

Hearing:
November 23, 2004

This Opinion is Not
Citable as Precedent
of the TTAB

Mailed:
April 12, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Creative Staffing, Inc.
v.
Creative Financial Staffing, LLC

Opposition No. 91124801
to application Serial No. 74502128
filed on March 18, 1994

Deborah T. Berkowitz and Matthew S. Nelles of Ruden,
McClosky, Smith, Schuster & Russell, P.A. for Creative
Staffing, Inc.

Jonathan P. Froemel of Barnes & Thornburg LLP for Creative
Financial Staffing, LLC

Before Seeherman, Grendel and Rogers,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Creative Financial Staffing, LLC [applicant] seeks a
Principal Register registration for CREATIVE FINANCIAL
STAFFING, with a disclaimer of FINANCIAL STAFFING, for
services identified as "Providing temporary accounting,
bookkeeping and other financial services personnel," in
Class 35. The application claims first use of the mark, and

first use of the mark in commerce, as of April 4, 1994.¹ However, for the purpose of any necessary determination of priority, applicant may rely on its filing date of March 18, 1994.

Creative Staffing, Inc. [opposer] has opposed issuance of a registration to applicant, asserting in its notice of opposition: opposer is the owner of the mark CREATIVE STAFFING; opposer commenced use of that mark "at least as early as 1985 and has used the mark continuously since that date for employment and staffing services, namely employment recruiting and temporary and full-time employment and staffing services"; the consuming public and trade have come to associate CREATIVE STAFFING with opposer and opposer has thereby acquired substantial goodwill in the mark; the services of opposer and applicant, offered under their respective marks, are highly related or similar; the marks are so similar as to create a likelihood of confusion, mistake or deception among consumers when the marks are used for the parties' respective services; and opposer will be damaged if applicant's mark is registered.

¹ The application was filed March 18, 1994 based on applicant's statement of its intent to use the mark in commerce. Within a year of filing the application, applicant filed an amendment alleging use of the mark. After subsequent processing and examination, the application was suspended beginning December 13, 1995, until the mark was approved for publication on July 18, 2001.

Applicant admitted allegations relative to the filing of the parties' respective applications. Otherwise, applicant denied the allegations in the notice of opposition, either expressly or by stating that it does not have sufficient information to enable it to admit or deny.

Opposer has introduced into the record the testimony deposition of Ann Machado, opposer's founder and owner, the testimony deposition of Sheri Cholodofsky, opposer's controller, and the testimony deposition of Sandra d'Hemecourt, a senior account manager for opposer. Various exhibits were introduced during the Machado and Cholodofsky depositions. In addition, opposer filed a notice of reliance on, among other things, applicant's responses to opposer's interrogatories and requests for admissions, and various printed publications.

Applicant has introduced the testimony deposition and exhibits of Daniel J. Casey, its managing member. Applicant has also filed a notice of reliance on opposer's responses to applicant's interrogatories and requests for admissions, on reprints from the USPTO Trademark Electronic Search System (TESS) regarding four non-party registrations, and on various printed publications.

Applicant attached certain materials to its appeal brief, but opposer, in its reply brief, objected to consideration of such materials and we sustain the

objection. See Plus Products v. Physicians Formula Cosmetics, Inc., 198 USPQ 111, 112 n.3 (TTAB 1978). Any other objections by the parties that require discussion are considered infra, in conjunction with our discussion of what the record establishes.

Opposer has filed an application to register its CREATIVE STAFFING mark,² but it does not rely in this case on a registration of its mark and, therefore, the extent of its rights in its mark is a matter for proof. When an opposer is not relying on a registration and the presumptions attendant to ownership of a registration, it bears the burden of pleading and proving its priority. See Hydro-Dynamics Inc. v. George Putnam & Company Inc., 811 F.2d 1470, 1 USPQ2d 1772, 1773 (Fed. Cir. 1987). In addition, such an opposer must establish that its mark is distinctive of its goods or services either inherently or through the acquisition of secondary meaning. See Towers v. Advent Software, Inc., 913 F.2d 942, 945, 16 USPQ2d 1039, 1041 (Fed. Cir. 1990).

