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Mailed:
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Celestial Movie Channel Limited

Serial Nos. 78721446 and 78721455

Brian J. Downey of Frost Brown Todd LLC for Celestial Movie Channel Limited.

Leigh A. Lowry, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Quinn, Bucher and Zervas, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Celestial Movie Channel Limited seeks registration on the Principal Register of the mark **CFX** (*in standard character format*) for services recited in the applications, as amended, as follows:

"electronic and wireless communication, transmission of data, documents, messages, images, sounds, voices, text, audio, video and electronic data; broadcasting of programs by television; cable television broadcasting, video on demand transmission services, satellite television broadcast services; and radio broadcasting" in International Class 38;¹ and

¹ Application Serial No. 78721446 was filed on September 27, 2005 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

"production and distribution of motion pictures and documentaries; script writing services; audio recording and production of music; conducting entertainment exhibitions in the nature of film festivals and in relation to film technology; conducting award ceremonies to promote excellence in the entertainment industry; entertainment in the nature of ongoing television shows and documentaries in the fields of action/adventure, comedy, crime, drama, horror, musicals, science fiction, war, westerns, soap operas, martial arts, sports, news, and game shows; entertainment in the nature of live and on-line musical performances, conducting film festivals, and fashion shows; providing on-line computer games; entertainment in the nature of visual and audio performances, dance performances, amusement park shows, and theatre productions; entertainment services, namely providing a website featuring musical performances, musical videos, photographs, movies, live-action reality shows, comedy shows, dramatic shows, related film clips, and other multimedia materials, and related reviews; entertainment services, namely live, televised and movie appearances by professional entertainers, movie stars, singers, and sports celebrities; entertainment services, namely providing television programs in the fields of movies, live-action reality shows, comedy shows, and dramatic shows, via a global computer network; entertainment services, namely providing on-line reviews of movies, live-action reality shows, comedy shows, dramatic shows, books, music and computer games; arranging ticket reservations for shows and other entertainment events; educational and entertainment services, namely providing motivational and educational speakers; entertainment in the nature of competitions in the fields of films, television shows, television series, music, fashion, sports, animation shows, dance, theatre productions, and on-line computer games; entertainment services, namely providing prerecorded music,

information in the field of music, and commentary and articles about music, all on-line via a global computer network and electronic global communications network; entertainment, namely live performances by musical bands; entertainment, namely live music concerts; radio entertainment production; entertainment services, namely providing radio programs, ongoing television programs, and conducting contests and festivals in the fields of music, film, sports, animation, and audio and visual shows via a global computer network; entertainment services, namely conducting contests on board cruise ships for passengers of all ages, in function rooms, stadiums, exhibition centers, concert halls, parks, or shopping malls; radio entertainment services, namely radio programs featuring performances by fictional characters, radio and sports and movie and games personalities, professional entertainers, movie stars, singers and sports celebrities; movie studios; movie theatres; and production of radio and television programs; [and] animation production services" in International Class 41.²

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney asserts that applicant's mark, when used in connection with applicant's recited services, so resembles the following mark:

² Application Serial No. 78721455 was filed on September 27, 2005 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.



registered in connection with "radio broadcasting services"³ in International Class 38, as to be likely to cause confusion, to cause mistake or to deceive.

Inasmuch as these two *ex parte* appeals involve common issues of law and fact, the Board has granted the request of the Trademark Examining Attorney to consolidate these two cases by deciding them in a single opinion. Applicant and the Trademark Examining Attorney have briefed the substantive issues. We affirm the refusals to register.

In arguing for registrability, applicant argues that the Trademark Examining Attorney erred by concluding that consumers will shorten the four letter call sign of **KCFX** to a three letter designation of **CFX**; that the Trademark Examining Attorney erred by failing to consider all relevant *du Pont* factors; that inasmuch as there are third-party registrations for identical or highly related services containing the letters "FX" along with other close variations on registrant's mark, the cited mark is relatively weak and entitled to only a narrow scope of

³ Registration No. 2773400 issued on October 14, 2003.

protection; and that most of applicant's services in the International Class 41 application are different from registrant's recited services.

