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Mailed:  
4 April 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Alpine Mortgage Corporation  
v.  
The Mortgage Department, Inc.

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Opposition No. 91166379

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Jeffrey P. Thennisch of Dobrusin & Thennisch, PC for Alpine Mortgage Corporation.

Jay M. Schloff of Intellipex PLLC for The Mortgage Department, Inc.

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Before Quinn, Drost, and Kuhlke, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

Applicant, The Mortgage Department, Inc., applied to register the mark HOME OF THE NO COST LOAN (standard character drawing) on the Principal Register for "mortgage and real estate procurement for others; mortgage brokerage; auto financing" in Class 36. Application Serial No. 78469581, filed August 18, 2004, is based on applicant's bona fide intention to use the mark in commerce and the application contains a disclaimer of the words "No Cost Loan."

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On August 18, 2005, opposer, Alpine Mortgage Corporation, filed an opposition to the registration of applicant's mark. In its notice of opposition, opposer relied on its ownership of Application Serial No. 76597428 filed June 16, 2004. This application issued as Registration No. 2988707 on August 30, 2005. The registration is for the mark HOME OF THE NO JOB LOAN in standard character form for "financial services namely mortgage brokerage and mortgage consulting services" in Class 36.

In its notice of opposition, opposer alleges that it has been using its HOME OF THE NO JOB LOAN mark in interstate commerce prior to the effective date of the opposed application. Opposer alleges that it "has also developed substantial common law trademark and service mark rights as well as rights analogous to trademark and service mark usage in the NO JOB mark since long prior to Applicant's filing date." Notice of Opposition at 3. Opposer asserts that there would be a likelihood of confusion between its mark and applicant's mark.

In its answer, respondent denied the salient allegations of the notice of opposition.

The Record

The record consists of the following items: the file of the involved application; the testimony deposition of

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opposer's president, J. Todd Kurz, with accompanying exhibits; the testimony deposition of one of applicant's principal shareholders and corporate officer, Barry K. Stoltze, with accompanying exhibits; and applicant's notice of reliance on a Yellow Pages directory and a press release by another mortgage company and opposer's notice of reliance on a status and title copy of Registration No. 2988707 and copies of other applications and a registration that it owns, as well as a trademark search report.

Priority

When we consider an opposition based on a likelihood of confusion, we must first consider the question of whether the opposer has priority. While the opposition was originally based on opposer's ownership of an application as well as its common law rights, twelve days after the opposition was filed, opposer's 2988707 registration issued. In its answer, filed October 20, 2005, applicant admits that: "Registration has been opposed by Alpine Mortgage Corporation on the ground that applicant's mark so resembles opposer's previously used and registered mark HOME OF THE NO JOB LOAN for financial services, as likely to cause confusion, or to cause mistake or deceive." Opposer has subsequently submitted a status and title copy of this registration. Inasmuch as this opposition is now based on opposer's ownership of a Federal registration and it has

been tried in this way, priority is not an issue in this case. See *King Candy Co. v. Eunice King's Kitchen*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

Likelihood of Confusion

We now move to the question of likelihood of confusion. When there is an issue under Section 2(d), we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003) and *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000).

Here, the first factor we will consider concerns the relatedness of the services. We must consider the services as they are identified in the involved application and registration. *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"). See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177

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USPQ 76, 77 (CCPA 1973). In this case, both applicant and registrant's services include "mortgage brokerage" services. We add that the evidence shows that the parties are primarily in the same business of mortgage lending to homeowners.

Opposer:

Q. Can you describe in more detail the services you offer, what type of mortgages you offer?

A. We offer commercial and residential mortgages.

Q. Can you break down as to how much commercial and how much residential?

A. Very little commercial, the majority is residential.

Q. What is the average monetary amount of your mortgages offered?

A. Residential would be about \$120,000 per unit.

Q. Can you describe your typical client?

A. Homeowner for a refinance or a proposed homeowner for a purchase.

Kurz dep. at 5.

