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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Executive Greetings, Inc.

v.

CalComp, Inc.

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Opposition No. 80,070  
to application Serial No. 73/697,066,  
filed on March 10, 1989

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Theodore F. Shiells of Curtis Morris & Safford for Wheeler  
Group, Inc.

James H. Laughlin of Lane & Mittendorf for CalComp Inc.

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Before Simms, Seeherman, and Hairston, Administrative  
Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Executive Greetings, Inc. (opposer),<sup>1</sup> a Connecticut  
corporation, doing business as The Drawing Board, has  
opposed the application of CalComp Inc. (applicant), a  
California corporation, to register the mark DRAWINGBOARD

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<sup>1</sup> In 1992, according to the testimony, opposer changed its name  
to Executive Greetings, Inc. Opposer's counsel also acknowledged  
this fact during oral argument.

for "computer graphics digitizer tablets."<sup>2</sup> In its pleading, opposer has asserted that it has used the marks DRAWING BOARD and THE DRAWING BOARD as trade names, trademarks and service marks on various goods including computer supplies and accessories; that it has previously used and registered these marks (for various office accessories as well as such items as greeting cards, invitations, announcements, correspondence forms, invoices, receipt books and voucher checks); that these marks have become well known in the field; and that applicant's mark, used in connection with its goods, so resembles opposer's marks and trade names as to be likely to cause confusion, to cause mistake or to deceive.

In its answer, applicant has denied the essential allegations of the notice of opposition and has asserted that applicant's customers are highly sophisticated and that the goods of the parties travel in different channels of trade.

The record of this case consists of testimony and exhibits submitted by both parties, numerous discovery responses of applicant and portions of three discovery depositions relied upon by opposer's notice of reliance; portions of printed publications, relied upon by opposer's notice of reliance; and the application file. The parties have submitted briefs and an oral hearing was held.

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<sup>2</sup> Application Serial No. 73/697,066, filed November 23, 1987, claiming use and use in commerce since March 23, 1987.

Opposer's Record

According to the testimony of opposer's vice president of marketing, Mr. Richard Willis, opposer makes and sells office supplies and promotional products. These products include labels, forms, memo pads, stationery, pens, pencils, greeting cards and computer supplies. In the latter category, opposer sells under the mark such goods as computer labels, diskettes, data cartridges, mag tape, computer printer ribbons, filing equipment, storage equipment for diskettes, data binders, computer and fax paper and laser paper products. Opposer also sells recall cards under the mark to dentists and doctors. Although opposer has recently expanded its offering of computer supplies, computer supplies under the mark have been sold by opposer since 1984. In the past, opposer also offered computer furniture under the mark. However, such sales ceased in 1990. Willis dep., 56. All of opposer's goods are offered through its catalogs and by telemarketing. In 1994, opposer's sales exceeded \$54 million while its advertising expenses exceeded \$17 million. Opposer distributes approximately 40 million catalogs and mailers per year promoting its products. Mr. Willis testified that, in the future, opposer may offer mouse pads under the mark and that, in the "longer term," opposer may offer keyboards. Willis dep., 47. Mr. Willis also testified that he is aware of no uses of the mark DRAWING BOARD or DRAWINGBOARD except by the parties involved in this opposition proceeding.

According to opposer's marketing manager, Ms. Corinne Rebillard, opposer's computer supplies have included such additional items as software, surge protectors, antiglare screens, dusts covers, PC repair kits, computer books and laser toner cartridges. Ms. Rebillard also stated that, between 1986 and 1988, opposer sold plotter pens. However, opposer does not sell computer hardware such as monitors and printers.

Opposer's record also consists of status and title copies of its pleaded registrations. They cover the mark shown below



**the drawing board**

for the following goods: correspondence forms, purchase order forms, invoices, recall cards, office removal cards, combined work diary and expense recording booklets, receipt books and voucher checks (Registration No. 777,414, issued September 22, 1964, renewed); and the mark THE DRAWING BOARD for the following goods: office accessories: namely, tape dispensers, pencil sharpeners, rotary card files, hole punchers, notebooks, binders, document files, pencils, writing pens, ink correction fluids, tape, nameplates, rubber ink stamps and printed materials: namely, writing paper and envelopes, greeting cards, labels, printed

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business forms, business cards, calendars, note paper and bank checks, in class 16; custom printing services in class 35; and mail order catalog services in the field of office supplies in class 42 (Registration No. 1,263,574, issued January 10, 1984). Another registration, Registration No. 1,033,833, issued February 17, 1976, covering the mark DRAWING BOARD and design for greeting cards, invitations, announcements, thank you cards and notecards has, according to office records, expired.

Opposer also took the testimony of a legal assistant who had conducted a trademark search of a private database (Trademarkscan). That search retrieved ten marks which include the term "DRAWING BOARD," both registered and applied for, most of which are owned by Executive Greetings, Inc.