Applicant did not assert in its answer that it believed opposer's pleaded mark to be descriptive and non-

² Serial No. 75908628 seeks registration of CREATIVE STAFFING for "employment and staffing services, namely, employment agencies, employment recruiting and temporary employment services," in Class 35. The application includes a disclaimer of "staffing" and includes, in the alternative, a claim of acquired distinctiveness under Section 2(f), 15 U.S.C. § 1052(f).

distinctive. In a case such as this, where the marks are identical but for applicant's addition of a descriptive term, and applicant seeks registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), it was incumbent on applicant to put opposer on notice that it would expect opposer to prove distinctiveness. In view of the position adopted by applicant, which is largely demonstrated by its own application, that the involved marks are inherently distinctive, it was entirely reasonable for opposer to conclude that it did not have to pursue the issue of distinctiveness. In fact, opposer contended in its brief (p. 10) that likelihood of confusion was the only issue to be determined. Applicant essentially acquiesced in the contention, when it noted in its brief (p. 8) that the "sole issue for consideration by the Board is whether there is a likelihood of confusion." Accordingly, we consider there to be no issue as to the inherent distinctiveness of opposer's mark.

Notwithstanding our discussion above, we recognize that applicant made certain statements in its brief asserting, variously, that the terms "Creative" and "Staffing," i.e., "the common elements of the two marks," are "descriptive, or at best highly suggestive" and that opposer's pleaded mark "is descriptive or highly suggestive at best, and therefore

is not inherently distinctive." We do not view applicant's arguments as signaling a retreat from its statement that the only issue to be considered is likelihood of confusion, which statement implies that at least for purposes of this case both parties should be presumed to have marks. Rather, we view applicant's arguments as indicative of applicant's position that the respective marks are weak and entitled to a narrow scope of protection. While we note that opposer's application seeks registration of its mark under Section 2(f) of the Trademark Act, that claim has been made in the alternative and opposer cannot, therefore, be viewed as having conceded that its pleaded mark is not inherently distinctive.³ In any event, on this record, i.e., based on the nature of opposer's use of its mark and the services for which it has used its mark, we do not hesitate to conclude that opposer's mark is suggestive and therefore inherently distinctive.⁴

As to priority, we again note applicant's contention that the only issue to be decided is likelihood of confusion, which certainly implies that applicant does not contest opposer's priority. On the other hand, applicant

³ See discussion in Section 1212.02(b) of the Trademark Manual of Examining Procedure (TMEP) (3rd ed., revision 2).

⁴ Applicant is legally incorrect insofar as it asserts that if opposer's mark were found to be highly suggestive, it would not be inherently distinctive. While suggestive marks may not be as strong as arbitrary or coined marks, they are considered inherently distinctive.

Opposition No. 91124801

contends that opposer, for many years, limited its services to providing employees for "clerical, light industrial, telemarketing, technical, contract and hospitality staffing." Brief, p. 13, relying on a year 2000 industry directory listing for opposer made of record by applicant's notice of reliance. In addition, applicant contends that opposer did not begin providing services in "the niche of finance and accounting" until at least three years after applicant. Brief, p. 13, relying on certain pages from the Machado deposition. Finally, applicant argues that even after opposer expanded into this niche, it placed permanent employees, not temporary employees, in accounting, bookkeeping and financial services jobs with clients. Brief, p. 14, relying on certain pages from the Machado deposition.

Applicant overreaches in attempting to limit opposer's activities to certain industries or fields by reference to the directory listing. That listing recites that opposer "specializes in" these fields. It does not affirmatively state that opposer offers its services only in these fields. In contrast, the Machado testimony is clear and unequivocal that opposer provides clients with temporary employees in not only the fields listed in the directory but in others as well:

Q. Let's talk about the placements that Creative Staffing makes. What types of positions does

Opposition No. 91124801

Creative Staffing provide temporary employees to fill?

A. We have different sort [sic] of divisions or subcategories. So we have officers and clerical, light industrial, hospitality, finance, legal, medical.