Applicant:

Q. Okay. Now does The Mortgage Department offer mortgage brokerage services?

A. Yes.

Q. And are those generally residential or commercial or both?

A. Generally residential. The majority residential.

Stoltze dep. at 5.

Therefore, the services are not only overlapping to the extent that both applicant and opposer identify their services identically in their identification of services, but the parties are actually offering primarily the same residential mortgage services to their customers.

"When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real*

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*Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992). In addition, because the marks are used on the same services, we must assume that the channels of trade and prospective purchasers are the same. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade") and *Morton-Norwich Products, Inc. v. N. Siperstein, Inc.*, 222 USPQ 735, 736 (TTAB 1984). ("Since there is no limitation in applicant's identification of goods, we must presume that applicant's paints move in all channels of trade that would be normal for such goods, and that the goods would be purchased by all potential customers").

The next critical factor concerns the marks, THE HOME OF THE NO COST LOAN and THE HOME OF THE NO JOB LOAN. "The first *DuPont* factor requires examination of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (internal quotation marks omitted). The marks

are identical in all respects except for the penultimate words, "Cost" and "Job."

We begin by addressing opposer's argument that it has a "family" of marks.

First, the No Job mark is one of a family of marks used by the Opposer to identify its services, all of which follow the "Home Of The No \_\_\_\_\_ Loan" format. Opposer has registered and applied for registration of these various marks, including Home of the No History Loan, Home of the No Credit Loan, Home of the No Check Loan, and Home of the No Score Loan. The Opposer's efforts to promote these marks have been successful; indeed, consumers contact the Opposer referring specifically to its marks as advertised. For example, consumers call and say, "I hear you are the Home of the No Job Loan; tell me more." Opposer's advertising with its No Job mark also includes the website [www.nojobloan.com](http://www.nojobloan.com) and the toll-free telephone number 1-888-No-Job-Loan.

Brief at 8-9 (citations and parentheticals omitted).

In response, applicant argues that: "Mere ownership of the various marks, or registrations thereof, does not suffice to establish a family of marks. Moreover, Opposer has not provided any proof in this proceeding that it promotes this asserted 'family' of marks together as a family." Brief at 7 (citation omitted).

A family of marks is a group of marks having a recognizable common characteristic, wherein the marks are composed and used in such a way that the public associates not only the individual marks, but also the common characteristic of the family, with the trademark owner. Simply using a series of similar marks does not of itself establish the existence of a family. There must be recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods.

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*J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991).

We agree with applicant. A family of marks must be established by more than simply using a variety of marks with a common characteristic.

[T]he different references to CBN as displayed on the webpages of record are simply links to other webpages (e.g., CBN News, CBN Outreach, CBN Television). The website links do not create the commercial impression that CBN is the common feature of a family of trademarks. Thus, petitioner has not met the first part of the test (i.e., that petitioner promoted its marks together prior to respondent's use of its mark).

*Christian Broadcasting Network Inc. v. ABS-CBN*

*International*, 84 USPQ2d 1560, 1566 (TTAB 2007) (footnote omitted). We agree that the evidence that opposer points to simply shows use of another "No \_\_\_ Loan" mark and a telephone number or a website address that includes the words "No Job." Therefore, this evidence does not even show that the marks (HOME OF THE NO SCORE LOAN or HOME OF THE NO CREDIT LOAN) are used with opposer's HOME OF THE NO JOB LOAN. Even if these marks were actually used with the entire NO JOB LOAN mark, these isolated references do not create the commercial impression that HOME OF THE NO \_\_\_ LOAN is a common feature of a family of trademarks.