By contrast, the Trademark Examining Attorney contends that the services are identical in part and otherwise closely related, and that the marks are confusingly similar, especially noting that radio announcers, their listeners and journalists often use the last three letters of a radio station's identification to refer to the station.

LIKELIHOOD OF CONFUSION

We turn then to a consideration of the issue of likelihood of confusion. Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods and/or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The Services

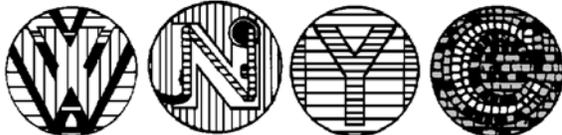
We turn first to the *du Pont* factor focusing on the relationship of the services recited in the involved

applications and the services of the cited registration. The Trademark Examining Attorney points out that applicant's radio broadcasting services are legally identical to registrant's radio broadcasting services.

Additionally, there are a number of reasons to find that applicant's services in International Class 41 are closely related to registrant's "radio broadcasting services." First, that applicant itself intends to use the same mark with both types of services supports the conclusion that these services are related. Second, the Trademark Examining Attorney has made of record third-party registrations demonstrating that services as identified in registrant's registration and applicant's International Class 41 services in the '455 application come from the same source. These registrations, summarized below, have probative value to the extent that they serve to suggest that the services listed therein are of a kind that may emanate from a single source. See *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214, 1217-1218 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 at n.6 (TTAB 1988).

GEORGIA TECH

for, *inter alia*, "radio broadcasting services" in International Class 38; "educational services-namely, ... recording of video and audio tapes for others ..." in International Class 41;⁴



AM 820 / 93.9 FM

for "radio broadcasting services" in Int. Class 38; "entertainment services in the field of an on-going radio program ..." in Int. Class 41;⁵



for "radio broadcasting services" in Int. Class 38; "radio entertainment production services; entertainment in the nature of on-going radio programs in the field of rock and roll music; providing entertainment information on radio stations, music, musical performers, musical groups and musical bands, music performances, live events and concerts by means of a global computer network" in Int. Class 41;⁶

⁴ Registration No. 1279173 issued to Board of Regents of the University System of Georgia on May 22, 1984; renewed. No claim is made to the term "Tech" apart from the mark as shown.

⁵ Registration No. 2449497 issued to WNYC Radio Foundation on May 8, 2001. No claim is made to the designations AM 830/93.9 FM" apart from the mark as shown.

⁶ Registration No. 2472958 issued to Broadcasting and Programming Systems Of Puerto Rico, Inc. on July 31, 2001; No claim is made to the word "Rock" apart from the mark as shown. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

PURA BUENAS	for "radio broadcasting services" in Int. Class 38; "entertainment services in the nature of on-going audio programs provided by telecommunication channels, ..." in International Class 41; ⁷
FI	for "multi-media broadcasting services, namely ... radio broadcasting services" in International Class 38; "production of ... radio programs featuring entertainment in the areas of the performing arts and fine arts ..." in Int. Class 41; ⁸
ULTRACRIB	for "radio broadcasting services" in Int. Class 38; "entertainment services, namely, providing on-air radio contests featuring a party" in International Class 41; ⁹
THE EXPERTS' CHOICE	for "radio broadcasting in the field of professional and amateur sports, and sports news, scores and statistics" in International Class 38; "entertainment services in the nature of providing radio, television and interactive television programs in the field of professional and amateur sports, and sports news, scores and statistics" in Int. Class 41; ¹⁰

⁷ Registration No. 2588074 issued to Univision Radio, Inc. on July 2, 2002. The English translation of "Pura Buenas" is "pure goods."

⁸ Registration No. 2693094 issued to The Flat Iron Corp. on March 4, 2003.

⁹ Registration No. 2819736 issued to Emmis Radio, LLC on March 2, 2004.

