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March 9, 2007
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SparkArt LLC

Serial No. 78261322

Jamie R. Sheldon of Law Office of Jaime Sheldon for SparkArt LLC.

Susan Kastriner Lawrence, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Hohein, Grendel and Kuhlke, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

SparkArt LLC has filed an application to register the mark "SPARKART" in standard character form on the Principal Register for

"business management consulting services and business strategy consulting services; strategic identity, design and analysis services, namely, business consulting relating to corporate identity, brand name development, retail identity and naming of others; market research; advertising design, placement and dissemination for others; [and] design, placement and dissemination of print and electronic media advertisements for others" in International Class 35 and

"consulting services, strategic identity, design and analysis services; namely, product design for others, package design for others, website design for others, and structural package design for others;

computer consultation services; custom computer software design and development services for others; website design and development services for others; [and] providing consultation on the use, integration and operation of computer software programs and the updating of computer software program services" in International Class 42.¹

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, when applied to his services, so resembles the following marks, which are owned in each instance by different registrants for the services indicated below, as to be likely to cause confusion, or to cause mistake, or to deceive:²

(i) the mark "SPARK! CREATIVE GROUP" and design, as reproduced below,

spark!
CREATIVE GROUP

which is registered on the Principal Register for "business marketing communication consulting services featuring the preparing of internal publications, direct mail design, corporate logos and identity programs, corporate collateral programs, trade

¹ Ser. No. 78261322, filed on June 11, 2003, which for each class alleges a date of first use anywhere of July 2, 1999 and a date of first use in commerce of July 26, 1999.

² Although registration was also finally refused in light of Reg. No. 2,347,952, issued on May 9, 2000, for the mark "SPARKNET" in standard character form on the Principal Register for "telecommunications services, namely, providing dedicated data communications lines between two points for use with the global communications network" in International Class 38 and "providing worldwide web site design, hosting the web sites of others on a computer server for a global computer network, computer consultation services in the fields of web site design, search engine optimization, e-mail hosting, e-mail newsletters, announcement lists and e-mail lists" in International Class 42, such registration has been canceled pursuant to the provisions of Section 8(a) of the Trademark Act, 15 U.S.C. 1058(a), and therefore will not be given further consideration.

advertising, computer graphics, and the like" in International Class 38;³

(ii) the mark "SPARK," which is registered on the Principal Register in standard character form for "rental of advertising space on fitted, plastic shells used for storing and securing small vehicles, namely, bicycles, motorcycles, snowmobiles, personal watercraft and all-terrain vehicles" in International Class 35;⁴ and

(iii) the mark "SPARK DESIGN," which is registered on the Principal Register in standard character form for "advertising services, namely, creating corporate and brand identity for others and preparing advertisements for others" in International Class 35 and "graphic art design" services in International Class 42.⁵

Applicant has appealed and briefs have been filed. We affirm the refusal to register as to each of the cited registrations.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098,

³ Reg. No. 2,306,835, issued on January 11, 2000, which sets forth a date of first use of the mark anywhere of May 29, 1997 and a date of first use of the mark in commerce of June 3, 1997; affidavit §8 accepted. The word "GROUP" is disclaimed.

⁴ Reg. No. 2,511,514, issued on November 27, 2001, which sets forth a date of first use of the mark anywhere of February 1, 1998 and a date of first use of the mark in commerce of March 1, 1998.

⁵ Reg. No. 2,932,214, issued on March 15, 2005, which for both classes sets forth a date of first use of the mark anywhere and in commerce of September 1995. The word "DESIGN" is disclaimed.

192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity or dissimilarity in the goods or services at issue and the similarity or dissimilarity of the respective marks in their entireties.⁶

Applicant, with respect to the marks at issue, contends in its brief that, "[i]n terms of appearance alone, there is simply not much similarity between Applicant's mark and [those in] the cited registrations." Similarly, applicant notes, the only commonality in sound shared by the respective marks is the word "SPARK." As to the connotation of each mark, applicant maintains that:

... Since each of the respective marks contains a distinctive element (with the exception of the SPARK registration) with a distinctive meaning, there is no particular commonality of connotation between the Applicant's SPARKART mark and [those in] the cited registrations. The portion ART in Applicant's mark, in the most general sense[,] refers to the products of human creativity--music, painting, dance, etc. When combined with the word SPARK, it could easily bring to mind the act of generating or setting in motion ("sparking") some category of ART such as ballet or literature, for instance. The cited registration SPARK DESIGN includes the word DESIGN with a variety of possible associations, synonymous with, for instance, the verbs to invent, devise, plan out or execute and the nouns for a graphic representation, drawing or sketch. As for SPARK CREATIVE GROUP, the connotation of CREATIVE GROUP is productive, imaginative or expressive. Each of the respective marks has its own distinct undertones created

⁶ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." 192 USPQ at 29.

by the elements that the marks do NOT have in common. Even the Applicant's SPARKART mark compared with the cited registration SPARK [mark] evokes a marked variation by the inclusion of the simple term ART.