Machado dep., p. 14.

In addition, there is uncontradicted, specific testimony about the types of positions filled in the finance field:

Q. What type of positions does Creative Staffing fill in the financial industry?

A. We do just about everything. Accountants, controllers, accounts receivable, accounts payable, collectors. We have a subcategory in there is escrow, mortgage and titles. We're doing a lot of mortgage professionals, bookkeepers, data entry operators. Gosh, just about everything that you could imagine.

Machado dep., pp. 14-15.

Finally, there is uncontradicted testimony that opposer has made placements in the financial field since it commenced operations:

Q. Has Creative Staffing been placing employees in the financial industry since its inception in 1985?

A. Yes. Our first order was for a 100 [sic] data entry operators and staff accountants to do an inventory for Sear's department store. That was my very first order. And my second order was from Ryder Trucking Company, Ryder Systems now, and they wanted someone in accounting, accounts payable or receivable.

Machado dep., pp. 16-17.

Applicant mischaracterizes the Machado testimony when it argues in its brief that opposer "did not expand into the niche of finance and accounting until 1998" (emphasis added). The thrust of the testimony and supporting exhibits is that opposer was at that time growing or expanding its operations in existing niches. Machado dep. 34-35 and exh. 3. Moreover, applicant mischaracterizes the Machado testimony when it argues that opposer's placements of financial services personnel have been permanent employees, rather than temporary employees. The testimony is clear that opposer has placed both types of employees. Machado dep. pp. 19-20.

Opposer's exhibit 8 to the Machado deposition requires some discussion. This exhibit displays pages full of newspaper advertisements placed in 1994, prior to applicant's filing date, by opposer. These ads seek employees for various types of positions, including financial services personnel. Applicant did not object to its introduction when it was offered during direct examination, except on the ground that it was not produced during discovery. This objection was not, however, maintained in applicant's brief and has, therefore, been waived. See authorities collected in TBMP Section 707.03(c) n. 300 (2d ed. rev. 2004). Applicant did, in its brief, assert that this exhibit "constitutes inadmissible hearsay

and lacks foundation," but this objection was not raised during the direct examination. Instead, applicant apparently relies on its cross-examination of the witness to establish that it first raised during the testimony deposition that the witness had no "personal knowledge of the ads themselves, and no business records foundation exists." Brief, p. 13, n. 1. At most, then, applicant's cross-examination, and its reference thereto in the brief, may be sufficient to maintain an objection that the witness did not establish a proper foundation for the exhibit.⁵ We disagree with the contention and find the exhibit admissible.

Machado testified that ads would be on the desks of opposer's employees after they were published, so that opposer's employees would be able to refer those responding to ads to the appropriate counselor; and she testified that the ads were representative of what opposer would have ran (Machado dep. p. 75) and that she would see the ads at the end of the month (p. 146). We find this a sufficient

⁵ In one reported decision, the Board found vague questioning by applicant's counsel, during cross-examination of a witness for opposer, insufficient to preserve an objection. See Time Warner Entertainment Co. v. Jones, 65 USPQ2d 1650, 1657 (TTAB 2002). In this case, we accept, for the sake of argument, that applicant's cross-examination of opposer's witness (Machado), on her personal knowledge of exhibit 8, may have been sufficient to put opposer on notice that it needed to utilize redirect to answer any questions raised about whether a proper foundation had been provided for introduction of the exhibit. Nonetheless, as explained above, we do not find the objection well-taken and find the exhibit admissible.

foundation for introduction of the ads. Moreover, we note that the ads only serve to corroborate the uncontradicted testimony of the witness that opposer had been placing financial services personnel before applicant began doing so. Even if we were to exclude the ads, we would find the Machado testimony sufficient to establish opposer's placement of financial services personnel since opposer commenced operations and well prior to the filing date of applicant's application. Cf. Powermatics, Inc. v. Globe Roofing Products Co., 341 F.2d 127, 144 USPQ 430, 432 (CCPA 1965) ("oral testimony, if sufficiently probative, is normally satisfactory to establish priority of use in a trademark proceeding"). See also, B.R. Baker C. v. Lebow Bros., 150 F.2d 580, 66 USPQ 232, 236 (CCPA 1945) (Oral testimony should "not be characterized by contradictions, inconsistencies and indefiniteness but should carry with it conviction of its accuracy and applicability.").