¹⁰ Registration No. 2940942 issued on April 12, 2005.



for "... radio broadcasting ... concerning the field of basketball ..." in Int. Class 38; "entertainment and educational services in the nature of ongoing ... radio programs in the field of basketball ...; the production and distribution of radio and television broadcasts of basketball games, basketball events and programs in the field of basketball; ... entertainment services, namely providing a website featuring ... radio programs, radio highlights, and audio recordings in the field of basketball, ..." in Class 41;¹¹

SOUL 106.3 THE BEST MIX OF R&B

for "radio broadcasting services" in Int. Class 38; "entertainment services, namely, music publishing services; recording studio services; concert services, namely, concert booking; providing on-line information in the field of entertainment information for the radio and music industries" in Class 41;¹²

NATIONAL BARBERSHOP TELEVISION NETWORK

for, *inter alia*, "radio broadcasting services" in International Class 38; "entertainment services, namely, production of television, radio and cable television programs, ..." in International Class 41.¹³

¹¹ Registration No. 2993212 issued to NBA Properties, Inc. on September 6, 2005. No claim is made to the designation "TV" apart from the mark as shown.

¹² Registration No. 3003037 issued on the Supplemental Register to Dontron, Inc. on 09/27/2005.

¹³ Registration No. 3030778 issued on the Supplemental Register to National Barbershop Television Network on December 13, 2005. No claim is made to the term "Television Network" apart from the mark as shown.

TBN

for, *inter alia*, "... radio broadcasting of information and other programs; radio program broadcasting; and streaming of audio material on the internet" in Int. Class 38; and "entertainment, namely ... production of radio ... programs; ... entertainment services, namely providing a radio program in the field of news, religion, health, variety, music, comedy and youth, adult and children specific topics via a global computer network; ... radio entertainment services, namely radio programs featuring performances by a radio personality; ..." in International Class 41;¹⁴

Finally, the fact that some of applicant's services in International Class 41 are closely related to registrant's cited radio broadcasting services makes irrelevant the fact that some other services that applicant recited in the International Class 41 application may be somewhat different from registrant's services. In fact, applicant does not seriously dispute the evidence of the Trademark Examining Attorney that its class 38 services are identical to registrant's services in part, and that some of its class 41 services are otherwise closely related to registrant's services. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) [likelihood of confusion must be found if public is confused

¹⁴ Registration No. 3135360 issued to Trinity Christian Center of Santa Ana, Inc. on August 29, 2006.

as to any item that comes within the identifications of goods [or services] in any given class in the involved application[s] and registration]. Accordingly, this critical *du Pont* factor supports a finding of likelihood of confusion as to both classes of applied-for services.

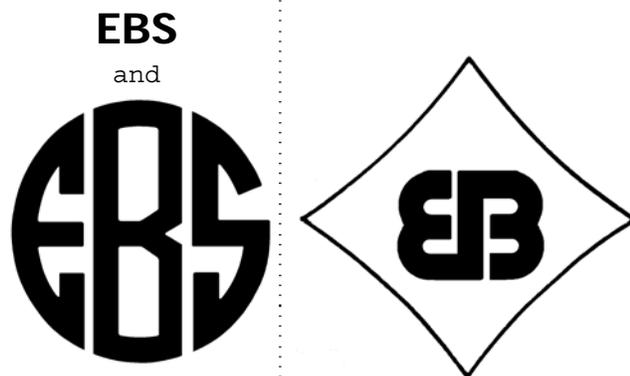
The Marks

We turn next to the similarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). We begin this part of the analysis mindful of the fact that when marks would appear on identical and/or closely-related services, the degree of similarity in 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).

