which favor registrant. Also, to the extent that we have any doubts, we have resolved them, as we must, in favor of the prior registrant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is affirmed for both the International Class 9 goods and the International Class 42 services.