

**THIS DECISION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB**

Mailed: 7/15/2005

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Realum KG

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Serial No. 78376508

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Michael Schefczyk for applicant.

Catherine Pace Cain, Trademark Examining Attorney, Law  
Office 113 (Odette Bonnet, Managing Attorney).

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Before Quinn, Hohein and Walsh, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Realum KG to register the  
mark REALUM (in standard character form) for "financial  
investment in the field of real estate; [and] leasing of  
real estate" in International Class 36; and "real estate  
development" in International Class 37.<sup>1</sup>

The trademark examining attorney refused registration  
under Section 2(d) of the Trademark Act on the ground that  
applicant's mark, as applied to applicant's services, so

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<sup>1</sup> Application Serial No. 78376508, filed March 1, 2004, based on  
German Registration No. 30173503, issued April 9, 2002.

resembles the previously registered mark REALEUM for a variety of goods and services related to real estate, as to be likely to cause confusion. The goods and services are identified as follows:

Printed materials, namely, manuals and books for use in operating, managing, insuring, brokering, maintaining, leasing, buying, selling, researching, developing, planning, investing, financing, marketing, and organizing of real estate; [and] printed materials, namely, manuals and books for use in real estate educational services, in consultation services and in accounting services (in International Class 16); and

Educational services, namely, conducting classes, seminars, conferences and workshops in the field of real estate (in International Class 41)<sup>2</sup>

Computer programs for use in financial and real estate data management; computer programs for use in the prospecting of tenants, analyzing and processing of tenant applications, renewals and transfers of tenants, sale of tenant services, monitoring of billables, receivables, and revenue at the property and portfolio levels, and in the leasing, researching, and marketing of real estate; computer programs for use in training of real estate property managers in the prospecting of tenants, analyzing and processing of tenant applications, renewals and transfers of tenants, sale of tenant services, monitoring of billables, receivables, and revenue at

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<sup>2</sup> Registration No. 2725144, issued June 10, 2003.

the property and portfolio levels, and in the leasing, researching, and marketing of real estate; computer software, namely, communications software for connecting computer users to a database and performing real estate and business transactions via a global computer network; computer software for providing decision support, information reporting, analysis of key performance trends and balanced scorecards in the field of real estate business; [and] computer programs for processing product and service transactions in financial and real estate fields (in International Class 9); and

Computerized and on-line data management services for real estate businesses; [and] providing business consulting services to real estate businesses (in International Class 35).<sup>3</sup>

Both registrations are owned by the same entity.

When the refusals were made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant argues that it owns a family of marks, and that the present mark "is an artificial term composed of a reference to the activity, i.e., real estate in this case, and the Latin ending "-um." (Brief, p. 1). Although applicant states that it "cannot refute the verbal similarity between the marks REALUM and REALEUM," applicant

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<sup>3</sup> Registration No. 2846297, issued May 25, 2004.

contends that the services rendered under the marks are different and would not be encountered by the same purchasers. Id. Applicant urges that the mere fact that both marks are used in the real estate field is not a sufficient basis upon which to find a likelihood of confusion.

The examining attorney maintains that the marks are highly similar. With respect to the goods and/or services, the examining attorney maintains that they are related inasmuch as all relate to the fields of finance and real estate. The examining attorney contends that registrant's computer programs, books and manuals could be used in connection with the type of financial and real estate services offered by applicant, and that registrant's educational services could be provided to consumers of applicant's services inasmuch as financial consultants and real estate agents often conduct seminars and workshops in their fields. In support of her position regarding the relatedness of the goods and/or services, the examining attorney submitted copies of use-based third-party registrations in an attempt to show that the type of goods and services involved herein may emanate from a common source under the same mark.

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 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 first turn to consider the similarities and the dissimilarities between the marks. In this case, we compare applicant's mark REALUM with registrant's mark REALEUM, both in standard character form. The terms themselves are strikingly similar. The only difference between the marks is the presence of the fifth letter "E" in the middle of registrant's mark. Many consumers would likely not notice or remember the slight difference in the middle of registrant's mark. Certainly, whether the marks can be distinguished in a side-by-side comparison is not the test. *Grandpa Pigeon's of Missouri, Inc. v.*

Borgsmiller, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973). Regarding the pronunciation of the marks, although very slightly different, it is likely that purchasers would pronounce the marks very similarly. Even if they were pronounced differently, the differences between REALUM and REALEUM would be slight.

