

THIS OPINION IS  
NOT A PRECEDENT  
OF THE T.T.A.B.

Hearing:  
August 21, 2007

Mailed:  
September 27, 2007

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Tele-Town Hall, LLC.

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Serial No. 78897251

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Jeffrey D. Harty of McKee, Voorhees & Sease, P.L.C. for  
Tele-Town Hall, LLC.

Renee McCray, Trademark Examining Attorney, Law Office 111  
(Craig D. Taylor, Managing Attorney).

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Before Quinn, Holtzman and Zervas, Administrative Trademark  
Judges.

Opinion by Zervas, Administrative Trademark Judge:

Tele-Town Hall, LLC has appealed from the final  
refusal of the trademark examining attorney to register  
TELE TOWN HALL (in standard character form) as a trademark  
on the Principal Register for "Internet telephony services;

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telephone conferencing services"<sup>1</sup> in International Class 38.  
Applicant has disclaimed the term TELE.

The examining attorney has refused registration of applicant's mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the previously registered mark



for "telecommunications services, namely audio, video, web and streaming teleconferencing,"<sup>2</sup> in International Class 38, that, as used on applicant's identified services, applicant's mark is likely to cause confusion or mistake or to deceive.

An oral hearing was conducted on August 21, 2007. We affirm the refusal to register applicant's 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

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<sup>1</sup> Application Serial No. 78897251, filed May 31, 2006. Applicant has claimed a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

<sup>2</sup> Registration No. 2800397, issued December 30, 2003. Registrant has disclaimed the term TELECONFERENCING.

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, however, two key, although not exclusive, 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 consider the similarity or dissimilarity of applicant's and registrant's services. Because applicant's "telephone conferencing services" are encompassed within registrant's "audio teleconferencing" services, we find that the services are identical in part.

With respect to the remaining services, i.e., applicant's "Internet telephony services," the examining attorney has established that they are closely related to registrant's teleconferencing services by submitting evidence 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

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producer. See *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The examining attorney has made of record three use-based third-party registrations in which one entity has adopted a single mark for services that include Internet telephony services and teleconferencing services. 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. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

See:

Registration No. 3039368 for the mark PACKET8 for, inter alia, "Internet telephony services" and "telephone conferencing services";

Registration No. 3053932 for SIGHT SPEED and design for, inter alia, "providing facilities and equipment for video conferencing" and "Internet telephony services"; and

Registration No. 3117056 for NETZERO for, inter alia, "Internet telephony services" and "providing telephone conference services."

The examining attorney has submitted with her final Office action additional registrations, including the following registrations, which claim both local and/or long distance telephone services and teleconferencing services:

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Registration No. 3020708 for a design for, inter alia, "telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone ..." and "video teleconferencing [and] web conferencing services";

Registration No. 3100113 for a design for, inter alia, "telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone ..." and "video teleconferencing [and] web conferencing services";

Registration No. 3168122 for YOUR PARTNER FOR PROFITABILITY for, inter alia, "local, long distance and international voice, data and facsimile telephone services," "video conferencing transmission services" and "providing telephone conferencing services";

Registration No. 3168144 for METVOIP for, inter alia, "local, long distance and international voice, data and facsimile telephone services," "video conferencing transmission services" and "providing telephone conferencing services"; and

Registration No. 3168460 for DIALSPHERE for, inter alia, "local and long distance telephone services" and "providing telephone conferencing services."

While the registrations do not specify that the telephone services are provided by means of the Internet, there is nothing in the identifications of services that precludes such telephone services from being provided by means of the Internet. We hence find these registrations probative of a relationship between applicant's and registrant's identified services.

Applicant argues that the respective services are "distinctly different" and that "the Examining Attorney places the ... services into the broad category of 'teleconferencing' services." Applicant adds that the question of likelihood of confusion must be determined based on an analysis of the relatedness of the goods or services rather than how the goods or services can be described, citing to *Elec. Data Sys. Corp. v. EDSA Micro Corp.*, 23 USPQ2d 1460, 1463 (TTAB 1992) for the proposition that "[t]he issue of whether or not two products are related does not revolve around the question of whether a term can be used that describes them both, or whether both can be classified under the same general category." Brief at p. 5. The examining attorney responds:

While it is true that it is not enough to find one term that may generally describe the services, and that a commercial or technological relationship must exist between the services, the Examining Attorney maintains that the aforementioned evidence of record overwhelmingly demonstrates the commercial and technological nexus between the services such that the contemporaneous use of the marks is likely to result in confusion as to their source or sponsorship.

Brief at unnumbered pp. 5 - 6. For support, the examining attorney cites to *General Electric Co. v. Graham Magnetics Corp.*, 197 USPQ 690, 694 (TTAB 1997), in which the Board stated "It is argued that both parties' goods are the

products of powder metallurgy technology. It is, however, not enough to find one term that may generically describe the goods. More must be shown: that is, a commercial or technological relationship must exist between the goods such that the use of the trademark in commercial transactions on the goods is likely to produce opportunities for purchasers or users of the goods to be misled about their source or sponsorship." (Emphasis in the original.)