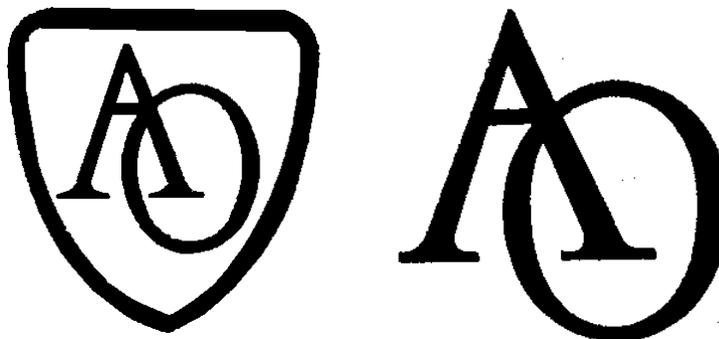
The Trademark Examining Attorney contends that the literal portions of these two marks [i.e., the letters K·C·F·X and C·F·X) are confusingly similar. In neither case do these letter-strings comprise spoken words or acronyms, but rather, both consist of a series of letters, each of which would be enunciated separately. As the Trademark Examining Attorney points out, it is more difficult to

remember a series of letters than it is to remember words. Hence, when comparing letter marks, the letters do not have to be exactly the same for a likelihood of confusion to exist. See *Weiss Associates Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) [confusing similarity between TMS and TMM]; *Dere v. Institute for Scientific Information, Inc.*, 420 F.2d 1068, 164 USPQ 347 (CCPA 1970) [confusing similarity between ISI and I.A.I.];

Edison Brothers Stores, Inc. v. Brutting E.B. Sport-International GmbH, 230 USPQ 530, 533 (TTAB 1986) [confusing similarity between EB and



EBS]; and *American Optical Corp. v. Southwest Petro-Chem, Inc.*, 175 USPQ 317 (TTAB 1972) [similarity between **AOC** and "AO" marks shown at right].



However, applicant argues that these cases do not apply inasmuch as registrant's letters are not *arbitrarily arranged* letters. Applicant argues that registrant's precise call letters K·C·F·X will be easily remembered

because they convey a specific meaning to its listeners, namely "Kansas City Fox." Indeed, the letter "X" in registrant's mark does appear to have the stylized tail of a fox. And the Trademark Examining Attorney's own evidence shows that radio station owners may apply for call letters where portions of the call letters may have origins in the station's geographic location [e.g., -PGC: Prince Georges County; KC--: Kansas City; -BAL: Baltimore], ownership [e.g., -HUR: Howard University Radio; -PLU: Pacific Lutheran University; -TUL: Tulane University], a slogan [-RNO: Rock of New Orleans], euphony/homonym [--FX: Fox], frequency, or the like. However, our likelihood of confusion analysis under the Lanham Act cannot be limited to the assumption that registrant's K.C.F.X will always carry the tag "Kansas City Fox," or that these call letters will be synonymous with this location and homonym combination. Even if we accepted as relevant to our determination that such may have been the case in the recent past, as shown on registrant's website, the record also shows that station's marketing tags change with changes in formats. Moreover, based on this entire record, it is equally plausible that registrant's tag could just as easily be shortened to "CFX."

In fact, there is no dispute based on this record that the leading letters "K" and "W" are mandatory geographic

indicators for radio station call letters. Hence, registrant's location west of the Mississippi River calls for a leading letter "K."¹⁵ Inasmuch as substantially all the stations within the same media market (except most notably those situated along the Mississippi River) will share the same leading letters "K" or "W," these beginning letters are often dropped by the stations themselves as well as by the members of the target audience. The Trademark Examining Attorney pointed out specific examples of this phenomenon:

WHFS is known as HFS:

Frank Ahrens: "... Legendary [alternative]-rocker WHFS 99.1 ... switched its format at noon today... Now, 'HFS is 'El Zol,' broadcasting a current hit blend of Caribbean and Central American dance music'..."

...

Annapolis, Md.: "I stopped listening to HFS years ago when it became clear that I'd be out of place at an HFS Festival."

...

Oakland, Calif.: I am stunned -- stunned! I remember the first thing I did when I bought a car in 1988: slapped a big 'HFS sticker on the bumper. If I recall, there was some sort of hierarchy about the color of the bumper sticker -- blue or green?!

