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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Rene Dubos Center for
Human Environments, Inc.

Serial No. 75/105,387

Michael A. Gollin of Venable, Baetjer, Howard
& Civiletti LLP for applicant.

Howard Smiga, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Quinn, Wendel and Bottorff, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

The Rene Dubos Center for Human Environments, Inc. has
filed an application to register the mark EARTHLINE for
"computer services relating to social and humanistic
aspects of environmental problems, namely, providing
electronic information services on a global information
network in the field of social and humanistic aspects of
environmental problems; providing a computer database

containing news, encyclopedia, and information in the field of social and humanistic aspects of environmental problems; and providing on-line interactive discussion forums for real-time interaction between computers users featuring topics related to social and humanistic aspects of environmental problems."¹

Registration has been finally refused under Section 2(d) on the ground of likelihood of confusion with the mark depicted below, which is registered for "publications, namely, books and magazines regarding natural resources."²

The refusal has been appealed and applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Here, as in any determination of likelihood of confusion, two key considerations in our analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods and/or services with which the marks are being used, or are intended to be

¹ Serial No. 75/105,387, filed May 7, 1996, based on an allegation of a bona fide intent to use the mark in commerce.

² Registration No. 2,023,503, issued December 17, 1996.

used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999).

The Examining Attorney maintains that the publications of registrant and the informational services provided by applicant on a global information network are related because they address similar subject matter, namely, environment issues. Even though applicant's information is provided on-line and registrant's in magazine and book form, the Examining Attorney argues that it has become increasingly common for magazines to have web sites and, accordingly, consumers subscribing to registrant's magazine may well encounter applicant's information via a global computer network and be confused as to the source of the material. The Examining Attorney has made of record evidence of several publications which have on-line databases featuring news similar to that found in their magazines.

Applicant contends that the goods and services are distinct, in that its services are in the field of social and humanistic aspects of environmental problems while registrant's publications concern natural resources, and the scientific aspects thereof, rather than any environmental problems. Applicant argues that the channels of trade involved are also different, since its services

are provided on the Internet, while there is no evidence that registrant's goods are so offered or that it is common for the publishers of books or highly specialized magazines to have web sites.

It is well established that it is not necessary for the goods of registrant and the services of applicant to be similar or competitive to support a holding of likelihood of confusion. It is sufficient if the respective goods and services are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from, or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) and the cases cited therein.

We find the overlap in subject matter of registrant's publications and applicant's electronic information services sufficient to establish a relationship between the goods and services. Contrary to applicant's arguments, we fail to see that a dividing line can be drawn between information with respect to the natural resources of a country or area and environmental issues. As shown by the dictionary definition relied upon by the Examining Attorney

in his brief, the "natural resources" are the "natural wealth of a country, consisting of land, forests, mineral deposits, water, etc."³ We consider "environmental problems" to be generally understood as encompassing issues such as the pollution or depletion of natural resources. Moreover, since there is no limitation as to the breadth of topics concerning "natural resources" covered in registrant's publications, both "scientific aspects" and environmental problems fall within the scope thereof.

Furthermore, we find the evidence of record fully adequate to establish that it is becoming increasingly common for publishers of magazines to offer on-line versions thereof. Whether or not registrant is presently offering its magazine on-line, we consider it reasonable that the same persons might encounter both registrant's publications and applicant's on-line informational services. Because of the known practice of on-line offering of magazines and because of the similarity of subject matter of registrant's and applicant's materials, these persons would be likely to believe that both emanate from the same source, if confusingly similar marks are used

³ Although not properly introduced by the Examining Attorney, dictionary definitions constitute matter of which we may take judicial notice. See *In re Patent & Trademark Services, Inc.*, 49 USPQ2d 1537 (TTAB 1998).

therewith. Contrary to applicant's arguments, the respective identifications of services and goods in the application and the cited registration contain no distinctions in channels of trade, only distinctions in form of media, and the potential purchasers would be the same persons.

Turning to the respective marks, and the similarity or dissimilarity thereof, the Examining Attorney takes the position that applicant has appropriated a major portion of the registered mark by using the identical root term EARTHLINE. The Examining Attorney argues that the same overall commercial impressions are created by the marks, the design features of registrant's mark being of lesser import than the literal portions.

Applicant, on the other hand, insists that the overall commercial impressions of the two marks are distinctly different. Applicant argues that the marks differ both in appearance, registrant's mark being two words separated by a slash and containing design elements, and in sound, there being a difference not only in the number of words and syllables in registrant's mark but also a pause, which gives it a "rhythmic" element. In addition, according to applicant, the connotation of "lines" in registrant's mark

is "of text," whereas in applicant's mark "line" refers to the electronic connection on-line.

Although it is true that, in determining likelihood of confusion, marks must be considered in their entireties, it is well established that there is nothing improper in giving more or less weight to a particular feature of a mark. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). If the word portion of a mark rather than the design features are more likely to be remembered and relied upon by purchasers in referring to the goods, it is the word portion which will be accorded more weight. See Ceccato v. Manifattura Lane Geatano Marzotto & Figli S.p.A., 32 USPQ2d 1192 (TTAB 1994); In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987).

We agree with the Examining Attorney that the literal portions EARTHLINES TIDELINES play the major part in the overall commercial impression created by registrant's mark. The design features are clearly secondary and chiefly serve to reenforce the literal portions. Furthermore, we consider the word EARTHLINES to be the dominant or more significant term, both because of its position as the first word in the mark and because of its more distinctive nature. See generally, Johnson Publishing Company, Inc. v. International Development Ltd., Inc., 221 USPQ 155 (TTAB

1982)(holding likelihood of confusion where one mark consists of a single word and the other mark is that same word followed by a second term).

Although TIDELINES has a recognized meaning,⁴ EARTHLINES appears to be a term coined by registrant. Thus, whether applicant's mark EARTHLINE is viewed as a variation or shortening of registrant's mark, or whether only the first portion of registrant's mark has been remembered over a period of time, we find confusion likely between the marks EARTHLINE and EARTHLINES TIDELINES. The distinctions which applicant attempts to draw based on the mere presence of a second term in registrant's mark are unpersuasive. As for any distinction in connotation between the mark based on different meanings for "line," we find applicant's interpretation of registrant's mark rather strained and also without foundation, particularly in view of the recognized meaning of "tideline."

Accordingly, on the basis of the similar overall commercial impressions created by the respective marks and the related nature of the goods and services with which the

⁴ We take judicial notice of the following definition in *Webster's Third New International Dictionary* (1993):

tide line: TIDEMARK

tidemark 1: a high-water or sometimes low-water mark left by tidal water or a flood (between the ~s).

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marks are being used, or are intended to be used, we find confusion likely. To the extent that there may be any doubt whatsoever in our minds, we follow the well-established principle that any doubts regarding the likelihood of confusion must be resolved against applicant, as the newcomer in the field. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal to register under Section 2(d) is affirmed.

T. J. Quinn

H. R. Wendel

C. M. Bottorff

Administrative Trademark Judges,
Trademark Trial and Appeal Board

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