In sum, we find that the record bears out opposer's prior use of its mark for placement of temporary and permanent financial services personnel since prior to the filing date of applicant's application. The foregoing discussion not only demonstrates opposer's priority but also addresses the overlap in the parties' services, and so we now turn to the issue of likelihood of confusion, which includes consideration of the involved services.

The question of likelihood of confusion in an opposition requires analysis of the facts as they relate to the relevant *DuPont* factors. See Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000) and In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In considering the evidence of record on these factors, we must keep in mind that “[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

First, we consider the respective services, as we have broached that subject above in discussing opposer's priority. In regard to opposer's services, we have already found that these have included the placement of temporary and permanent financial services personnel. In regard to applicant's services, we are constrained by the identification set forth in applicant's application. 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"). Applicant places "...temporary accounting, bookkeeping and other financial services personnel." The identification does not limit the types of businesses (i.e., fields) in which such personnel are placed, nor does it limit applicant's placements to businesses of a particular size. In addition, there is no limit as to channels of trade through which applicant's services are offered. As a result, we must assume that applicant places "...temporary accounting, bookkeeping and other financial services personnel" in all sorts of businesses and offers its services in all customary channels of trade for a business such as applicant's. We cannot acquiesce in applicant's argument that it "specifically markets its services to companies that have accounting departments of five or more people" (brief, p. 14), because this restriction is not in the identification.

Opposer pleaded that it has used its mark since 1985 for "employment and staffing services, namely employment recruiting and temporary and full-time employment and staffing services." The record clearly establishes that opposer, in fact, has used its mark in conjunction with such a wide range of services. As noted above, however, the evidence of use for specific services that overlap with

those of applicant is most significant. We note, however, that the record also shows that firms that place temporary and permanent employees may do so in a wide range of fields. See Machado exh. 11. Accordingly, even without the direct overlap in services that is evidenced by the record, we would find the services related.

We consider next the marks. In doing so, we note that when marks will be used in connection with the same services, the marks do not have to be as similar for a likelihood of confusion to exist, as they would have to be if the services were not identical. Century 21 Real Estate Corp. v. Century Life of America, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines."). We also recognize the well-established principle that, while the marks are compared in their entireties, including descriptive or disclaimed portions thereof, "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." In re National Data Corp., 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant has disclaimed exclusive rights in the words FINANCIAL STAFFING, and there can be no doubt, based on the record, that both terms are descriptive when used in connection with applicant's services. Applicant's identification indicates that it focuses on "financial services personnel," and numerous exhibits reveal that "staffing" is a descriptive term for employment, personnel placement, and temporary labor companies. See, for example, Machado exhibit 11, which are yellow page listings that show various companies using the term "staffing" in a descriptive manner. Accordingly, the dominant portion of applicant's mark, and the portion on which prospective customers would rely to distinguish applicant from other "staffing" agencies, is the term CREATIVE.

Much the same analysis applies to opposer's mark, for "staffing" is no less descriptive for opposer's services than it is for applicant's services. Accordingly, CREATIVE is also the dominant term in opposer's mark.

The marks do not merely share a common dominant element, they also both have that dominant term placed first, and it has been held that the first parts of marks are often those most likely to be impressed on the minds of prospective purchasers and remembered. Presto Products, Inc. v. Nice-Pak Products, Inc., 9 USPQ2d 1895 (TTAB 1988).

