THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB

Mailed: August 29, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re John Robert Weber

Serial No. 78908583

John Robert Weber, *Pro Se*.

Tejbir Singh, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

Before Quinn, Walters and Wellington, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

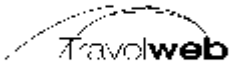
John Robert Weber has filed an application to register the standard character mark TRAVELWEBER on the Principal Register for "travel information services," in International Class 39.[1]

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles

[1] Serial No. 78908583, filed June 14, 2006, based on an allegation of a bona fide intention to use the mark in commerce.

the previously registered marks shown below that, if used in connection with applicant's services, it would be likely to cause confusion or mistake or to deceive.[2]

Registration No. 2827849 [Registered March 30, 2004]
Mark:



Identification of Goods:
"Providing rate comparison information for travel and lodging services," in International Class 35; "providing travel information services via a global computer network; travel agency services, namely, checking availability and making reservations and bookings for transportation via a global computer network," in International Class 39; "travel agency services, namely, checking availability and making reservations and bookings for temporary lodging via a global computer network," in International Class 43.
Owner: Travelweb LLC
Additional Information:
The mark consists of the stylized mark "TRAVELWEB" together with an arch that curves over and behind "TRAVELWEB" and is shaded to give the appearance of being three-dimensional.

Registration No. 2413708 [Registered December 19, 2000; Section 8 affidavit accepted]
Mark: TRAVELWEB
Identification of Goods:
"Providing car rental and airline information by internal computer communications networks and over the global computer information network; travel agency services, namely making reservations for car rentals and airline tickets," in International Class 39; "providing hotel, motel and temporary lodging information by internal computer communications networks and over the global computer

[2] The final refusal also includes Registration No. 2482587 as a basis for the Section 2(d) refusal. However, this registration was cancelled under Section 8 and, therefore, the refusal is moot as to this registration.

information network; travel agency services, namely making reservations for hotel, motel and temporary information lodging," in International Class 42.
Owner: Travelweb LLC

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusals to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.,* 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Services

The examining attorney contends that applicant's and registrant's identified services are closely related, if not the same. The examining attorney states that applicant's and registrant's "travel information services" (Reg. No. 2827849) are the same; and that applicant's "travel information services" are related to registrant's providing of online information regarding car rental and airline tickets (Reg. No. 2413708) because registrant's services would be used by consumers as they make their travel plans. In support of this position, the examining attorney submitted copies of numerous third-party registrations showing these types of services, including travel information services and travel agency services, identified in a single registration; and excerpts from several Internet websites showing that travel information services and travel agency services are offered on the same website and that these services are marketed in the same trade channels to the same consumers.

Applicant contends that the services are different because applicant "does not provide travel agency services [and] does not make reservations and bookings for transportation" and his services "do not include … making reservations for car rentals and airline tickets" (brief, p. 2). Applicant states that he provides travel information

only and consumers must make their reservations, confirmations and payments directly with the service provider. Applicant also contends that "the online consumer is sophisticated and knowledgeable enough to determine the difference between TRAVELWEB and TRAVELWEBER" (id.).

The question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). *See also, Octocom Systems, Inc. v. Houston Computer Services, Inc.,* 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each

parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein; and *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

The services identified in cited Registration No. 2827849 include "… travel information via a global computer network," which is encompassed within applicant's broader identification of "travel information services," and, thus, these services are in part identical. Additionally, the evidence of record clearly establishes a relationship between applicant's travel information services and the travel agency services identified in both of the cited registrations. It is unnecessary to consider whether, or to what extent, applicant's services are related or similar to the remaining services recited in the cited registrations.

The *du Pont* factor regarding the services weighs against applicant.

Trade Channels and Purchasers

Turning to the *du Pont* factors regarding the channels of trade and the conditions under which and buyers to whom sales are made, we note, first, that applicant's recitation of services is not limited in this regard. Thus, we presume that applicant's services would be offered in all ordinary trade channels for these services and to all normal classes of purchasers. *See In re Linkvest S.A.*, 24 USPQ2d 1716

(TTAB 1992). While the identical travel information and travel agency services in cited Registration No. 2827849 are rendered "via a global computer network," this trade channel is encompassed within applicant's broadly identified services, i.e., applicant may also render its services via the Internet. The trade channels for the travel agency services recited in Registration No. 2413708 are not so limited and, thus, applicant's services and these closely related travel agency services are likely to be rendered in overlapping, if not the same, channels of trade. In other words, the applicant's and registrant's trade channels are overlapping and/or the same.

Neither the application nor either of the cited registrations is limited with respect to the purchasers of the respective services. Thus, while the class of purchasers may encompass sophisticated individuals, it also includes all members of the general public, i.e., all levels of sophistication. Further, even sophisticated purchasers are susceptible to source confusion, particularly under circumstances where, as here, the services are the same or closely related. *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."). *See*

also Wincharger Corp. v. Rinco, Inc., 297 F.2d 261, 132 USPQ 289 (CCPA 1962); and *In re Pellerin Milnor Corp.*, 221 USPQ 588 (TTAB 1983). While some members of the general public may exercise care in obtaining travel information and making travel plans, there is no evidence in this regard in the record and we must presume that all levels of care will be exercised in utilizing the respective services.