Finally, with respect to the overall commercial impression engendered by each mark, applicant asserts that:

... Instructive cases on this issue are: *Long John Distilleries, Ltd. v. Sazerac Co.*, 426 F.2d 1406, 166 USPQ 30 (C.C.P.A. 1970) (finding no confusion between LONG JOHN and FRIAR JOHN ... because the marks conveyed "very different overall impressions" despite their use of "JOHN" in their respective marks, both for whiskey); *Kellogg Co. v. Pack'em Enterprises[] Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991) (affirming the Board's finding of no likelihood confusion between the marks FROOTIE [sic] ICE and FROOT LOOPS based on the different commercial impressions created by them despite their common misspelling of the generic term "fruit" (FROOT) or "FRUITY" (FROOTEE)). Similarly here, having a single element in common--SPARK--with the registered marks does not cause confusion when the remaining non-common elements are considered in light of their power to create entirely different commercial impressions.

As to the respective services, applicant insists that the *du Pont* factor which pertains to the conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing, weighs heavily in favor of there being no likelihood of confusion. Specifically, applicant emphasizes in its brief that:

Services that would generally be categorized as "marketing" or "advertising" related (such as those covered under Applicant's mark and [those in] the cited registrations) are generally marketed to professional purchasers, businessmen, companies and corporations of all sizes. Indeed, unless in the entertainment industry, most individuals do not have a need or desire

to market, advertise or promote themselves as individuals. . . . Moreover, these marketing/advertising services are normally sold to discriminating customers who give a great deal of thought and deliberation before settling with a particular seller of the services.

Applicant's services are typically sold only after much information has been conveyed to the purchaser and usually after a face-to-face meeting between Applicant and the purchaser. In addition, Applicant's services are generally expensive, as Applicant and its clients typically enter into contracts that span a period of time. The purchasing class of Applicant's services, the deliberation required to enter into a services contract with Applicant, and the expense associated with such a contract renders confusion as to the source of Applicant's services nearly impossible.

In addition, applicant urges that the *du Pont* factor which relates to the number and nature of similar marks in use on similar services shows that there is no likelihood of confusion. In particular, applicant contends in its brief that "[t]he record in the instant case shows that there are no less than ten registrations in International Class 35 for marks that contain SPARK, the element that the Examining Attorney believes is most dominant in the Applicant's mark and the [marks in the] cited registrations"⁷ (footnote omitted). Noting, for instance, that

⁷ The marks in such third-party registrations, as set forth by applicant in its brief, are "WIDESPARK," "SPARKSTORM," "VERTICAL SPARK," "THINKSPARK," "SPARK PROMOTIONS," "MARKETSPARK," "SPARKS CAN FLY," "BRIGHTSPARK," "SPARKETING" and "BRANDSPARK." The Examining Attorney, in her brief, accurately observes, however, that applicant made of record only a list of various marks which are the subjects of certain third-party registrations rather copies of such registrations. As she correctly points out:

The Trademark Trial and Appeal Board does not take judicial notice of registrations, and the mere submission of a list of registrations does not make these registrations part of the record. *In re Delbar Products, Inc.*, 217 USPQ 859 (TTAB

"the WIDESPARK registration covers 'marketing communications for others focused on strategic planning, namely marketing communications programming planning; brand entity development namely brand entity standards design and brand entity integration; print design namely collateral, advertising, packaging and direct mail; web marketing namely web site optimization/submission, e-mail marketing and web site promotional programming'" and that "the SPARK PROMOTIONS registration covers 'marketing services, namely promoting the goods and services of others to their order and specification through the distribution of promotional items," applicant asks the question: "[H]ow can the Examining Attorney argue that there could be confusion between SPARKART and SPARK CREATIVE GROUP, for instance[,] when the PTO has already acknowledged, by registering both SPARK CREATIVE GROUP AND SPARK DESIGN for very similar services, that these marks are not confusingly similar?"

