

Simms, Administrative Trademark Judge, concurring:

While I concur in the result reached by the majority, I would add the following comments.

First, in response to the Examining Attorney's argument that registrant's description of goods ("pre-recorded computer programs recorded on magnetic disks") should be broadly construed to include applicant's specifically described computer programs for doctors' offices, I would point out that this Office no longer allows such broad descriptions of computer programs. See TMEP Section 804.03(b). The Office now requires that applicants specify the purposes or functions of their computer programs. In light of this change, I am reluctant to say, as the Examining Attorney does, that the registrant's identification is broad enough to encompass the goods in applicant's description.

However, registrant has also registered its mark for computer programs for spreadsheet applications. With respect to this description, it appears to me that these computer programs could be used by any business, including a doctor's office. With respect to these goods, therefore, I find a closer relationship.

Second, this is an ex parte case and, in the absence of evidence, little or no weight can be given to any fame of the registered marks. If, in an inter partes proceeding, the registrant can demonstrate the fame of its registered

marks for its computer programs,¹ as well as other facts bearing on the issue of likelihood of confusion, then we may reach a different result.

R. L. Simms
Administrative
Trademark Judge

¹ Applicant appears to acknowledge some level of fame in the registered marks when counsel concedes that these marks are "used on a well known best-selling computer software program..." (Response, p. 2, filed Nov. 20, 1995)