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AUG 28 ,98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re MICOM Communications Corp.

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Serial No. 74/513,785

Laurence R. Hefter of Finnegan, Henderson, Farabow, Garrett &  
Dunner, LLP for MICOM Communications Corp.

Baldev S. Sarai, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

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Before Sams, Seeherman and Hohein, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

MICOM Communications Corp. has filed an application to  
register the mark "SNAPS" for "a system network architecture  
protocol emulator for use in telecommunications systems to enable  
traffic to be transmitted over a wide area network  
asynchronously".<sup>1</sup>

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<sup>1</sup> Ser. No. 74/513,785, filed on April 18, 1994, which alleges a bona  
fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its product, so resembles the mark "SNAPS," which is registered for "computer programs for use in network architectures and computer programs for use in interfacing and integration between and among various computer environments and various computer mainframes,"<sup>2</sup> 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.

Inasmuch as the marks herein are identical in all respects, the issue of likelihood of confusion essentially depends upon whether the respective goods are closely related. It is well settled, in this regard, that goods 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 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 in 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

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<sup>2</sup> Reg. No. 1,930,500, issued on October 31, 1995, which sets forth dates of first use of January 31, 1983.

590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Applicant argues, however, that its goods pertain to hardware used in the telecommunications industry, while those of registrant relate to software utilized in the computer industry. Specifically, applicant maintains that:

Applicant's trademark identifies a specific branch of the telecommunications market-- asynchronous transmission over a wide area network (WAN). The cited registration cannot relate to such asynchronous transmission in the telecommunications industry since it does not even relate to the telecommunications industry.

In view of the above, the customers for applicant's systems are different from the customers of the programs identified by the cited registration. This prevents any confusion or likelihood of confusion from occurring. ....

The Examining Attorney, on the other hand, correctly notes that the issue of likelihood of confusion must be determined on the basis of the goods as they are identified in the application and the cited registration, citing Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1816 (Fed. Cir. 1987) and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Here, the Examining Attorney argues, applicant's system network architecture protocol emulators for use in telecommunications systems to enable traffic to be transmitted over a wide area network asynchronously and registrant's computer programs for use in network architectures and computer programs for use in interfacing and integration

between and among various computer environments and various computer mainframes are, on their face, "very closely related ... because they both are used to perform computer networking functions." Given such similarity, the Examining Attorney contends that "it is reasonable to suppose that the goods would be found in the same channels of trade and [would be] sold [to] the same group of purchasers, namely, those concerned with the operation of computer networks."

In particular, the Examining Attorney further asserts that:

The reference to "telecommunications systems", "wide area networks" and an asynchronous mode of operation, is not sufficient to limit and differentiate the applicant's goods from those of the registrant principally because the meaning of the word "telecommunications" is vague and indefinite. Likewise, given that the registrant's software is for use in network architectures and is not limited to local area networks (LAN) or wide area networks (WAN), it must be interpreted as covering all types of networks. *In re Elbaum* [sic, *Elbaum*], 211 USPQ 639 (TTAB 1981). Similarly, the asynchronous mode of operation of the applicant's hardware is insufficient to differentiate its goods from the registrant's software because it is not known whether or not the registrant's goods operate in synchronous or asynchronous mode. Moreover, it is not the mode of operation which is significant here but rather the overall function or purpose of the goods which, as far as the descriptions of the goods are concerned, appears to be identical or at least very closely related.

With respect to the price of the goods in question and the identity and sophistication of the purchasers, assuming *arguendo* that the applicant's product is expensive and purchased by sophisticated buyers after careful deliberation, the record fails to demonstrate that confusion is

unlikely because the registrant's product may also be expensive and directed to the same class of purchasers. In this regard, it must be noted that the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). As to the identity of the consumers of the goods at issue, the claim that the applicant's product is sold to those in the telecommunications field and the registrant's goods are not is simply not supported. Given the vague meaning of "telecommunications" and the clear inference from applicant's identification of goods that its software is used for communication purposes, it must be concluded that applicant's and registrant's products are sold to the same population of consumers or at least an overlapping population of consumers.

We agree with the Examining Attorney that confusion is likely. As our principal reviewing court held, in reviewing a decision by the Board finding a likelihood of confusion between the marks "OCTOCOM," "OCTOCOM" and a stylized "O" design for data communications equipment--namely, modems, and the virtually identical mark "OCTACOMM" for computer programs and manuals therefor sold as a unit:

[T]he record supports no other factual findings but that modems and computer programs are commonly used together in networking, could come from a single source, and be identified with the same mark. .... We agree with the board that purchasers would likely be confused when goods as closely related as modems and computer programs are sold under the virtually identical marks of these parties. Thus, the Board's decision denying registration ... of the OCTOCOM marks for "modems" is affirmed.

Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1788 (Fed. Cir. 1990). Similarly, the respective goods involved in this case are, on their face, so closely related that, when sold under the identical (if not also arbitrary) mark "SNAPS," confusion as to their source or sponsorship is likely to occur. Both applicant's system network architecture protocol emulators for use in transmitting telecommunications traffic asynchronously over wide area networks and registrant's computer programs for use in network architectures and its computer programs for use in interfacing and integrating computer environments and mainframes would find application in asynchronous telecommunications systems. They consequently would be sold through the same channels of trade to the same classes of purchasers, such as telecommunications systems engineers, designers and managers. Circumstances accordingly are such that, even among knowledgeable and technically sophisticated customers, confusion as to the origin of the respective goods, or mistakenly attributing a common association thereto, is likely.

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

J. D. Sams

E. J. Seeherman

G. D. Hohein  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board

**Ser. No.** 74/513,785