

**THIS OPINION IS NOT A
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Mailed: July 13, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sunbridge Capital, Inc.

Serial No. 78525295

Glenn K. Robbins II of Spencer Fane Britt & Browne LLP for
Sunbridge Capital, Inc.

Linda Estrada, Trademark Examining Attorney, Law Office 104
(Chris Doninger, Managing Attorney).

Before Cataldo, Bergsman and Wellington,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

An application was filed by Sunbridge Capital, Inc. to register on the Principal Register the mark shown below for the following services, as amended: "Financing services limited to equipment financing services and lease-purchasing financing" in International Class 36.¹

¹ Application Serial No. 78525295 was filed December 1, 2004, based on applicant's assertion of January 9, 2004 as the date of first use of the mark in commerce. Applicant disclaimed the exclusive right to use "CAPITAL" apart from the mark as shown. In addition, applicant describes the mark as follows: The mark consists of a design of a bridge with a ray of sunshine and the words SunBridge Capital.



The trademark examining attorney refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, as used in connection with its services, so resembles the mark SUNBRIDGE, previously registered on the Principal Register in typed or standard character form for "Investment of venture capital for the benefit of start-up, emerging, and growth companies" in International Class 36,² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs on the issue under appeal. In addition, applicant filed a reply brief.

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

² Registration No. 2768072, issued September 23, 2003.

1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (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, 27 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997).

We first consider the similarity of the marks. In this case, applicant's mark, SUNBRIDGE CAPITAL and design, incorporates in its entirety registrant's SUNBRIDGE mark as its most distinctive and dominant feature. There is no evidence of record to support a finding that SUNBRIDGE has a recognized meaning in the investment or financial field. Thus, the term SUNBRIDGE is at least distinctive, if not arbitrary, as used with both registrant's and applicant's services. Further, the word SUNBRIDGE in applicant's mark appears in large, boldface type that physically appears larger than the word CAPITAL and also occupies the center of the mark. Thus, SUNBRIDGE is the portion of applicant's mark to which the viewer is drawn, as well as the portion that the viewer is most likely to remember. The design of a bridge and ray of sunshine in applicant's mark, though

visually prominent, is less significant than the wording therein. This is because when a mark comprises both wording and a design, the wording would be used by customers to request the identified goods or services. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). For these reasons, we consider SUNBRIDGE to be the dominant feature of the registered mark.

As for the presence of CAPITAL in applicant's mark, this term, which has been disclaimed, is obviously descriptive of the recited services. It is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In view of the descriptive nature of the word CAPITAL, it has little, if any, source-indicating significance, and is entitled to less weight in the likelihood of confusion analysis. Consumers who are familiar with the mark, SUNBRIDGE, used in connection with registrant's investment services, who then see the mark SUNBRIDGE CAPITAL and design used in

connection with applicant's equipment financing and lease-purchasing financing services, are likely to assume that the owner of the SUNBRIDGE mark simply has added CAPITAL and a design when using the mark in connection with financing services. In other words, consumers are likely to view both marks as variations of each other, and therefore as indicators of a single source. Thus, despite the fact that the applicant's mark includes the word CAPITAL and a design, the marks SUNBRIDGE and SUNBRIDGE CAPITAL and design are highly similar in appearance, pronunciation, connotation and commercial impression. Accordingly, this *du Pont* factor favors a finding of likelihood of confusion.

Turning now to our consideration of the recited services, we must determine whether consumers are likely to mistakenly believe that they emanate from a common source. It is not necessary that the services at issue be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient instead that the respective services are related in some manner, and/or that the conditions and activities surrounding the marketing of the 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, give rise to the mistaken belief that they originate from the same producer. *See In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

In this case, the examining attorney has made of record a number of use-based third-party registrations which show that various entities have adopted a single mark for services that are identified in both applicant's application and the cited registration. *See, for example:*

Registration No. 1827020 for, *inter alia*, assisting in the acquisition of venture capital, financing leased equipment;

Registration No. 2711638 for, *inter alia*, financing lease purchases, financial investment in the fields of..venture capital, venture capital investment financing;

Registration No. 2646331 for, *inter alia*, venture capital services, lease-purchase financing;

Registration No. 2475710 for, *inter alia*, lease-purchase financing, financial investment services in the field of real estate, namely, venture capital financing;

Registration No. 2569800 for, *inter alia*, equipment financing, venture capital financing; and

Registration No. 2910182 for, *inter alia*, venture capital funding services to emerging and start-up companies, equipment financing.

Third-party registrations which individually cover a number of different items and which 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. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993). In this case, the evidence of record supports a finding that the same marks are used to identify both applicant's services and those of registrant. This evidence demonstrates the related nature of the services at issue, and this *du Pont* factor also favors a finding of likelihood of confusion.

Furthermore, we are not persuaded by applicant's arguments that its customers differ from those of registrant or that registrant's services travel in channels of trade that are separate and distinct from those in which applicant's services may be encountered. Nor are we persuaded by the two third-party declarations submitted by applicant regarding applicants' customers and the conditions under which the services would be provided because there are no restrictions in either description of services on which applicant's arguments may be grounded. It is settled that in making our determination regarding the relatedness of the parties' services, we must look to the services as identified in the involved application and cited registration. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787

(Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.") See also *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 this case, there are no restrictions in either applicant's or registrant's recitation of services as to the channels of trade in which the services may be encountered, or type or class of customer to which the services are marketed. Thus, while applicant may argue and present declarations stating that its services are directed toward businesses and other entities in the financial field that are distinct from those seeking registrant's services, neither recitation of services contains any such limitations. Accordingly, both applicant's and registrant's services are presumed to move in all normal channels of trade and be available to all classes of potential consumers, including

consumers of each others' services. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

The final *du Pont* factor discussed by applicant and the examining attorney is that of the conditions of sale. Applicant asserts that both its services and those of registrant potentially involve very large sums of money, and would be purchased by careful and sophisticated users. There is no evidence that either applicant's or registrant's services are limited to only by highly sophisticated persons. Even small unsophisticated companies may need equipment financing assistance and/or an investment of capital. Moreover, in view of the third-party registrations which are evidence that both equipment financing and lease-purchasing financing services and venture capital services are of a type which may emanate from a common source, prospective purchasers may mistakenly believe that these services could emanate from a single source. We acknowledge that in the financial transactions involved in this appeal, the relevant consumers will exercise some degree of care in making the purchasing decision. However, the marks SUNBRIDGE and SUNBRIDGE CAPITAL and design are so similar that even careful purchasers are likely to assume that the marks identify services emanating from a single source. Even

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sophisticated purchasers are not necessarily knowledgeable in the field of trademarks or immune from source confusion. See *In re Decombe*, 9 USPQ2d 1812, 1814-1815 (TTAB 1988).

Finally, applicant argues that "the better practice is to resolve the matter on applicant's behalf on the theory that any person who believes that he would be damaged by the registration will have an opportunity under the rules and statutes to opposer the registration of the mark" (brief, p. 5). However, in light of the foregoing, and resolving any doubt as we must in favor of the prior registrant, we find that a likelihood of confusion exists between the applied-for mark and the mark in the cited registration. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal of registration is affirmed.