Applicant has argued (brief, p. 10) that opposer always displays its pleaded CREATIVE STAFFING mark in conjunction with a design element and that this helps avoid possible confusion. The record does not support this conclusion. Various exhibits to the Machado deposition show use of CREATIVE STAFFING without a design element. See, for example, exhibits 3A, 5 and 6, which show mixed uses both with and without the design. In addition, the testimony of opposer's witnesses establishes that opposer does a good deal of client solicitation over the phone, so that the mark would be spoken and not seen. Even if we found that the record established that each visual display of opposer's mark did incorporate the design element, we still would consider the word CREATIVE to be the dominant element, as words generally are more dominant than designs. See Giant Food, Inc. v. Nation's Food Service, Inc., 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983); In re Appetito Provisions Co., 3 USPQ2d 1553, 1554 (TTAB 1987); and Kabushiki Kaisha Hattori Tokeiten v. Scuotto, 228 USPQ 461, 462 (TTAB 1985). This is particularly true in this case, where the design is more ornamental than recognizable as anything in particular.

In terms of connotation, insofar as applicant's mark includes the term FINANCIAL, it has a more specific connotation than does opposer's mark. Nonetheless, the overall commercial impression of the two marks is very

similar. Clairol Incorporated v. Roux Laboratories, 442 F.2d 980, 169 USPQ 589, 590 (CCPA 1971) (Even though the words "Plus" and "Puff" "may have different meanings by themselves, this difference alone does not overcome the conclusion that when the marks are viewed in their entirety a likelihood of confusion exists").

Based on our finding that the parties' services overlap, and on the absence of any restrictions as to channels of trade or classes of consumers in applicant's identification (so that we must presume applicant to utilize the same channels of trade as opposer and market to the same consumers as opposer),⁶ and on the very similar overall commercial impressions created by the respective marks, we have no doubt that there exists a likelihood of confusion of consumers. Applicant's mark and services would likely be viewed as identifying a more specific or specialized subset of opposer's services. See Creative Playthings, Inc. v. Fisher-Price Toys, Inc., 169 USPQ 58 (TTAB 1971) (Board sustained opposition against registration of CREATIVE BLOCKS, with BLOCKS disclaimed, based on opposer's prior use of CREATIVE PLAYTHINGS as mark and trade name, finding that purchasers familiar with opposer's mark and goods would be

⁶ Moreover, the record is clear that the parties actually do have certain common customers. See opposer's response to applicant's interrogatory no. 14, and the Cholodofsky testimony dep. at pp. 19-20 in regard to Kelly Services.

likely to believe that applicant's mark identified a particular line of opposer's toys). See also, Miss Universe, Inc. v. Drost, 189 USPQ 212 (TTAB 1975)(likelihood of confusion between MISS U.S.A. and MISS NUDE U.S.A.). Accord, Miss Universe, Inc. v. Flesher, 433 F.Supp. 271, 200 USPQ 330 (C.D.Cal. 1977)(any insertion by defendant of word between MISS and U.S.A., as an adjective or other word modifying U.S.A., likely to cause confusion with plaintiff's MISS U.S.A. mark), injunction modified, remanded for trial, 605 F.2d 1130, 204 USPQ 354 (9th Cir. 1979).

Notwithstanding that we have already concluded that there is a likelihood of confusion, we address briefly opposer's proffered evidence of instances of actual confusion. Applicant has argued that each of the specific instances on which opposer relies occurred after opposer produced a brochure which used the phrase "Creative Financial Staffing" within a listing of "Creative Staffing Divisions," and after opposer used a phone directory listing for "Creative Financial Staffing."⁷ In essence, applicant contends that opposer is responsible for the instances of

⁷ For the brochure, see exhibit 3A to the Machado testimony deposition and exhibit 47 to applicant's testimony deposition of Daniel Casey. Both these exhibits have subsections entitled "Creative Financial Staffing," "Creative Medical/Insurance Support Staffing" and "Creative Hospitality Staffing," and appear to be copies of the same brochure. As for the yellow pages listing, opposer's witness testified this was not an ad, but only a listing, and that it appeared for one year when offered to opposer by the directory publisher at no charge. Machado dep. pp. 39-41 and 142-43.

actual confusion, if any of opposer's proffered examples actually can be found to be instances of confusion concerning the involved marks, as opposed to errors of another type. Opposer, on the other hand, asserts that each of the instances of asserted actual confusion, some of which are very recent, cannot be attributable to publication of a single brochure and/or a phone directory listing, both of which occurred years before. Moreover, opposer contends, applicant has not proven that any of the individuals asserted by opposer to have been confused actually had seen the brochure and/or phone listing. To these arguments regarding how we should interpret this body of evidence, we add our own observation that much of opposer's evidence of actual confusion suffers from a degree of vagueness, for example, the asserted instance in which an unidentified employee of applicant came to opposer's office for a paycheck.

