

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

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Paper No. 12  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re GCS Group, Inc.

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Serial No. 75/205,892

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David V. Radack of Eckert Seamans Cherin & Mellott, LLC for  
GCS Group, Inc.

Martha Santomartino, Trademark Examining Attorney, Law  
Office 112 (Janice O'Lear, Managing Attorney).

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Before Seeherman, Hanak and Rogers, Administrative  
Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

GCS Group, Inc. has filed an application to register  
RES-A-TRACK as a trademark in International Class 9 for  
goods identified as "computer software for use in managing  
a database of health care providers, scheduling personnel

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and reporting to government agencies to facilitate reimbursement."<sup>1</sup>

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, as used in connection with the identified goods, is likely to cause confusion or mistake or to deceive consumers, in view of the prior registration of the mark RESTRACK 2000 for "computer software program for documenting resident care in medical and nursing facilities."<sup>2</sup>

When the refusal was made final, applicant appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See In re E.I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the

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<sup>1</sup> Serial No. 75/205,892, filed November 29, 1996, based on applicant's allegation of first use and first use in commerce as of May 15, 1996. The application was suspended for some time, pending resolution of the prior-filed application that resulted in issuance of the registration cited by the examining attorney to support the refusal of registration considered herein.

<sup>2</sup> Registration No. 2,206,029, issued November 24, 1998 to Kelly Consulting, Inc.

analysis of likelihood of confusion presented by this case, two key considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We begin with the goods and note that our analysis of the similarity or relatedness of the goods is based on the identifications in the involved application and registration. See Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990), and Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987).

Applicant argues that the respective computer programs are not competitive and that its program is used "in large teaching hospitals, where the activities of medical students and medical residents must be tracked," whereas registrant's program is assertedly used only by "nursing home facilities where patient movements and needs must be tracked." (Emphasis by applicant.) As further support for its argument that registrant's goods would not be used in hospitals, applicant asserts that nursing homes have "residents" while hospitals have "patients" and, therefore, since registrant's RESTRACK 2000 mark suggests that the

software sold under the mark tracks residents' care, the software would only be used in nursing homes, not in hospitals. There is nothing in the record, however, to support the contention that residents is a term used only in conjunction with nursing homes and patients is a term used only in conjunction with hospitals. We do not find applicant's unsupported argument on this point persuasive.<sup>3</sup>

In short, applicant's goods are not limited to use in large teaching hospitals and we agree with the examining attorney that, as the goods are identified in the application, they could be used in any facilities employing health care providers. In addition, in the absence of support in the record for applicant's contention that residents is not a term that can be used to refer to individuals receiving care in hospitals, we read the registrant's identification to encompass computer programs tracking care being provided to individuals in all sorts of medical facilities, including hospitals.

Finally, we note that one specific function of applicant's program is to "facilitate reimbursement," apparently of labor costs associated with providing medical

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<sup>3</sup> Applicant itself alternately refers to the individuals whose care is tracked by registrant's computer program as patients or residents.

care. There is nothing in the identification of registrant's program that would preclude its being used to facilitate reimbursement of these or other costs incurred when providing medical care. Thus, the programs may be viewed as complementary, even if they are not competitive.

Even if goods identified in an application and registration are not competitive, there may still be a likelihood of confusion, when similar marks are used in conjunction therewith, if such goods are related in some manner and/or if the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under conditions that would give rise to the mistaken belief that the goods emanate from or are in some way associated with the same source or sponsor. See In re Kangaroos U.S.A., 223 USPQ 1025, 1026-1027 (TTAB 1984), and cases cited therein. In the case at hand, we find the goods related for purposes of the likelihood of confusion analysis.

Turning to the marks, we find them very similar. As applicant acknowledges, the "Res" portion of each mark is highly suggestive of the term "resident," and the "Track" portion of each mark specifies the common "tracking" function of each program. Applicant argues that the letter "A" in its mark is the mark's dominant element and that

"2000" is the dominant element of registrant's mark. We disagree. We do not find the "A" in applicant's mark to impart any particular significance to the mark, or to detract from the overall connotative significance of the mark as signifying a program for tracking hospital residents. Likewise, we do not find the "2000" element of registrant's mark nearly as significant in its contribution to the overall commercial impression of that mark as is the "RESTRACK" portion. Generally, the first part of a mark is more likely to be impressed upon the mind of, and be remembered by, a prospective purchaser. Presto Products Inc. v. Nice-Pak Products Inc., 9 USPQ2d 1895, 1897 (TTAB 1988). Moreover, notwithstanding that there is no disclaimer of "2000" in the cited registration, we agree with the examining attorney that it would likely be viewed by purchasers as indicative of a version or model of registrant's software. We do not find the presence of "2000" in registrant's mark sufficient to overcome the similarity in sight and sound of RES-A-TRACK and RESTRACK.

While the marks may be different in connotation insofar as each is suggestive of a program that tracks a different type of "resident," we do not find any such difference in connotation sufficient to outweigh the overall similarity of the marks in sight and sound. We

need not find similarity in each of the elements of the "sound, appearance or meaning" trilogy to find that marks are similar for purposes of the likelihood of confusion analysis. See In re Lamson Oil Co., 6 USPQ2d 1041, 1042 (TTAB 1988).

Applicant argues that its goods are expensive and would only be purchased by sophisticated consumers. Even so, when marks very similar in appearance and pronunciation are used on or in connection with related goods, even sophisticated purchasers may be confused. See, e.g., Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990). Moreover, given that the goods as identified are not competitive but may be viewed as complementary, even sophisticated consumers may view the marks as variations on a theme intended to differentiate related products having a common source or sponsorship.

Decision: The refusal of registration under Section 2(d) of the Lanham Act is affirmed.