The Examining Attorney, on the other hand, argues in her brief that confusion is likely because:

1981); *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). To make registrations proper evidence of record, soft copies of the registrations or the complete electronic equivalent (i.e., printouts of the registrations taken from the electronic search records of the United States Patent and Trademark Office) must be submitted. TMEP §710.03. See *In re JT Tobacconists*, 59 USPQ2d 1080, 1081 n. 2 (TTAB 2001); ... *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1231-32 (TTAB 1992). Thus, these referenced registrations have no evidentiary weight in the current likelihood of confusion determination.

Nonetheless, we have considered the list submitted by applicant inasmuch as the Examining Attorney has waived any objection thereto on such ground by having failed to advise applicant of the deficiency therein until the submission of her brief.

Here, the dominant portion of applicant's mark is essentially identical to the dominant portion--or entirety--of each [of the] registrants' mark[s]; accordingly, the marks are confusingly similar in appearance, sound, connotation and overall commercial impression. Moreover, the services of applicant are sufficiently related to the services of registrants so that the same purchasers would be likely to encounter these services and mistakenly believe they come from the same source.

In particular, with respect to the marks at issue, the Examining Attorney correctly points out that:

[T]he test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot[] Inc. v. M.C. Becton*, 214 F.[3]d 1322, 54 USPQ2d 1894 ... (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Additionally, although the examining attorney must look at the marks in their entireties under §2(d), one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, [753 F.2d 1056], 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976) [;] *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1988) [;] TMEP §1207.01(viii).

In applying such principles, the Examining Attorney maintains with respect to similarities in sound and appearance of the marks at issue that "[t]he first (dominant) portion of applicant's mark is identical to the first (dominant) portion or

entirety of registrants' marks." Specifically, she asserts that applicant's mark "consists of a dominant term SPARK and the highly suggestive, if not descriptive term, ART," while two of the registrants' marks, namely "SPARK! CREATIVE GROUP" and design and "SPARK DESIGN," "consist of the term SPARK and descriptive or highly suggestive wording; ... [and the other mark] is simply SPARK by itself." She further contends as to registrants' marks that, "[i]n each instance--with the exception of where the entire mark is SPARK--the term SPARK is the first portion of the mark as well as the non-descriptive/suggestive portion of the mark; and is therefore the most likely portion of the mark to be impressed upon the minds of purchasers and viewed as the source indicator of the services." That applicant's mark, as well as two of the three cited marks, "include additional matter does not detract from the fact that the dominant portion of the marks are identical and that the dominant portion of applicant's mark is identical to the entirety of the [other cited mark]," she insists. Moreover, she observes that in the case of the cited "SPARK! CREATIVE GROUP" and design mark, applicant not only "may choose to use its mark in a stylization highly similar [to]--or even the same as--the registrant's [stylization]," but "[t]here can be no doubt that the SPARK portion will be viewed as the source indicator, i.e., the more dominant element of the [registrant's] mark," given that "the SPARK portion, while in lower case letters, is larger with some letters in bold ... [as opposed to] the wording CREATIVE GROUP which, while in all capitals, is smaller and below the term SPARK!"

The Examining Attorney thus concludes that, "in each instance, there can be no doubt that the term SPARK is the dominant--or entire--portion of applicant's and registrants' marks; and that the marks are therefore confusingly similar in appearance." For essentially the same reasons, she urges that the respective marks are "confusingly similar in sound," noting that likewise any "additional elements in each mark were not overlooked or minimized" in relation to the dominant or sole term "SPARK" but, "rather, the first element was given greater significance when comparing the marks at issue."

As to the similarities in connotation and overall commercial impression, the Examining Attorney insists that it is again the shared term "SPARK" which purchasers are likely to recollect and attribute to the associated services a common source or sponsorship. "The fact that applicant's and ... [two] of registrants' marks have additional material," she contends, "does not detract from the overall connotation or commercial impression created by the use of the term SPARK in each of the marks" because (footnote omitted):⁸

⁸ Inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions, the Examining Attorney's implicit request in her brief that the Board take judicial notice of the definitions attached to her brief of the terms "art," "design" and "creative" from The American Heritage Dictionary of the English Language (4th ed. 2000) is approved. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n. 7 (TTAB 1981).