¹⁵ BROADCAST STATION IDENTIFICATION
"Broadcast stations in this country are assigned call signs beginning with K or W. Generally speaking, those beginning with K are assigned to stations West of the Mississippi River and in U.S. territories and possessions, while those beginning with W are assigned to broadcast stations East of the Mississippi River..." < www.fcc.gov/cgb/statid.html >

Regardless, the 'HFS sticker was such an important announcement for my teenage self to make to the rest of the world:

"Madonna is not the only music out there! The Cure rules!" And when you looked for parking around the old 9:30 Club and saw tons of other cars with the same sticker you knew you were with your people.

'HFS went downhill so significantly in the mid-'90's that it became almost unlistenable, (so much so that I didn't miss it at all when I moved to California) but I've never been able to let go. The radios in both of my parents' (WETA listeners, both) cars both have 'HFS presets, allowing me to feed my nostalgia whenever I visit.

Unlike when WDCU went off the air, I can't say I'm really going to miss 'HFS's programming. Still it's hard to believe it's gone. I'm stunned.

Frank Ahrens: Thanks for the story. In many ways, 'HFS cultivated what radio station owners lust for - a real sense of ownership from its listeners, a passionate following. 'HFS became a currency among the hipperati, one of the Stations of the Cross to visit on your visit to D.C. hippitude...

...

Parkland, Fla.: Lived in D.C. from '79 to '89 and HFS was the ONLY station to listen to ... when you could get it. Couldn't stand Greaseman or Stern, and the music and DJs on HFS were great... they actually were "DJs"!

...

McLean, Va.: Hi Frank. When I was in college we had a great commercial-free alternative station - 91.9 WNRN - that was modeled after HFS but with much better variety. ... Do you think there's a market for a low-budget, independent alt-rock

station like that in D.C., now that HFS is gone? ...¹⁶

WYSP is known as YSP:

HEADLINE: Stern heard on 'YSP
... 94.1 WYSP listeners heard a familiar voice Tuesday afternoon when Howard Stern called into Kidd Chris's show ..."¹⁷

HEADLINE: Inqlings | Yikes! Opie & Anthony on 'YSP
"... I hear that CBS is about to bring in - actually rehire - the XM satellite bad-boy team of Opie & Anthony to do a morning show in three or four markets, including Philly's "Free FM" station, WYSP (94.1).¹⁸

WPGC is known as PGC:

"... This week [Former Mayor Barry's] staff was busy planning a Youth Peace Summit ... working with WPGC Radio."
"PGC did one in Prince George's County and it was very successful,' [Linda] Green said."¹⁹

Todd Reynolds / Ed Kowalski / Ed McNeal writes:

...
"... After returning from Pittsburgh in late-1977, I was looking for something to fill the time before my FCC gig came through. Dan Mason was shuffling the chairs at 'PGC after Brant Miller went to WLS. ... [The DJ name] Ed McNeal lasted until I left 'PGC for the last

¹⁶ "Radio: WHFS Off the Air," Wednesday, January 12, 2005
< www.washingtonpost.com/wp-dyn/articles/A4252-2005Jan12.html >

¹⁷ HEADLINE: Dan Gross | Stern heard on 'YSP
< <http://www.philly.com/mld/philly/entertainment/15851070.htm> >

¹⁸ < <http://www.highbeam.com/doc/1K1-12f816000009392.html> >

¹⁹ < <http://www.washingtoninformer.com/OPEDeditorial2006Jan12.html> >

time in August 1978. (Interestingly enough, though, Dan did call me when Jerry Clifton went into 'PGC, to let me know they were looking for weekend jocks.]"²⁰

WFAN is known as FAN:

HEADLINE: About Sports Radio 66 WFAN
"... Since its debut on July 1, 1987, dozens of stations have copied the all sports format, but none have achieved the success and the notoriety of the FAN."²¹

HEADLINE: Bob Raissman: WFAN's Sid vicious
"[DJ Sid] Rosenberg, FAN's resident bad boy..."
...
"Because he's stupid,' one of Rosenberg's FAN colleagues said.
"Putting him in that Imus atmosphere is like giving an alcoholic the keys to a bar."²²

