

06/22/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 9
RS/JS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mesa Technical College

Serial No. 75/597,997 and 75/597,998

Jeffrey D. Meyers of Peacock Myers & Adams PC for Mesa
Technical College.

John M. C. Kelly, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Simms, Hohein and Bottorff, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Mesa Technical College (applicant), a New Mexico
corporation, has appealed from the final refusals of the
Trademark Examining Attorney to register the marks MESA
TECHNICAL COLLEGE and MESA TECHNICAL COLLAGE and design
("TECHNICAL COLLEGE" disclaimed apart from each of the
marks) for educational services, namely, conducting
classes, seminars, conferences and workshops at the college
level in the field of paleontology and geology and

distributing course materials in connection therewith.¹

These cases were briefed separately but the Board will decide both appeals in this opinion.

We affirm.

The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC 1052(d), on the basis of Registration No. 1,991,246, issued August 6, 1996, for the mark MESA for educational services, namely, conducting pre-college programs in the fields of mathematics, engineering and science. The registration is owned by the Regents of the University of California.

It is the Examining Attorney's position that the word MESA is the dominant element in each of applicant's marks, and that the generic and disclaimed matter ("TECHNICAL COLLEGE") is less significant or less dominant in creating a commercial impression in the marks. The Examining Attorney argues that registrant's and applicant's marks have similar connotations and that the additional wording in each of applicant's marks does not overcome a likelihood of confusion. With respect to the connotation, the Examining Attorney, relying upon a definition of "mesa" as

¹ Applications Serial Nos. 75/597,997 and 75/597,998, both filed December 2, 1998, claiming use and use in commerce since October 1, 1996. In the second application, applicant has described its mark as consisting in part of a stylized sun shining over the horizon of a stylized sloping landscape.

"a broad flat-topped elevation with one or more clifflike sides, common in the southwest United States," contends that applicant has failed to show that the respective marks would have different commercial impressions.

Concerning the services, the Examining Attorney argues that they are closely related with potentially identical subject matter. In addition, the Examining Attorney points out that the owner of the cited registration, the Regents of the University of California, offers college educational services, according to Web site evidence of record. Also, third-party use-based registrations made of record by the Examining Attorney show that consumers may encounter both high school or pre-college and college-level courses under the same mark. It is the Examining Attorney's position that the same students may encounter both registrant's pre-college educational services and applicant's college-level paleontology and geology educational services. Further, the Examining Attorney asks us to resolve any doubt in favor of the registrant.

Applicant, on the other hand, contends that the respective marks have different meanings, applicant's conveying the impression that its services are related to topographical characteristics of the Southwest, while registrant's mark MESA is, according to Web site evidence

of record, an acronym for Mathematics, Engineering and Science Achievement. Further, applicant contends that registrant's mark *may* be intended to convey other meanings of "mesa," derived from the Spanish word for "table," suggesting that registrant's services will enable one to have a "firm table" of knowledge with respect to mathematics, engineering and science. Applicant also argues that the respective services would be offered to different customers, applicant's being offered directly to college-aged students whereas registrant's pre-college level services would be offered to minors, rather than adults. Therefore, according to applicant, guardians of minors would be the likely buyers of registrant's services. Applicant's attorney also contends that there have been no instances of actual confusion in the four years since applicant's use commenced.²

Upon careful consideration of this record, we are persuaded that applicant's use of the marks sought to be registered for applicant's college-level educational

² In applicant's initial response and in its brief on the case, applicant made reference to two third-party registrations which include the word "MESA." The Examining Attorney in his brief objected to this mere listing of registration numbers and marks without the provision of copies thereof. Because the Examining Attorney did not raise this objection until his brief, we believe that the objection, which could have been cured, has been waived. Accordingly, we have considered this listing for whatever limited probative value it has.

services is or will be likely to cause confusion with registrant's mark MESA for pre-college educational services. First, considering the marks, giving due weight to the generic words "TECHNICAL COLLEGE" in applicant's marks, the respective marks are substantially similar in commercial impression. They differ only by the addition of generic matter in applicant's asserted marks ("TECHNICAL COLLEGE") and the design in Serial No. 75/597,998.

Moreover, applicant has submitted no proof that registrant's mark would be recognized by the relevant consumers as an acronym having a different meaning than such term in applicant's marks.

With respect to the services, as the Examining Attorney has noted, the respective services need not be identical or directly competitive in order for there to be likelihood of confusion. The respective services need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the respective services come from the same source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984) and *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985). We believe that this record adequately establishes the close

relationship between high school or pre-college educational services and college-level educational programs. Not only does registrant offer all of these services, but other entities apparently do as well, according to the third-party registrations of record. The evidence helps demonstrate that consumers may encounter these similar services offered under the same mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Accordingly, we conclude that the relevant public, aware of registrant's MESA pre-college educational services, who encounter applicant's MESA TECHNICAL COLLEGE (with and without design) college-level educational services, are likely to believe that the respective services come from or are sponsored by the same source.

Decision: The refusals of registration are affirmed.