

THIS OPINION IS NOT  
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THE TTAB

Mailed: March 26, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Dash

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Serial No. 78607157

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Jagannath Dash, pro se.<sup>1</sup>

Lourdes D. Ayala, Trademark Examining Attorney, Law Office  
106 (Mary I. Sparrow, Managing Attorney).

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Before Hairston, Drost and Taylor, Administrative Trademark  
Judges.

Opinion by Taylor, Administrative Trademark Judge:

Jagannath Dash has filed an application to register on  
the Principal Register the following mark EGLOBETECH and  
design, for "information technology consulting services."<sup>2</sup>

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<sup>1</sup> After applicant's main brief was filed, the Board learned that applicant's original counsel died. Applicant was allowed time to appoint new counsel. No response having been received, the Board presumes that applicant now represents himself in this proceeding.

<sup>2</sup> Serial No. 78607157, filed April 12, 2005, and alleging November 20, 2004 as the date of first use and date of first use of the mark in commerce. The application also contains the following color statements: The color(s) black and yellow is/are claimed as a feature of the mark. The color black for the lettering and the color yellow for the design.



The examining attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with the identified services, so resembles the registered mark GLOBALTECH (in typed format) for "computer consultation,"<sup>3</sup> as to be likely to cause confusion, mistake or to deceive.<sup>4</sup>

When the refusal was made final, applicant appealed. Appeal briefs were filed. For the reasons discussed below, we affirm the refusal to register.

Before we begin our likelihood of confusion analysis, we must discuss a couple of evidentiary matters. Applicant attached to his brief definitions of the word "tech,"

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<sup>3</sup> Registration No. 1896609, issued May 30, 1995, renewed.

<sup>4</sup> The examining attorney also cited Registration No. 2454536 for the mark GLOBAL TECHPRO.COM for, inter alia, "computer consultation services, including design and implementing websites for others" as a bar to registration. This registration was cancelled on March 8, 2008 for failure to file a Section 8 declaration of continued use. The refusal is, therefore, moot as to this registration. We add that the examining attorney made no reference to Registration No. 2454536 in her appeal brief and, in so doing, effectively withdrew the refusal.

obtained from the online dictionary, Dictionary.com Unabridged (v 1.1), of which we take judicial notice,<sup>5</sup> and a list of third-party applications and registrations (consisting of the serial and registration numbers, the mark, and whether the application is "Live" or "Dead") for marks containing the formatives "glob" and "tech," in combination, obtained from the TESS database of the United States Patent and Trademark Office (USPTO). As regards the list, it is both untimely and in an improper format. As regards timeliness, 37 C.F.R. § 2.142(d) provides, in part, that "[t]he record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed." Moreover, mere listings of third-party applications and registrations are not an appropriate way to enter such material in the record, and the Board does not take judicial notice of applications and registrations in the USPTO. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992);

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<sup>5</sup> From the website [www.Dictionary.com](http://www.Dictionary.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).

Cities Service Company v. WMF of America, Inc., 199 USPQ 493 (TTAB 1978); and In re Duofold Inc., 184 USPQ 638 (TTAB 1974). Accordingly, the list of third-party applications and registrations has not been considered in reaching our decision herein.<sup>6</sup>

Additionally, applicant submitted, with his response to the examining attorney's first office action, other lists from the TESS database of third-party applications and registrations of marks containing the term "globe," "tech," "globe and tech" and "glob\*\*\*." Although this evidence is in an improper format, inasmuch as it was timely filed, and because the examining attorney did not object to these lists or advise applicant that copies of the registrations were necessary and commented on the evidentiary value of third-party registrations, we will consider the lists as being of record. TMBP § 1208.02 (2d ed. rev. 2004), and the authorities cited therein

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<sup>6</sup> Even if we had considered this list, our decision would be the same. That is, a mere listing of third-party registrations which include the mark and the registration number, without any accompanying indication of the goods and/or services associated therewith, has virtually no probative value. See TMBP § 1208.02 (2d ed. rev. 2004). Further, the expired registrations and pending and abandoned applications have no value in this appeal. Action Temporary Services Inc. v. Labor Force Inc., 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989) ("[A] cancelled registration does not provide constructive notice of anything"), and the applications show only that they have been filed. See Interpayment Services Ltd. v. Docters & Thiede, 66 USPQ2d 1463 (TTAB 2003).

(regarding evidence considered due to actions of non-offering party and treatment of third-party registrations). However, for the reasons discussed in footnote 6, these lists are of virtually no probative value.