As to the meaning of the marks, it is likely that purchasers would perceive both marks as being suggestive when used in connection with real estate goods and services. Finally, we find that the commercial impressions engendered by the marks REALUM and REALEUM would be very similar, if not virtually identical. The marks look and sound similar, and their meanings are identical. Therefore, this factor favors a finding of likelihood of confusion.

In finding that the marks are confusingly similar, we have kept in mind that consumers, due to the normal fallibility of human memory over time, retain a general rather than a specific impression of trademarks encountered in the marketplace. In re Research and Trading Corp., 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986).

We find it likely that consumers would believe, in view of the similarities in sound, appearance, meaning and overall commercial impression between REALUM and REALEUM,

that the respective goods and/or services have a common source if such goods and/or services were related.

We thus turn to the du Pont factor regarding the similarity or dissimilarity of the involved goods and/or services. In comparing the goods and/or services, it is not necessary that they be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that the goods and/or services originate from or are in some way associated with the same source. In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978). The issue of likelihood of confusion must be determined on the basis of the goods and/or services as set forth in the application and the cited registration(s). In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); and Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987).

Applicant is rendering financial real estate investment services, real estate leasing services and real

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estate development services. Registrant is offering, in relevant part, manuals and books for use in leasing, buying, selling, developing, investing and financing of real estate; and computer programs for a variety of uses in the field of financial and real estate, including data management; leasing, researching and marketing of real estate; monitoring revenue at the property and portfolio levels; providing decision support, information reporting and analysis of key performance trends in the field of real estate business; and processing product and service transactions in financial and real estate fields.

Registrant also offers classes, seminars, conferences and workshops in the field of real estate, as well as business consultation services to real estate businesses.

Applicant's services and registrant's goods and services involve real estate and, in point of fact, some of registrant's goods and services specifically involve real estate leasing, investment and development, that is, the very services rendered by applicant. The goods and services would move in the same or similar real estate and financial trade channels and would be purchased by the same classes of purchasers. Anyone looking to invest, lease or develop real estate is a prospective consumer for both

applicant's services and the goods and services of registrant.

The examining attorney has made of record several use-based third-party registrations in an attempt to show that goods of the type identified in the application and that goods and services in the cited registration may be sold under a single mark by a single source. Third-party registrations which individually cover a number of different items and which are based on use in commerce are probative to the extent that they 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). Here, the registrations show adoption of the same mark by the same entity for, inter alia, various real estate services, such as leasing and investing, as well as for educational seminars and conferences regarding real estate.

A determination of the issue of likelihood of confusion between the applied-for mark and the registered mark must be made on the basis of the identifications of goods and services as they are identified in the involved application and registration. The involved identifications of goods and services do not include any limitations as to classes of purchasers and we must presume, therefore, that

the identifications encompass all goods and services of the type described, and that the identified goods and services move in all channels of trade and to all classes of purchasers that would be normal for such goods and services. In re Elbaum, 211 USPQ 639, 640 (TTAB 1981). Accordingly, we presume that applicant's and registrant's goods and/or services are offered to all types of consumers, ordinary and sophisticated. To the extent that some purchasers may be knowledgeable in the fields of real estate and investments, this does not necessarily mean that they are immune from source confusion. In re Decombe, 9 USPQ2d 1812 (TTAB 1988).

Further, as pointed out by the examining attorney in response to applicant, the fact that the goods and services are classified in different classes is immaterial. The classification is purely an administrative determination unrelated to the determination of likelihood of confusion. Jean Patou Inc. v. Theon Inc., 9 F.3d 971, 29 USPQ2d 1771 (Fed. Cir. 1993). See TMEP §1207.01(d)(v)(4<sup>th</sup> ed. rev. April 2005).

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., supra; and

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In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565,  
223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.