

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Remerica Real Estate Corporation

v.

Steve Komondorea

Opposition No. 91151476
against Serial No. 78068315

Jeffrey P. Thennisch and Abby C. Moskowitz of Dobrusin &
Thennisch, PC for Remerica Real Estate Corporation.

Jennifer L. Whitelaw of Whitelaw Legal Group for Steve
Komondorea.

Before Walters, Bucher and Holtzman, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Steve Komondorea seeks registration on the Principal
Register of the mark **REALAMERICA REALTY** for services recited
in the application as "real estate brokerage" in
International Class 36.¹

Registration has been opposed by Remerica Real Estate
Corporation. As its ground for opposition, opposer asserts

¹ Application Serial No. 78068315 was filed on June 9, 2001
based upon applicant's allegation of first use anywhere and first
use in commerce at least as early as January 2, 1991. The word
"Realty" has been disclaimed apart from the mark as shown.

that applicant's mark, when used in connection with applicant's services, so resembles opposer's previously used and registered mark, shown below:



and registered for real estate agency services in International Class 36,² as to be likely to cause confusion, to cause mistake or to deceive under Section 2(d) of the Lanham Act.

Applicant, in his answer, has denied the salient allegations in the opposition.

By operation of the rules, the record includes the pleadings and the file of the opposed application. Opposer has also made of record its pleaded registration by submitting a certified status and title copy of the above registration. Opposer, as part of its case-in-chief, has also made of record, pursuant to a notice of reliance, the testimony deposition of opposer's president James A. Courtney, with exhibits; the discovery deposition of

² Registration No. 1581883 issued on February 6, 1990 claiming first use anywhere and first use in commerce at least as early as December 1, 1988; renewed. According to the registration, the lining shown in the drawing is a feature of the mark and is not intended to indicate color.

applicant, Steve Komondorea; a record dated March 2, 2004 from the Florida Department of State, Division of Corporations; applicant's answers to opposer's discovery requests; and the results of a search in the online WHOIS database of information on web pages and domain names for <RealAmericaRealty.com>. Applicant submitted no evidence in this proceeding but did file a brief. Opposer filed a main brief as well as a reply brief.

Applicant, Steve Komondorea, is the president of a Florida corporation with its principal place of business in Cape Coral, Florida. Deposition of Steve Komondorea, p. 4. He first used his mark in commerce in connection with real estate brokerage services on January 2, 1991. His real estate brokerage services cover residential properties, retail investment properties and business acquisitions. *Id.*, pp. 21, 24. While applicant offers these services almost exclusively in Florida - the only state in which he is licensed to sell real estate - he has handled transactions in Tennessee and North Carolina. *Id.*, pp. 13, 16. In 2004, Applicant spent around ten-thousand dollars promoting his business, much of the paid media being newspaper advertisements.

Opposer is a Michigan corporation headquartered in Plymouth, Michigan. Opposer first used its mark in commerce

in connection with real estate agency services on December 1, 1988. These real estate services include residential sales, commercial sales, office leasing and home leasing.

Opposers' standing is a threshold inquiry made by the Board in every *inter partes* case. In Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), the Federal Circuit has enunciated a liberal threshold for determining standing, i.e., whether one's belief that one will be damaged by the registration is reasonable and reflects a real interest in the case. See also Jewelers Vigilance Committee Inc. v. Ullenberg Corp., 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); and Lipton Industries, Inc. v. Ralston Purina Company, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). We find that opposer has established its standing in view of its claimed and established **REMERICA** registration.

With regard to the issue of priority in relation to the services set forth in opposer's pleaded registration, because opposer has established that it owns a valid and subsisting registration of its pleaded mark, the issue of priority does not arise. See King Candy Company v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); and Carl Karcher Enterprises Inc. v. Stars Restaurants Corp., 35 USPQ2d 1125 (TTAB 1995).