Accordingly, we judicially notice that such dictionary (i) defines "art" in pertinent part as "2a. The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production

Applicant's mark is comprised of SPARK and ART. As noted by applicant, the term "ART" connotes a product of human creativity (see attached dictionary definition)--this is not unsimilar [sic; dissimilar] to the connotations of both the term "DESIGN" and the wording "CREATIVE GROUP" (see attached definitions for "DESIGN" and "CREATIVE"). That is, the terms "ART," "DESIGN," and "CREATIVE" all connoted the idea of a creative or artistic idea--or "spark."

....

Applicant contends that the "non-common elements" in each mark create entirely different commercial impressions. However, as demonstrated above the addition of these elements does not sufficiently distinguish the marks from one another.

The Examining Attorney concludes, therefore, that the respective marks are "confusingly similar in connotation and overall commercial impression."

With respect to the services at issue, the Examining Attorney emphasizes that confusion is likely because, "[i]n each instance, applicant's services are identical, or at the very least highly related, to and/or encompass, the services of each of the registrants." In particular, as to the services set forth, respectively, in connection with the registrations for the marks "SPARK! CREATIVE GROUP" and design, "SPARK" and "SPARK DESIGN," she accurately points out that:

of the beautiful in a graphic or plastic medium. **b.** The study of these activities. **c.** The product of these activities; human works of beauty considered as a group"; (ii) lists "design" in relevant part as **2.** The purposeful or inventive arrangement of parts or details **3.** The art or practice of designing or making designs. **4.** Something designed, especially a decorative or an artistic work"; and sets forth "creative" as **1.** Having the ability or power to create. **2.** Productive; creating. **3.** Characterized by originality and expressiveness."

Reg. No. 2306835 contains "business marketing communication consulting services featuring the preparing of internal publications, direct mail design, corporate logos and identity programs, corporate collateral programs, trade advertising, computer graphics, and the like." Applicant's services consist [in pertinent part] of "strategic identity, design and analysis services, namely, business consulting relating to corporate identity, brand name development, retail identity and naming of others" as well as "advertising design, placement and dissemination for others" and "consulting services, strategic identity, design and analysis services; namely, product design for others, package design for others, website design for others, and structural package design for others." Applicant and registrant both provide services which involve creating brand and corporate identity as well as corporate image design and advertising; applicant and registrant provide similar--if not the same--services.

....

Reg. No. 2511514 consists of "rental of advertising space on fitted, plastic shells used for storing and securing small vehicles." Applicant's services consists [sic] [in relevant part] of "advertising design, placement and dissemination for others; [and] design, placement and dissemination of print and electronic media advertisements for others." The services of applicant clearly encompass the more narrowly defined services of registrant.

Finally, Reg. No. 2932214 contains "advertising services, namely, creating corporate and brand identity for others and preparing advertisements for others." Applicant's services include [in pertinent part] "strategic identity, design and analysis services, namely, business consulting relating to corporate identity, brand name development, retail identity and naming of others; market research; advertising design, placement and dissemination for others ...[; and] design, placement and dissemination of print and electronic media advertisements for others" as well as "consulting services, strategic

identity, design and analysis services; namely, product design for others, package design for others, website design for others, and structural package design for others." Again, applicant provides highly related--if not the same exact--services provided by registrant.

In consequence thereof, the Examining Attorney concludes that:

Thus, in each instance, there can be no doubt that applicant's services are [in relevant part] identical to, or highly related to and/or encompass the services of each registrant. Therefore, it must be presumed that such services travel through the same channels of trade and will be encountered by the same class of purchasers who will mistakenly believe they come from a single source.

The Examining Attorney, furthermore, properly notes as to applicant's assertion that purchasers of marketing and/or advertising related services are typically discriminating or sophisticated purchasers that the fact that purchasers may be knowledgeable or sophisticated in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of service marks or immune from source confusion, citing *In re Decombe*, 9 USPQ2d 1812, 1814-15 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983); and TMEP §1207.01(d)(vii). See also *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289, 292 (CCPA 1962); and *In re Research & Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986).

Lastly, as to the list of third-party registrations made of record and relied upon by applicant, the Examining Attorney properly points out in her brief that it is well established that, contrary to applicant's assertions, third-party

registrations do not demonstrate use of the marks which are the subjects thereof in the marketplace or that the consuming public is familiar with the use of those marks and has learned to distinguish between them based on the differences therein. See, e.g., *Smith Brothers Manufacturing Co. v. Stone Manufacturing Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973); and *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (C.C.P.A. 1973). Third-party registrations, by themselves, are thus entitled to little weight on the issue of likelihood of confusion. See, e.g., *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); and *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983). Finally, as our principal reviewing court pointed out in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board or this court." See also, *In re Broyhill Furniture Industries Inc.*, 60 USPQ2d 1511, 1514 (TTAB 2001); and *In re Pennzoil Products Co.*, 20 USQP2d 1753, 1758 (TTAB 1991).