While the parties have examined and debated the particulars of each purported instance of actual confusion, we need not do so, and need not make specific findings on each particular instance. The law is clear that evidence of actual confusion need not be present to conclude that there exists a likelihood of confusion. Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983). Thus, while we do not agree with

applicant that every instance of purported actual confusion is attributable to opposer's brochure or telephone directory listing, we do not rely on this evidence to support our conclusion that there is a likelihood of confusion.⁸

Another argument that applicant advances with some degree of fervor focuses on the existence of certain third-party registrations which utilize the term "Creative," and asserts that these weigh against a finding of likelihood of confusion. Brief, p. 17. One of the four registrations on which applicant relies is for a mark (APPLIED STAFFING) that does not employ the term "Creative"; another is for the mark RANSTAD CREATIVE TALENT, but includes a disclaimer of "Creative Talent";⁹ and a third is for MEDICAL STAFFING SOLUTIONS and design, which includes a much smaller phrase in parentheses, "(providers of creative professional opportunities)." The fourth registration is for the same mark as opposer's, i.e., CREATIVE STAFFING, but is the subject of a petition to cancel filed by opposer. While

⁸ Applicant closes its brief by arguing that the unclean hands of opposer, attributable to opposer's use of applicant's mark, should preclude opposer from obtaining the relief it seeks, i.e., an order refusing registration to applicant. Applicant did not, however, plead an unclean hands affirmative defense and we do not find such a defense to have been tried by express or implied consent of the parties.

⁹ Opposer argued that there is no use of the third-party marks in Florida, which is inapposite. Applicant contends opposer has actually provided evidence of the RANSTAD CREATIVE TALENT mark, but applicant overlooks the fact that this evidence shows use of the RANSTAD company name in a directory, not the RANSTAD CREATIVE TALENT mark.

applicant is correct in observing that this CREATIVE STAFFING registration exists and cannot be discounted, its existence goes more to the issue of whether opposer or the registrant has the greater proprietary right in the mark, not to the issue of whether "Creative" is so widely used for staffing or personnel placement services that it should be considered weak and deserving of only limited protection. In any event, we acknowledge that "Creative" is a suggestive term for these services, and that opposer's mark CREATIVE STAFFING may be weak. However, "even weak marks are entitled to protection against registration of similar marks" for identical services. In re Colonial Stores, 216 USPQ 793, 795 (TTAB 1982). See also In re The Clorox Co., 578 F.2d 305, 198 USPQ 337, 341 (CCPA 1978) (ERASE for a laundry soil and stain remover held confusingly similar to STAIN ERASER, registered on the Supplemental Register, for a stain remover). We reiterate that the services in this case are identical in part, and the marks CREATING STAFFING and CREATIVE FINANCIAL STAFFING, are extremely similar.

The final point of disagreement that we must address is the deliberation with which purchasers of the parties' services would make their purchasing decisions. We cannot agree with opposer's contention that a business will take lightly its decision to hire even a temporary employee and we agree with applicant that there is some degree of care

Opposition No. 91124801

exercised in making these decisions. Nonetheless, the record is clear that the parties offer overlapping services under very similar marks to the same classes of consumers, including some common customers, and that a good deal of business is solicited by phone. Under these circumstances, we conclude that even purchasers acting with some degree of deliberation will be subject to confusion. Further, businesses in which opposer and applicant may place temporary personnel are not the only class of relevant persons to be considered in this case. We must also consider the individuals who may respond to advertisements of opposer and applicant that seek individuals for placement with client companies. This group of persons may be somewhat less deliberate than hiring companies.

Decision: The opposition is sustained and registration to applicant is refused.