Applicant's Record

According to the testimony of Steven Schmenk, applicant's director of reseller accounts, applicant first began using the mark DRAWINGBOARD in March 1987 in connection with applicant's computer graphic input device (digitizer tablet). This product now sells from as low as \$200-300 to around \$12,000. Applicant sells driver software packaged with its digitizer device. According to the record, applicant sells its goods through national distributors to resellers, and applicant also sells its goods to original equipment manufacturers and end users directly. Some of applicant's goods, purchased by resellers

such as Computer Discount Warehouse, are sold through catalogs of the resellers. Approximately five to ten percent of applicant's sales are by this method. Schmenk dep., 42. While applicant's goods are sold in some computer stores (such as Egghead), applicant does not sell its goods in office supply stores. Applicant's ultimate consumers or end users include CAD (computer-aided design) designers and drafters, mappers and cartographers (geographic information systems users), architects, engineers, graphic arts designers and, to some extent, desktop publishers. Schmenk dep., 13, 33. Users of applicant's computer graphics equipment include architectural, construction, engineering and drafting firms. Applicant's customers are generally well educated. Sales of applicant's goods were approximately \$20 million in 1994, with advertising expenditures around \$1/2 million. Mr. Schmenk distinguished applicant's digitizers from other types of computer products:

The products [floppy disks, tape backup supplies] that you mentioned are consumables used in everyday activities, whereas the DrawingBoard digitizer products are high end specialized computer graphic input devices, and the amount of sales expertise and service and resource far exceeds [sic] what you would find in a typical office supply store.

Schmenk dep., 47. Mr. Schmenk also testified that there are no other third-party users of similar marks.

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Applicant's record also includes the testimony of Neil Kleinman, an expert in the field of digitizer marketing. He testified, among other things, that applicant has around 20 percent of the digitizer market and that about one to two percent of personal computer users use digitizers. Mr. Kleinman also conceded that digitizers of other companies are sold through catalogs.

Applicant advertises its goods by means of trade shows, advertisements placed in trade magazines, point-of-sale materials and catalogs. Applicant also knew of opposer's mark before applicant adopted its mark. Finally, the discovery reveals that applicant does not sell software per se.

The Parties' Arguments

Opposer argues that confusion is likely because of the similarity of the marks and the goods of the parties. It is opposer's position that its mark is unique and the subject of widespread use and promotion. Opposer argues that its mark is, therefore, famous. With respect to the goods, opposer argues that applicant's goods fall into the category of "office supplies" or "commodities," which are periodically ordered from suppliers, and are therefore similar to opposer's goods:

The "DRAWING BOARD" catalog has offered computer supplies of a widely varying type since at least as early as 1984. Although digitizer tablets have

not yet been offered, several competitive computer supplies catalogs are offering digitizer tablets, and it is possible that the "DRAWING BOARD" will do so in the future to keep pace.

The fact that digitizer tablets are carried by several different catalogs shows that they have become a commodity which anyone selling computer supplies can be expected to handle.

It would be natural for the "DRAWING BOARD" catalog to offer digitizer tablets in the future.

The trend is towards digitizer tablets becoming a commodity. The price has dropped, the item is carried in a number of different catalogs, and there are a number of different competing manufacturers. It becomes more and more likely that the products will be carried by ever-increasing numbers of distributors and catalogs in the future.

Opposer's main brief, 17-18, 21. Opposer argues that the fact that consumers of the respective products may be educated does not mean that confusion is unlikely, and that the lack of instances of actual confusion can be accounted for by the fact that applicant consistently uses its corporate name or trade name along with its trademark DRAWINGBOARD.

Applicant, on the other hand, argues that confusion is unlikely. In addition to pointing out various specific differences in the respective marks, applicant argues that its goods are specifically different from opposer's office and computer supplies. Applicant points to the fact that its product is a board on which graphic images are composed and that by using applicant's product this data is converted to digital information. The market for applicant's product

is a small specialty market, according to applicant's attorney, and consists of such fields as mapping, cartography, architecture and engineering. Applicant argues that opposer's mark, on the other hand, is a house mark principally used for holiday cards and in connection with its office supply mail order catalog business including printed paper supplies. While applicant acknowledges that opposer does sell some computer supplies like diskettes, data cartridges and computer ribbons, opposer does not sell computer hardware like applicant's peripheral equipment. Applicant also argues that opposer's mark may not be used on the specific goods which opposer sells through its catalog; instead the names of various different companies which make those goods appear on those products. With respect to the marks, it is applicant's position that its mark DRAWINGBOARD has a different connotation from opposer's mark because applicant's mark, used in connection with digitizer tablets, is reminiscent of drawing surfaces. Applicant's attorney also argues that there have been no instances of actual confusion despite eight years of contemporaneous use.

Discussion and Opinion

Upon careful consideration of this record and the arguments of the parties, we agree with applicant that, while the marks of the parties have obvious similarities, there are sufficient differences in the goods of the parties and the channels of trade and classes of customers that confusion is unlikely. Applicant's digitizer tablets are

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specialty computer graphic input devices which are specifically different from the office and computer supply products sold by opposer and listed in its registrations. Also, as applicant has noted, many of the goods which opposer sells in connection with its office (and computer) catalog business do not bear the mark THE DRAWING BOARD or DRAWING BOARD but the marks of the various vendors who sell to opposer. These facts, together with the fact that applicant's customers are likely to be relatively knowledgeable and sophisticated purchasers convince us that, although the marks are substantially similar, confusion is unlikely. We also observe, as opposer has acknowledged, that the renown of opposer's mark lies primarily with its long-standing greeting card and office supply catalog business, and not with computer peripheral equipment.

Decision: The opposition is dismissed.

R. L. Simms

E. J. Seeherman

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