WXPN is known as XPN:

Join XPN today
"Y-Rock on XPN"
"Tour the XPN Studios"
"Y-Rock and XPN Welcome Broken Social Scene"
"XPN Free At Noon: Arlo Guthrie"
"XPN Welcomes Bruce Hornsby"²³

Furthermore, even if the first two letters of registrant's call sign are arguably derived in some way from "Kansas City," and even if we should conclude that this

²⁰ < http://www.amandfmmorningside.com/wpgc_todd_reynolds_aka_ed_mcneil.html >

²¹ < <http://wfan.com/about/> >

²² < <http://www.nydailynews.com/11-05-2002/sports/col/braissman/story/311809p-266781c.html> >

²³ < <http://www.xpn.org/> >

Kansas City radio station markets itself as "The Fox," that does not force a different conclusion on the issue of confusing similarity of the letters. By analogy, the lettered marks in some of the decisions cited above were derived from the trade or corporate names of the involved parties. For example, in *Edison Brothers*, the "EB" logo of E.B. Sport's, as illustrated above, was held confusingly similar to the "EBS" logo despite the fact that "EBS" was derived from, and often used together with, the designation "Edison Brothers Stores."

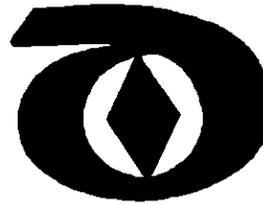
As to the design feature of registrant's mark, we find the overall significance of the stylized foxtail to be *de minimis*. Registrant's mark is a vocalized, letter-string mark having clear visual portrayals of the involved letter. This is to be distinguished from those decisions dealing with what are primarily design marks - incapable of being pronounced or of conveying any inherent meaning. In such cases, lettering style and designs may well be sufficient to prevent a likelihood of confusion.²⁴ That is clearly not the case herein.

²⁴ The more highly stylized one of the involved marks may be, the more determinative of the outcome will be the similarity or difference in the appearance of the marks. Our then primary reviewing Court, in *Diamond Alkali Company v. Dundee Cement Company*, 343 F.2d 781, 145 USPQ 211 (CCPA 1965), when faced with the following marks:

Applying these principles to the case now before us leads us to conclude that the marks, when taken as a whole, are more similar than they are dissimilar. The only literal



Dundee Cement Co.'s
stylized letter "D"



Diamond Alkali Co.'s stylized house mark

held as follows:

"Upon the question of likelihood of confusion the board stated, [*Diamond Alkali Company v. Dundee Cement Company*,] 139 USPQ 314, 316:

"While there is a remote possibility that some purchasers of opposer's [Diamond Alkali Co.'s] products might ascertain that this house mark includes a stylized version of the letter "d" as a feature thereof, the mark, when viewed either as a whole or in part, would normally be regarded as consisting of an arbitrary design which is capable of many different interpretations rather than as a letter "d." Such a conclusion is supported by opposer's own actions in connection with its mark [i.e., describing this image as an "emblem deriv[ing] its inspiration from a chemical retort."] When considered in their entirety, applicant's mark differs radically in appearance from opposer's design mark, and it is concluded that no likelihood of confusion or mistake would result from the contemporaneous use thereof. Cf. *In re Burndy Corporation*, 133 USPQ 196 (CCPA 1962).

"When symbol marks such as these are being considered, appearance is most significant. "Symbols of this kind do not sound." *Columbian Steel Tank Co. v. Union Tank & Supply Co.*, 47 CCPA 898, 902, 277 F.2d 192, 125 USPQ 406, 409. Appellant requests our consideration of the [differences in specific features]. We have considered these features but agree with the board that in appearance the marks are sufficiently dissimilar that there is no likelihood of confusion."

