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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cardinal Business Media, Inc.

Serial No. 74/682,500

Timothy D. Pecsénye and Cynthia Greer of Blank, Rome, Comisky &
McCauley for applicant.

Paula B. Mays, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Quinn, Hohein, and Hairston, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Cardinal Business Media, Inc. has filed an application
to register the mark "ONSTAGE" for "directories of goods and
services particular to the live performance industry".¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that

¹ Ser. No. 74/682,500, filed on May 31, 1995, which alleges a bona
fide intention to use the mark in commerce.

applicant's mark, when applied to its goods, so resembles the mark "AT&T: ONSTAGE," which is registered, in the format reproduced below,

AT&T: OnStage

for "entertainment services, namely the sponsorship, promotion and presentation of live theatrical shows, live dance shows and live musical performances,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Turning first to consideration of the respective goods and services, applicant asserts with respect to its directories of goods and services particular to the live performance industry that:

Applicant's directory contains information regarding items such as sound reinforcement and remote recording companies, booking agencies, managers, touring companies, cartage services, venues, promoters, and production personnel. This type of directory is used by individuals in the industry who requires [sic] information on goods and services necessary for organizing, producing and marketing a live performance. This is an industry specific publication which is geared to industry professionals.

² Reg. No. 1,591,389, issued on April 10, 1990, which sets forth dates of first use of January 31, 1987; combined affidavit §§8 and 15.

Registrant's services, on the other hand, "are more properly characterized as business or financial services," according to applicant, since registrant "simply finances projects in the entertainment field." Specifically, applicant admits that registrant, "AT&T[,] is a large, and perhaps the most widely recognized, telecommunications company" which, applicant contends, essentially "lends its name, financial support and general corporate sponsorship to various theatrical presentations." Applicant consequently insists that, since "[a] production company seeking financial sponsorship services would not consult Applicant's directory," there is no "intersection" between applicant's goods and registrant's services.

The Examining Attorney, however, correctly observes that it is well settled that goods and services need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods and services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, e.g., *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590, 595-96 (TTAB 1978); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). Here, the

Examining Attorney argues, not only is "AT&T ... known for its directory services including directory listings," but "both the applicant's goods and the registrant's services are in the entertainment and performance industries, [and thus] the consumer is likely to believe that the applicant's directories feature the entertainment services sponsored by the registrant."

We concur with the Examining Attorney that applicant's goods and registrant's services are so closely related that, if sold or offered under the same or similar marks, confusion as to the source or affiliation thereof would be likely to occur. Plainly, business managers, producers and promoters of theater companies, dance troops, musical groups and other performing artists would utilize applicant's directories of goods and services particular to the live performance industry in order to find the goods and/or services required to stage or otherwise present the artists' performances. Presenting such entertainment also typically requires, however, securing the kinds of financial sponsorship and promotion which registrant's services provide. Given the logistics and costs involved in presenting live performances, individuals who organize, produce and/or market such entertainment events as their profession would have occasion to consult applicant's directories and to seek registrant's financial support services.

Turning, then, to consideration of the respective marks, applicant contends that:

The presentation of Registrant's trademark creates a unique impression. "On stage" is defined as "on a part of the stage visible to the audience." AT&T uses the mark as AT&T: ONSTAGE. (emphasis added) The use of the colon in the trademark suggests that it is AT&T who is on stage, that is, in the limelight by financially supporting the project. Through this trademark, AT&T highlights the company's involvement in projects other than telecommunications (probably charitable in nature) and allows AT&T to present itself as the "star" due to its sponsorship of the project.

Applicant's mark, on the other hand, simply alludes to live performances which are "on stage." A consumer encountering Applicant's mark on industry related directories would probably assume the

directory had something to do with being or getting "on stage." The form[s] of the two trademarks create separate commercial impressions.

We agree with the Examining Attorney, however, that the respective marks, when considered in their entireties, project essentially the same commercial impression due to the shared term "ONSTAGE". Although we disagree with the Examining Attorney's position that the word "**Onstage** is the dominant term of the registrant's mark" inasmuch as "[t]he term AT&T is merely ancillary in the registered mark, and merely identifies the owner of the registered mark," we also disagree with applicant's contrary assertion that the term "AT&T" predominates in registrant's mark.

Instead, this case is governed by the general rule that likelihood of confusion is not avoided between otherwise

confusingly similar marks merely by adding or deleting a house mark. See, e.g., In re Apparel Ventures, Inc., 229 USPQ 225, 226 (TTAB 1986) and In re Riddle, 225 USPQ 630, 632 (TTAB 1985). Here, the absence of the house mark "AT&T" from applicant's "ONSTAGE" mark does not serve to avoid a likelihood of confusion since such mark and registrant's "AT&T: ONSTAGE" and design mark both create essentially the same commercial impression due to the presence of the common term "ONSTAGE," which has virtually the same suggestive connotation in both marks.

In particular, as to applicant's argument that, due to the conceded renown of the name "AT&T," consumers would focus on the "AT&T" portion of registrant's "AT&T: ONSTAGE" and design mark as designating the "star" or sponsor of the show being presented and thus would readily distinguish such mark from applicant's "ONSTAGE" mark, we note that this case is analogous to In re Riddle, supra at 632, in which the Board pointed out that:

Applicant urges that, because of the fame of Richard Petty in conjunction with automobile racing, it is the "RICHARD PETTY'S" portion of applicant's ["RICHARD PETTY'S ACCUTUNE" and design] mark which dominates the mark and which would cause it to be easily distinguishable from the ["ACCUTUNE"] mark shown in the cited registration. The problem with applicant's argument is that, while the name "Richard Petty" might well be a famous one in connection with automobiles and automobile racing, that fact does not diminish the likelihood of confusion in this case. In particular, those who encounter both the "ACCUTUNE" automotive testing equipment [offered by registrant] and the

automotive service centers offered under applicant's mark would be likely to believe that Richard Petty endorsed or was in some way associated with both the goods and services, in that both marks contain the designation "ACCUTUNE."

Likewise, those knowing of registrant as primarily a provider of telecommunications services could nevertheless believe that AT&T endorses or is in some manner affiliated with both the financing of entertainment services, through its sponsorship, promotion and presentation of live theatrical, dance and musical shows, and the closely related field of providing directories of goods and services which are of particular interest to the live performance industry, inasmuch as both registrant's and applicant's marks feature the term "ONSTAGE".

Accordingly, we conclude that purchasers and prospective customers, familiar with registrant's "AT&T: ONSTAGE" and design mark for its entertainment services, namely the sponsorship, promotion and presentation of live theatrical shows, live dance shows and live musical performances, could reasonably believe, upon encountering applicant's substantially similar mark "ONSTAGE" for its directories of goods and services particular to the live performance industry, that registrant has expanded its offerings to include the closely related field of offering directories of goods and services of particular interest to the live performance industry.

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

Ser. No. 74/682,500

T. J. Quinn

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges,
Trademark Trial and Appeal Board