

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 10

10/4/00

HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Technion Communications Corporation

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Serial No. 75/531,955

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**Charles E. Baxley** of Hart, Baxley, Daniels & Holton for applicant.

**Wm. Patrick Shanahan**, Trademark Examining Attorney, Law Office 113 (Meryl Hershkowitz, Managing Attorney).

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Before Hohein, Hairston and Wendel, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Technion Communications Corporation has filed an application to register the mark TECHNISOFT for "computer software for use in organizing, deriving, analyzing, compiling and offering of consumer tendency information sourced from telephonic databases."<sup>1</sup>

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of

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<sup>1</sup> Serial No. 75/531,955, filed August 6, 1998, based on an allegation of a bona fide intention to use the mark in commerce.

confusion with the registered mark TECHNOSOFT for "computer programs."<sup>2</sup> The refusal has been appealed and both applicant and the Examining Attorney have filed briefs. Applicant waived its right to an oral hearing.

We make our determination of likelihood of confusion on the basis of those of the *du Pont* factors<sup>3</sup> which are relevant under the circumstances. Here, two key considerations in our analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods with which the marks are being used, or are intended to be used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the case cited therein.

Looking first to the goods, the Examining Attorney maintains that under the Board's ruling in *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992), the goods are legally identical. In line with the determination in *Linkvest* that goods identified broadly as "computer programs" would encompass all varieties of computer programs, the Examining

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<sup>2</sup> Registration No. 1,797,556, issued October 12, 1993. Section 8 affidavit accepted. The registration originally issued for goods identified as "computers and computer programs," but the identification was amended with the filing of the Section 8 affidavit to "computer programs."

<sup>3</sup> *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

Attorney considers applicant's specific computer software to be covered by the goods of the cited registration.

Applicant insists that the Examining Attorney is extrapolating the *Linkvest* decision too far; that the computer world has greatly changed since 1992; and that the "sweeping fiat of *Linkvest* is overdue for a tune-up."

(Brief, p. 4). Applicant points to present Office practice in which computer programs are required to be further identified as to intended purpose. Applicant also argues that the holding of *Linkvest*, even if accepted, should be limited to those cases in which the marks are identical.

It is well established that the question of likelihood of confusion must be determined on the basis of the goods as identified in the involved application and the cited registration, rather than on what any evidence may show those goods to be. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). The Board simply followed this basic principle in determining in *Linkvest* that goods identified in the cited registration as "computer programs recorded on magnetic disks" encompassed all such computer programs, without any limitation as to the kind of program or the field of use. The *Linkvest* decision has not become outdated; the propriety of interpreting goods identified in

this broad manner has not been overruled. Although the Office may no longer permit the issuance of registrations with such broad identifications, the scope of protection to which earlier registrations with broader identifications are entitled has not been diminished. When faced with the citation of such a registration, an applicant's recourse lies in seeking partial cancellation of the registration under Section 18 of the Trademark Act.

Furthermore, we find no reason to limit the *Linkvest* decision to those cases in which the involved marks are identical. As pointed out by the Examining Attorney, the similarity or dissimilarity of the goods is a separate factor to be taken under consideration, independently of the similarity or dissimilarity of the marks. While the greater the degree in similarity of the marks, the lesser may be the degree in similarity of the goods required to support a holding of likelihood of confusion, the degree of similarity of the marks per se plays no part in the determination of the degree of similarity between the goods.

Thus, we find applicant's specific computer software to be fully encompassed by the "computer programs" of the cited registration. We move forward to a comparison of the

marks being used, or intended to be used, on these computer program or computer software products.<sup>4</sup>

The Examining Attorney argues that applicant's mark TECHNISOFT and registrant's mark TECHNOSOFT are highly similar in sound and appearance and present essentially the same connotation and commercial impression. Both marks are said to suggest technical software programs.

Applicant, on the other hand, contends that a distinct difference is created by the presence of the term "NO" in the middle of registrant's mark. Applicant argues that "NO" sends consumers a negative message, whereas the "NI" of applicant's mark is liltng and positive. The difference between "NO" and "NI" is said to be "critical" to the sound, appearance and commercial impressions of the marks.

We find the respective marks highly similar in sound and appearance, the sole difference of one vowel in the middle of the marks being one which is likely not even to

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<sup>4</sup> We take judicial notice of the following definition found in *The Computer Glossary* (7<sup>th</sup> ed. 1995):

software program     A computer program (computer application). All computer programs are software. Usage of the two words together is redundant, but common.

Thus, we find no merit in applicant's attempt to distinguish between registrant's "computer programs" and applicant's "computer software."

be noted, much less remembered by purchasers over a period of time. The "NO" connotation argued by applicant appears to be a bit strained and one not likely to be perceived by purchasers. We further agree with the Examining Attorney that the marks create similar overall commercial impressions, there being little distinction in connotation between "techno" and "techni" when used with products of this nature.

While applicant further argues that its purchasers are a group of highly specialized, sophisticated executives who would not be confused by the respective marks, we would only reiterate that which was pointed out in *Linkvest*, namely, that "expertise in a particular field does not necessarily endow one with expertise in connection with the use of a trademark." This is especially true when consideration is given to the fact that there is the potential for use of the marks on very similar or identical products. Applicant's additional argument that it is not aware of any actual confusion is equally unpersuasive, in view of the fact that there is no evidence that applicant has as yet even used its mark.

Accordingly, upon consideration of all relevant factors, and particularly in view of the high degree of similarity of the respective marks and the overlap of

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registrant's computer programs with applicant's particular software, we find confusion likely if applicant were to use its TECHNISOFT mark on the goods identified in the application.

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

G. D. Hohein

P. T. Hairston

H. R. Wendel

Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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