The *du Pont* factors regarding the services, channels of trade and purchasers weigh against applicant.

Marks

The examining attorney contends that the marks are substantially similar because the word portion of the registered design mark is dominant; both applicant's and registrant's marks contain the terms "travel" and "web" combined in the same order as that of applicant to form a single word; and the "er" at the end of applicant's mark does not distinguish it from the registered marks.

Applicant appears to argue that the marks can be distinguished because his last name is "Weber" and, thus, this portion of his mark will be perceived as his last name.[3]

[3] Applicant concludes that "fair use" requires that he be permitted to use his name. We note that this is not a concept that is relevant to the issue of registrability. *See Nina Ricci S.A.R.L. V. E.T.F. Enterprises Inc.,* 889 F.2d 1070, 12 USPQ2d 1901 (Fed. Cir. 1989) (VITTORIO RICCI for handbags, clothing and retail store services in the field of clothing is likely to cause confusion with NINA RICCI for clothing and accessories even though Vittorio Ricci was the name of defendant's principal); *Ford Motor Co. v. Ford,* 462 F.2d 1405, 174 USPQ

In determining whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression, 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 terms of their overall commercial impressions that confusion as to the source of the goods or 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). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial

---

456, 458 (CCPA 1972) ("the interest in allowing an entrepreneur to use his own surname as a trademark on his goods must give way to the more compelling public and private interests involved in avoiding a likelihood of confusion or mistake as to source where use of the surname leads to such confusion or mistake"). *See also Justin Industries, Inc. v. D.B. Rosenblatt, Inc.*, 213 USPQ 968, 976 (TTAB 1981) ("the right to use one's name in his business may be circumscribed if it conflicts with a mark previously used by another and is likely to cause confusion as to the origin of the business or of the goods sold thereunder"); *Jack Winter Inc. v. Lancer of California, Inc.*, 183 USPQ 445, 446 (TTAB 1974) (DAVID WINTER for clothing is likely to cause confusion with JACK WINTER for clothing); *Girard-Perregaux & Cie, S.A. v. Perregaux*, 122 USPQ 95, 96 (Comm'r. Pats. 1959) ("Paul Perregaux" is likely to be confused with "Girard Perregaux" and "Perregaux").

impression created by the mark. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applicant's mark consists of the word portion of the registered marks with the addition of the letters "er" as a suffix. The mark TRAVELWEB in Registration No. 2431708 is in standard character form, as is applicant's mark, TRAVELWEBER. Registration No. 2827849 consists of the single word TRAVELWEB in a non-distinctive script, with the two individual words "travel" and "web" in different font shades so that it is visually obvious that the whole term TRAVELWEB consists of the merger of two individual words, "travel" and "web." The arch over the term TRAVELWEB serves to highlight that term. Due to the nature of this design, we find that the term TRAVELWEB is the dominant portion of the mark. Moreover, it is the wording TRAVELWEB that would be used by purchasers to search for registrant'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 dominant and source-signifying portion of the registered 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).

Applicant appears to argue that the connotations of the marks are different because purchasers will understand the letters WEBER in his mark as applicant's last name. However, only those persons familiar with applicant are likely to, perhaps, so perceive applicant's mark. In this day of the ubiquitous Internet, it is equally likely that these same purchasers, as well as all other members of the general public, would understand "er" in applicant's mark as a suffix to the term TRAVELWEB, which consists of the two recognizable words "travel" and "web." As such they are more likely to understand TRAVELWEBER as suggesting someone who uses the "web" to research and reserve "travel." In this case, the connotation of the "TRAVELWEB" portion of applicant's mark is likely to be the same as the connotation of TRAVELWEB in the registered marks. When we consider the marks as a whole, we consider them to be more similar than dissimilar.

While applicant argues that he will distinguish his mark from the registered marks by including the phrase TRAVELWEBER IS NOT AFFILIATED WITH TRAVELWEB on "each individual deliverable" (brief, p. 2), this is irrelevant to our determination of the registrability of the mark, TRAVELWEBER, in this application. That phrase is not part of the mark in the application and we must consider only the applied-for mark.

Conclusion

When we consider the record and the relevant likelihood of confusion factors, and all of applicant's arguments relating thereto, including those arguments not specifically addressed herein, we conclude that in view of the substantial similarity in the commercial impressions of applicant’s mark, TRAVELWEBER, and registrant’s marks, TRAVELWEB in standard characters and in a design format, their contemporaneous use on the same and closely related services involved in this case is likely to cause confusion as to the source or sponsorship of such services.

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