Diamond Alkali Company, 145 USPQ at 213.

difference between the two marks is the initial letter "K." Both marks contain the same three upper-case letters "CFX" in the same order. The Trademark Examining Attorney has placed evidence into this record clearly showing that radio station owners, webmasters, disc jockeys, reporters and members of the listening public refer to radio stations by using the last three call letters. Thus, if consumers were to refer to the registrant's KCFX by the last three letters of its call sign, they would call it CFX, which is applicant's mark. We conclude that applicant's **CFX** mark and registrant's **KCFX** mark are substantially similar in overall commercial impression, and thus are likely to be confused.

The number and nature of similar marks in use on similar services

Applicant points out that there are a number of third-party registrations for similar marks in connection with related services ["The co-existence of all these 'FX' marks on related services ..." (applicant's brief, pp. 8 and 9)], decreasing the likelihood of confusion between any two specific services incorporating the weak mark. *Visa International Service Associations*, 24 USPQ2d 1365, 1367 (9th Cir. 1992). For example, applicant points to the following:

KZFX

for "radio broadcasting services" in Int. Cl. 38;²⁵



for, *inter alia* "... production and distribution of television programs and network radio programming services ..." in Int. Class 38;²⁶ and

EFX MEDIA

for, *inter alia* "... production and distribution of radio and television commercials" in Int. Cl. 38.²⁷

However, third-party registrations are entitled to little weight on the question of likelihood of confusion. *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); and *In re Hub Distributing, Inc.*, 218 USPQ 284 (TTAB 1983). Such registrations are not evidence of what happens in the marketplace or that the public is familiar with the use of the marks. *In re Comexa Ltda*, 60 USPQ2d 1118 (TTAB 2001); and *National Aeronautics and Space Admin. v. Record Chem. Co.*, 185 USPQ 563 (TTAB 1975). Furthermore, when compared

²⁵ Registration No. 1481082 issued to Shamrock Broadcasting, Inc. on March 15, 1988. Section 8 affidavit accepted and section 15 affidavit acknowledged.

²⁶ Registration No. 2641611 issued to SFX Entertainment, Inc. on October 29, 2002.

²⁷ Registration No. 3062840 issued to The EFX Company on February 28, 2006. No claim is made to the word "Media" apart from the mark as shown.

in their entireties, none of these marks is as close to registrant's mark as is applicant's mark herein.

Additionally, while the Trademark Examining Attorney, as part of the Office's analysis, has carefully compared the marks in their entireties, here it is applicant who is dissecting the mark in placing undue emphasis on the "FX" component of these several marks.

Finally, the coexistence of the registered mark, KZFX, with registrant's mark, **KCFX**, reminds us of the special difficulties presented in any Lanham Act determination of likelihood of confusion involving radio station call letters:

"... We recognize that the FCC issues licenses to parties to use very similar call letters, and that the public is aware that call letters for separate radio and television stations may vary by just one letter. As a result, call letters may be able to be closer to each other without causing likelihood of confusion than would be the case for other marks for other goods or services. Our finding of likelihood of confusion in this case should not be read as asserting a principle that confusion is likely if call letters for radio or television broadcasting services differ by just one letter. Here we have found the marks to be confusingly similar because of the identity of the remaining letters and the similarity of the differing letters in terms of the similar effect of those letters in the marks as a whole, as discussed *supra*."

In re Infinity Broadcasting Corp. of Dallas, 60 USPQ2d at 1219 [finding confusion between registrant's KING FM and KING-

TV and applicant's KYNG]. Similarly, we find these two marks to be substantially similar in overall commercial impression.

Conclusion

When compared in their entireties, applicant's mark conveys a similar commercial impression to registrant's cited mark. The respective services are overlapping and otherwise related, and presumably will move in the same channels of trade, albeit over different frequencies, to the same groups of ordinary members of the radio-listening audience. Moreover, applicant has failed to rebut the evidence of the Trademark Examining Attorney that radio audiences are most accustomed to the industry practice of shortening call letters to the last three letters. Hence, we find a likelihood of confusion herein.

Decision: We affirm both of the refusals to register herein based upon Section 2(d) of the Lanham Act.