Upon careful consideration of the arguments presented, we agree with the Examining Attorney that contemporaneous use by applicant of its mark "SPARKART" in connection with its services is likely to cause confusion with each of the cited marks as used in connection with the various services respectively associated therewith. We note, in this regard, that our principal reviewing court has pointed out that "[w]hen marks would appear on virtually identical ... services, the degree of similarity [of

the marks] 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). Here, as the Examining Attorney has tellingly and accurately observed in her brief, "applicant does not appear to dispute that applicant's services are [in relevant part] highly related to, if not the same as, the [pertinent] services of each registrant." Such fact, of course, weighs heavily in favor of a finding of likelihood of confusion.

As to the marks at issue, we find that when considered in their entirety, applicant's mark "SPARKART" is substantially similar in sound, appearance, connotation and overall commercial impression to the registrants' marks "SPARK! CREATIVE GROUP" and design, "SPARK" and "SPARK DESIGN." Each mark consists of or is dominated by the term "SPARK," which constitutes the sole or first element thereof. As to the dominance of such term in applicant's mark and two of the three cited marks, it is settled that highly suggestive or disclaimed matter, including a merely descriptive term, is typically less significant or less dominant when marks are compared. Although such matter is not ignored, it is typically subordinate to a more significant, source-indicative feature of a mark with respect to the creation of the mark's overall commercial impression. *See, e.g.* *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); and *In re National Data Corp.*, *supra* at 224 USPQ 751 ["[t]hat a particular feature is descriptive [or otherwise lacking in distinctiveness] ... with respect to the involved ... services is

one commonly accepted rationale for giving less weight to a portion of a mark"]. While dissimilarities exist between applicant's mark, due to the inclusion therein of the highly suggestive word ART, and each of the three cited marks, including the presence of other highly suggestive or disclaimed matter in two of such marks, namely, the words "CREATIVE GROUP" and "DESIGN," as well as the additional element of a stylized presentation of the "SPARK! CREATIVE GROUP" and design mark in which the words "CREATIVE GROUP" appear in much smaller size than the dominant term "SPARK!," such differences are not sufficient to preclude a likelihood of confusion given the absence of any significant distinguishing element in the cited "SPARK" mark and the dominance in the other cited marks of the term "SPARK." Therefore, although the typically knowledgeable and sophisticated purchasers of the services at issue may indeed note the differences in the marks, they likely will assume that the differences indicate variant marks of a single source, rather than identify separate sources, given the presence in each mark of the term "SPARK." See, e.g., In re Smith & Mehaffey, 33 USPQ2d 1531, 1533 (TTAB 1994). The substantial similarities in the respective marks thus outweigh the differences therein and favor a finding of a likelihood of confusion.

We accordingly conclude that customers and prospective purchasers who are familiar or otherwise acquainted with one or more of the registrants' marks "SPARK! CREATIVE GROUP" and design, "SPARK" and "SPARK DESIGN" for the various "business marketing communication consulting services featuring the

preparing of ... corporate logos and identity programs, ... trade advertising, computer graphics, and the like," the "rental of advertising space on fitted, plastic shells used for storing and securing small vehicles" and "advertising services, namely, creating corporate and brand identity for others and preparing advertisements for others," which are respectively provided under such marks, would be likely to believe, upon encountering applicant's substantially similar mark "SPARKART" mark for its "business management consulting services and business strategy consulting services; strategic identity, design and analysis services, namely, business consulting relating to corporate identity, brand name development, retail identity and naming of others; market research; advertising design, placement and dissemination for others; [and] design, placement and dissemination of print and electronic media advertisements for others" and its "consulting services, strategic identity, design and analysis services; namely, product design for others, package design for others, website design for others, and structural package design for others; computer consultation services; custom computer software design and development services for others; website design and development services for others; [and] providing consultation on the use, integration and operation of computer software programs and the updating of computer software program services," that such identical in part and otherwise commercially related services emanate from, or are sponsored by or associated with, the same source.

Ser. No. 78261322

Decision: The refusal under Section 2(d) is affirmed as to each of the cited registrations.