Therefore, we will now consider whether there is a likelihood of confusion between applicant's HOME OF THE NO COST LOAN and opposer's HOME OF THE NO JOB LOAN. As we discussed previously, the marks are identical except for the

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words "Job" and "Cost." Opposer argues that as "a whole, they give the same impression of offering non-traditional loans. One conveys the impression that it offers a loan that does not cost anything, and the other conveys the impression that it offers a loan that does not require proof of employment. The Applicant and the Opposer could readily offer either of these products." Brief at 11. Further, opposer asserts that "the No Job mark is an arbitrary, or at the very least, suggestive mark." Brief at 10.

Applicant contends that "assuming without conceding that Opposer's mark is at all suggestive, applicant's mark is as suggestive as Opposer's mark, which serves to distinguish the two marks." Brief at 8. Applicant also claims that the marks have different meanings and connotations.

Applicant's mark HOME OF THE NO COST LOAN indicates that a loan offer that does not contemplate a cost, that is, a loan that does not involve a price as a prerequisite. Opposer's mark HOME OF THE NO JOB LOAN shows a loan product that does not require an occupation or employment. Clearly, a loan that does not demand a price differs in meaning from a loan that does not demand employment. The entirely different meanings of the marks thus prevent the likelihood of confusion between the marks.

Brief at 11.

We hold that the marks HOME OF THE NO JOB LOAN and HOME OF THE NO COST LOAN are very similar in sound and appearance. The only difference between the marks is the fact that the loans are described as "No Job" and "No Cost"

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loans. The fact that the marks are not identical does not mean that there is no likelihood of confusion. Small differences between the marks do not eliminate the similarity of the marks. See *Pickering & Co., Inc. v. Bose Corp.*, 181 USPQ 602, 603 (TTAB 1974) "When both slogans are considered in their entirety, as they must be, there is little doubt but that they are substantially similar in sound and appearance. And, after a consideration of all the evidence herein, we are clearly of the opinion that applicant's slogan 'YOU CAN HEAR THE DIFFERENCE NOW.' so resembles the slogan 'FOR THOSE WHO CAN HEAR THE DIFFERENCE'"). See also *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984) (SPICE VALLEY so resembles SPICE ISLANDS that confusion is likely).

Here, applicant has disclaimed the term "No Cost Loan." Disclaimed matter is often "less significant in creating the mark's commercial impression." *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001). See also *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting, *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion'").

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Applicant has described its loans as follows: "[W]e were doing refinance and to some extent purchase transactions in which we would pay for the client's closing costs from the proceeds of the yield spread premium that the banks and mortgage companies which funded the loans would pay to The Mortgage Department which would net the customer a loan at no cost." Stoltze dep. at 6. Indeed, applicant admits that "the term 'no-cost loan' is otherwise commonly used in the lending industry to refer to a type of loan." Brief at 14. Therefore, it is unlikely that consumers will rely heavily on the term "cost" to distinguish the marks.

Opposer argues that "[b]oth marks suggest to the purchasing public the requirements for obtaining a loan from the particular company." Reply Brief at 4. We agree that consumers are likely to view the marks as identifying the same source for loans that does not require certain things (a job or costs) that other mortgage companies may require. *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) (citations omitted) ("In sum, the Board had good reason to discount ALE, JOSE, and GOLD as significant differences between the marks." Federal Circuit affirmed the board's determination that "Jose Gaspar Gold" for tequila, is likely to cause confusion with registered "Gaspar's Ale"). We add that while the opposer's mark is

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suggestive, the evidence does not indicate that it is a weak mark that is only entitled to a narrow scope of protection.

Here, the marks are similar in sound and appearance and the only difference between the meaning and commercial impression of the marks is that the marks refer to loan products that omit different requirements. Therefore, we conclude that the marks are similar. Homeowners, who oftentimes would be simply ordinary purchasers, are likely to believe that there is some association or connection between mortgage services marketed to homeowners under the marks HOME OF THE NO JOB LOAN and HOME OF THE NO COST LOAN. Furthermore, when these very similar marks are used on identical services, we hold that there is a likelihood of confusion.

Decision: The opposition to the registration of application Serial No. 78469581 is sustained.