Turning now to the merits of the appeal, 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, 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 turn first to a consideration of the services identified in the application and the cited registration. The examining attorney argues that the parties' services are highly related. Applicant does not argue otherwise. Indeed, applicant's brief is silent with regard to this factor. In addition, the examining attorney submitted

copies of various use-based, third-party applications and registrations to show that various trademark owners have adopted a single mark for services of the kind that are identified in both applicant's application and the cited registration, i.e., information technology consulting services and computer consultation.<sup>7</sup> While the third-party applications show only that the applications were filed and are of no probative value (see *Interpayment Services Ltd. v. Docters & Thiede*, 66 USPQ2d 1463 (TTAB 2003)), the third-party registrations may serve to suggest that the types of services involved herein are related services. See *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (Although third-party registrations are "not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may nonetheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source"). See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993).

These registrations include:

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<sup>7</sup> We note that one trademark owner has identified its computer consulting services as being synonymous with information technology consulting services

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Registration No. 2806151 for, inter alia, "computer consulting services, namely information technology consulting";

Registration No. 3009872 for, inter alia, "computer consulting in the areas of computers, computer systems, computer software, computer networks and computer system security" and "information technology consulting services";

Registration No. 3012310 for "computer consulting services and information technology consulting services";

Registration No. 2826242 for, inter alia, "computer consulting services and information technology consulting services";

Registration No. 2900592 for, inter alia, "computer consulting" and "information technology consulting";

Registration No. 2869570 for, inter alia, "computer consulting services" and "information technology consulting services"; and

Registration No. 2943994, for, inter alia, "computer and information technology consulting services."

We find that the third-party registrations are sufficient to demonstrate that information technology consulting services and computer consultation are very closely related, if not overlapping, services.

The *du Pont* factor of relatedness of the services thus favors a finding of likelihood of confusion.

Further, in the absence of any limitations to the services recited in both applicant's application and the cited registration, we must presume that they will be offered in all the normal channels of trade and will be

offered to and purchased by all the normal classes of purchasers for these types of computer and information technology related consulting services. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). In view thereof, the *du Pont* factors of the similarity of the channels of trade and purchasers strongly favor a finding of likelihood of confusion as to the cited registration.

We now consider applicant's mark EGLOBETECH and design and registrant's mark GLOBALTECH. In determining the similarity or dissimilarity of the marks, we must consider the marks in their entireties in terms of sound, appearance, meaning and commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general, rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant argues that his composite mark is clearly distinctive from the registered mark inasmuch as it is "written in a highly unique fashion." (Brief p. 6). The examining attorney, by comparison, argues that "the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the services offered under the respective marks is likely to result. (Brief p. 3). She particularly argues that "although applicant's mark contains additional material, namely, designs, and/or letter differences, these elements are quite minor in relation to the similarities in each mark." (*Id.*)

Although we must compare the marks in their entireties, one feature of a mark may be more significant than another and, as applicant acknowledges, 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, 224 USPQ 749 (Fed. Cir. 1985) ["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 consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable."] In addition, with a composite mark

comprising a design and words, the word portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed. *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593 (TTAB 2001) ("words are normally accorded greater weight because they would be used by purchasers to request the goods"); *In re Nat'l Data Corp.*, 753 F.2d at 1056.

Citing to a line of cases including *In re K-T Zoe Furniture Inc.*, 16 F.3d 390, 29 USPQ2d 1787 (Fed. Cir. 1994), applicant contends that its mark is so highly stylized that it is "clearly distinctive" from the registered mark. Applicant elaborates that:

[T]he words are written in a stylized print lettering with the "G" being written as a capital letter and all the other letters being written in lower case lettering. Further, there is a sonar type design coming off the left side of the mark with the "e" being strategically placed in the center of the innermost circle of the sonar design. The registered mark GLOBALTECH is a word mark.

We find this argument unavailing. The issue involved in *K-T Zoe Furniture* and the other cases cited by applicant was mere descriptiveness and not likelihood of confusion, the issue involved herein. In this case, because the cited mark is registered in a typed format, registrant's rights

therein encompass the term "GLOBALTECH" and are not limited to the depiction thereof in any form. See Phillips Petroleum Co. v. C. J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). Instead, as *Phillips Petroleum* makes clear, when a registration for a word mark is in typed form, "then the Board must consider all reasonable manners in which ... [the word] could be depicted." *INB National Bank v. Metrohost Inc.*, 22 USPQ 1585, 1588 (TTAB 1992). Therefore, registrant's mark must be regarded as including the display thereof in the same lettering style used by applicant, since such would be a reasonable manner of display and there is no showing by applicant that the lettering format is unusual for information technology consulting services or otherwise "unique" as claimed by applicant. Moreover, the color elements of applicant's mark are insufficient to avoid a likelihood of confusion; the literal elements being displayed in the color black, a color common to lettering. It is only the design that is yellow in color. Thus, neither the stylized lettering format of applicant's mark nor the black and yellow color scheme distinguishes applicant's mark from the registrant's mark.