We turn, then, to the issue of likelihood of confusion under Section 2(d) of the Act. Accordingly, the focus of our determination is on the issue of whether applicant's **REALAMERICA REALTY** mark, when used in connection with "real estate brokerage" services, so resembles opposer's  mark as to be likely to cause confusion, to cause mistake or to deceive as to source or sponsorship.

Our determination of likelihood of confusion must be based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). 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 and differences in the marks." 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).

Turning first to the services, we agree with opposer that real estate agency services and real estate brokerage

services are substantially similar, if not the same. While we cannot determine from this record what, if any, difference exists between "agency" and "brokerage" services in the real estate field, the evidence clearly establishes that both parties sell various types of real estate. Inasmuch as there are no limitations as to the channels of trade in applicant's application or in opposer's registration, we must assume that the parties' services would be sold in essentially the same channels of trade and to essentially the same classes of consumers. See Canadian Imperial Bank of Commerce v. Wells Fargo Bank, NA, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) [the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services recited in an opposer's registration]; see also, Sterling Drug Inc. v. Merritt Corp., 119 USPQ 444, 445 (TTAB 1958); and Pennwalt Corp. v. Center Lab., Inc., 187 USPQ 599, 601 (TTAB 1975). Hence, these factors all favor the position taken by opposer.³

With this in mind, we turn to a consideration of the similarity or dissimilarity of the parties' marks in their

³ In light of our disposition herein, and given the absence of any evidence on this issue, we make no determination as to whether, in a case such as this one, there may be a distinction between the care that consumers take in choosing a real estate agent or broker as opposed to the care they may take in choosing the particular piece of real property that they are purchasing.

entireties as to appearance, sound, connotation and commercial impression. See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Applicant argues that REALAMERICA REALTY differs significantly in appearance, pronunciation, connotation and commercial impression from the  mark on which opposer bases its opposition.

By contrast, opposer argues that "whether written or spoken, REMERICA and REALAMERICA REALTY are nearly identical, and make confusion unavoidable." Opposer's brief, p. 13. We disagree with the conclusion that these marks are "nearly identical." Rather, we find compelling applicant's arguments that the two most prominent sounds and appearances of its mark are totally absent from opposer's mark, namely, (1) the leading syllable, "Real" (versus "Rem") (2) followed by the letters "am" - a combination totally missing from opposer's mark.

Regarding connotation, the first term in applicant's mark consists of the two English-language words "Real" and "America" and is likely to be so perceived; whereas, opposer's mark, REMERICA, is likely to be perceived as a single arbitrary word beginning with the syllable "rem" that may, at most, suggest the word "America." Additionally,

opposer's stylized mark creates a distinctive impression missing from applicant's mark. We find the overall commercial impressions of the two marks to be quite different.

Accordingly, opposer's reliance upon the relatedness of the services and the similarity of the channels of trade, etc., is not sufficient to support a finding of likelihood of confusion when, for example, the dissimilarity of the marks at issue weighs so strongly in applicant's favor.

As to the apparent absence of actual confusion, we find this to be a neutral factor herein. While the respective marks have been used contemporaneously, it seems clear from the record that applicant's operations have been offered almost exclusively in Florida, while registrant's operations have been offered only in the upper Midwest in the area in and around the state of Michigan. Accordingly, there has been no opportunity for confusion to occur.

Furthermore, while opposer suggests it has demonstrated its right to exclude others from use of its mark on real estate agency services, we agree with applicant that these actions appear to have no application to the instant case. Opposer initiated two lawsuits in the State of Michigan against former employees alleging passing off and unfair

competition. Both of these cases settled, resulting in consent injunctions.

In conclusion, after weighing all the relevant du Pont factors, although the services herein are very closely related, if not identical, we find it determinative that the respective marks are quite different as to appearance, sound, connotation and commercial impressions. Hence, we find that opposer, as plaintiff in these actions, has not shown by a preponderance of the evidence that there is a likelihood of confusion herein.

Decision: The opposition is dismissed and the application will be forwarded for registration.