Contrary to applicant's argument, the examining attorney has not simply relied on placement of the services in the broad category of teleconferencing services. Rather, the examining attorney has provided evidence of a commercial relationship between the services. She has introduced evidence 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. Evidence of this kind is sufficient to establish a relationship between the services.

In view of the foregoing, we find that the examining attorney has established prima facie a relationship between

applicant's and registrant's services and we resolve the *du Pont* factors regarding the similarity of the services against applicant.

With respect to the similarity of trade channels, inasmuch as applicant's services are in part encompassed with registrant's services and otherwise concern teleconferencing services without any trade channel or purchaser restrictions, we must assume that the services move in the same channels of trade to the same customers. *Schieffelin & Co. v. Molson Companies Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989) ("[S]ince there are no restrictions with respect to channels of trade in either applicant's application or opposer's registrations, we must assume that the respective products travel in all normal channels of trade for those alcoholic beverages"). Indeed, the webpage made of record with the final Office action from phone-bill-busters.com for Polycom Audio Video Conferencing shows an advertisement for both audio and video conferencing and is not directed to any specific purchasers but is directed to the general public.<sup>3</sup> The *du Pont* factor regarding the

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<sup>3</sup> Most of the excerpts from the Nexis evidence submitted by the examining attorney with her final Office action in support of her contention that the trade channels are related have little or no probative value because of their brevity or because they are simply irrelevant to the issue before us.

similarity or dissimilarity of trade channels hence is also resolved against applicant.

We next consider the similarity or dissimilarity of the marks in their entireties. Our focus is on whether the marks are similar in sound, appearance, meaning, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). We do not consider whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar that confusion as to the source of the goods 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). Also, we are guided by the well-established principle that although the marks must be considered in their entireties, there is nothing improper, under appropriate circumstances, in giving more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

We find that TOWN HALL is the dominant portion of applicant's mark. TELE is a merely descriptive term that has been disclaimed by applicant. See definition of "tele-" as a prefix meaning "telephone" from the online version of *The American Heritage Dictionary of the English Language*, 4<sup>th</sup> ed. (2000), submitted with the first Office action. Descriptive matter is generally viewed as a less dominant or significant feature of a mark. See *National Data Corp.*, 224 USPQ at 752.

With respect to registrant's mark, applicant maintains that the design element with "the fanciful T-H-T with the clock tower" is the dominant portion of the mark, and that in a composite mark in which a design element is more conspicuous, the design element is likely to be dominant. We disagree. The term TOWNHALL, with the "T" and the "H" capitalized, is in thick lettering, is an actual English word and is of substantial size. In contrast, the design, which is composed of the letters THT is such that the two "T"s appear as lateral supports for the towering "H" which has a clock at its top. With the initialism embedded within the design, the large wording under the design would be more impressive to the purchaser and hence would be the term the purchaser first reads in the mark, and would likely be the term by which applicant's services would be

referred to by purchasers. TELECONFERENCING, of course is a generic term which registrant has disclaimed and which is in smaller lettering than TOWNHALL and functions more as an upper boundary in the mark. We hence conclude that TOWNHALL, and not the design, is the dominant component of the mark. We do not ignore the other elements of applicant's mark, but we give more weight to TOWNHALL in our comparison of applicant's mark and the cited registered mark. *See National Data Corp., supra.*

Thus, in comparing the marks in terms of sound, we find that the marks are similar in that both marks include the term TOWN HALL (or TOWNHALL), and that this term is the dominant term in each mark. The differences in sound caused by the other wording and the initialism in registrant's mark are outweighed by the similarity caused by the common term TOWN HALL.

In terms of connotation, we find that the overall connotation of both applicant's and registrant's marks is "town hall" in view of the dominant wording in the marks. The design element in registrant's mark which resembles a building adds to the connotation of registrant's mark as "town hall" and does not distinguish the meaning of registrant's mark.

Applicant has commented on the "font style" of the lettering in registrant's mark. This stylization is not dispositive, given the fact that applicant's mark is in standard character form and thus could be displayed in a "font style" similar to registrant's lettering. See, e.g., *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012 (TTAB 1988).

In terms of overall commercial impression, we find that the marks are similar rather than dissimilar because they both prominently include TOWN HALL. "THT" in registrant's design, once viewed, would be considered simply as an initialism for "Town Hall Teleconferencing" and it therefore does not suffice to distinguish the marks. Purchasers familiar with registrant's mark, which so prominently features the wording TOWN HALL, upon encountering applicant's services marketed under applicant's mark, are likely to assume that there is a source or other connection between the respective services. That is, purchasers are more likely to assume, based on the presence in both marks of the wording TOWN HALL that a source connection exists, than they are likely to assume, based on the presence in registrant's mark of the generic wording and design element, that no such source connection exists.

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On balance, and considering the marks in their entirety, we find them to be similar rather than dissimilar, and that the *du Pont* factor regarding the similarity of the marks weighs in favor of a finding of likelihood of confusion.

Weighing all of the evidence of record as it pertains to the relevant *du Pont* factors, we find that a likelihood of confusion exists.

Decision: The refusal to register is affirmed.