Nor do we find the design sufficient to distinguish applicant's mark from the registrant's mark. The wave

design, even though displayed in the color yellow, has minimal visual impact, merely serving to frame the left side of applicant's mark. Moreover, it is the wording EGLOBETECH that would be used by purchasers to procure applicant's services. Thus, the wording would make a greater impression on purchasers and is the portion that is more likely to be remembered as the source-signifying portion of the applicant's mark. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593 (TTAB 2001) ("words are normally accorded greater weight because they would be used by purchasers to request the goods"). See also, e.g., *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (1987).

Insofar as the literal element, EGLOBETECH, is concerned, applicant displays this element with a capital "G" and the remaining letters in lower case. This display creates a visual separation between the letter "e" and the remainder of applicant's mark, "Globetech." Further, as applicant explains, "the 'e' [] [is] strategically placed in the centermost circle of the sonar design." This placement, however, results in the letter "e" being more in the nature of a prefix and a visually less noticeable literal component. Moreover, the letter "e-" is defined as "computer" or "computer network" in the American Heritage

Dictionary of the English Language (4<sup>th</sup> ed. 2006).<sup>8</sup> As such, the letter "e" is unlikely to distinguish the respective computer and computer related consultation services. See *Cunningham v. Laser Golf Data Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) ("[T]he 'descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion.'").

Thus, the dominant and distinguishing portion of applicant's mark EGLOBETECH and design is the term "GLOBETECH."

We find the GLOBETECH portion of applicant's mark substantially similar to the cited mark, GLOBALTECH. Both share the terms "GLOBE" or the variant "GLOBAL" and "TECH." Given the overall similarity in the terms, it is unlikely that consumers will notice the different letters, i.e., "e" in applicant's mark and "al" in the cited mark, embedded in the middle of the respective marks, or treat them as a distinguishing factor. We therefore find that the marks are similar in appearance and sound.

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<sup>8</sup> As noted, the Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports, supra*.

Applicant argues that "[t]he terms Global, Globe, and Tech are among the most ubiquitous in the trademark registry." We presume by this that applicant is arguing that those terms are common and weak. It was in support of this position that applicant submitted the lists from the TESS database of numerous marks containing those words. As discussed previously, these lists have no probative value. However, the evidentiary failings, at least with respect to the third-party registrations, is not critical in this case, since such registrations are not necessary to show the meaning of GLOBE, GLOBAL and TECH.<sup>9</sup> Applicant submitted several definitions from Dictionary.com of these terms.

The most relevant are:

Globe - 2. a. The earth;

Global - 2. Of, relating to, or involving the entire earth; worldwide: global war; global monetary policies.

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4. Computer Science. Of or relating to an entire program, document or file.

Tech - 2. Technology.  
3. Technical work.<sup>10</sup>

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<sup>9</sup> Third-party registrations can be used in the manner of dictionary definitions to show that a term has a significance in a particular filed. See *Mead Johnson & Company v. Peter Eckes*, 195 USPQ 187 (TTAB 1977).

<sup>10</sup> All from the website [www.dictionary.com](http://www.dictionary.com) and all citing to *The American Heritage Dictionary of the English Language* (4<sup>th</sup> ed.).

These definitions tend to suggest that both applicant's and registrant's related computer and information technology consulting services are global in scope and technical in nature. However, the record is devoid of evidence showing that the terms "Globe" or "Global" and "Tech," in combination, are commonly used by others in relation to the services offered by applicant and registrant. Therefore, we cannot conclude that a term, combining the formative "glob" and the term "tech," is entitled to only a narrow scope of protection such that slight differences between marks would serve to distinguish them. See e.g., *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986) (COMMCASH and COMMUNICASH confusingly similar); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and THE '21' CLUB confusingly similar); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS evoke similar overall commercial impression).

While differences admittedly exist between the respective marks, we find that in their entireties, applicant's EGLOBETECH and design mark and registrant's GLOBALTECH mark are substantially similar in appearance, sound, meaning and commercial impression. Accordingly, the

*du Pont* factor of similarity of the marks favors a finding of likelihood of confusion.

As a final matter, we consider applicant's argument that confusion is not likely because:

[T]he entities sell their products to professional buyers. All of the entities sell various computer related goods and services to businesses. Where, as here, the relevant buyer class is composed solely of professional or commercial purchasers, it is reasonable to set a higher standard of care than exists for consumers.

As noted previously in this decision, there is no limitation in either recitation that the services are rendered solely to professionals. Nor is there any evidence that either applicant's or registrant's services are limited to use by highly sophisticated persons. However, even assuming *arguendo* that the respective services will be offered only to and purchased only by "professionals," even knowledgeable and careful purchasers can be confused as to source where, as here, very similar marks are used in connection with closely related services. See *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers ... are not infallible.").

In view of the foregoing, we conclude that prospective purchasers familiar with registrant's GLOBALTECH mark for computer consultation services would be likely to believe, upon encountering applicant's mark EGLOBETECH and design for information technology consulting services, that applicant's and registrant's services originate with or are somehow associated with or sponsored by the same entity.

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is affirmed.