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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Plain Dealer Publishing Co.

Serial No. 74/548,577

Pamela A. Rask of Sabin, Bermant & Gould LLP for Plain
Dealer Publishing Co.

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

Before Simms, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Plain Dealer Publishing Co. (applicant) seeks
registration of THE PLAIN DEALER QUICKLINE VOICE
INFORMATIION SERVICE and design in the form shown below for
"audiotext information services in the field of headline
news, financial news, sports, entertainment, soaps,
horoscopes, lottery, weather and time, all transmitted via

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telephone lines." The application was filed on July 12, 1994 with a claimed first use date of June 12, 1994. Applicant disclaimed the exclusive right to use VOICE INFORMATION SERVICE apart from the mark in its entirety.

The Examining Attorney refused registration pursuant to Sec 2(d) of the Lanham Trademark Act on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with the mark QUICKLINE, previously registered in typed capital letters for "private line telephone communications services." Reg. No. 1,058,734.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant withdrew its request for an oral hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods or services and the similarities of the marks. Federated Foods, Inc. v.

Fort Howard Paper Co., 544 F. 2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We will first consider applicant's services and the services of the cited registration. Applicant's telephone information services are available free of charge to anyone who has access to a touchtone telephone. A person simply dials a telephone number, and then enters the appropriate four digit code corresponding to the topic he or she is interested in. On a daily basis, applicant publishes in its newspaper (The Plain Dealer) a list of over 250 topics with their corresponding four digit codes. A sample of the various topics include headline news (1000); foreign exchange report (1121); golf update (1310); jazz news (1415); Days of Our Lives (1502); horoscope-Gemini (1604); lottery-michigan (1712); and weather-Green Bay (1841).

As previously noted, the goods of the cited registration are "private line telephone communications services." A "private line" is a communications term and it is defined as "a line, channel, or service reserved solely for one user." McGraw-Hill Dictionary of Scientific and Technical Terms (3d ed. 1984). Entities such as the Federal Emergency Management Agency and the National Communications System use "private line telecommunications systems to carry vital emergency information." McGraw-Hill Encyclopedia of Science and Technology (1998). Applicant has properly made

of record a photocopy of the specimen of use which was submitted with the application which matured into the cited registration. Applicant did so not in an effort to improperly limit the identification of services set forth in the registration, but rather to afford the Examining Attorney a better understanding of what "private line telephone communications services" are. See In re Trackmobile Inc., 15 USPQ2d 1152, 1153 (TTAB 1990). The specimen of use indicates that a private line telephone enables the user to "just lift the handset (go 'offhook') and the corresponding phone in the distant city rings automatically." A private line telephone is reserved for the exclusive use of one company and it offers the advantages of enhanced security and instant access because there are no busy signals. As might be expected, a private line telephone system is considerably more expensive than a ordinary telephone system, and it is certainly not marketed to ordinary consumers.

In arguing that applicant's services and registrant's services are related, the Examining Attorney simply states that "both are telecommunications services." (Examining Attorney's Brief page 9). The Examining Attorney has acknowledged that there is absolutely no evidence of record demonstrating that the same companies offer both (1) services identical to or similar to applicant's services and

(2) services identical to or similar to registrant's services. The Examining Attorney merely speculates that in the future, registrant or applicant may "expand" their services such that there will be some overlap. (Examining Attorney's brief page 10).

To be quite blunt, we find that applicant's services and registrant's services are very distinct. Indeed, we do not even share the view of the Examining Attorney that "both [services] are telecommunications services." (Examining Attorney's brief page 9). As identified in the application, applicant's services are not telecommunications services. Rather, applicant's services are information services which just happen to be transmitted via telephone lines. To characterize applicant's information services as telecommunication services would mean that in similar fashion, numerous different types of companies -- such as airlines, banks and pharmacies -- also provide telecommunications services when they offer to their customers having touchtone telephones various types of information such as flight arrival times, checking account balances and prescription refill updates.

Moreover, not only are applicant's services and registrant's services quite dissimilar, but in addition, there is no dispute that private line telephone communications services are provided only to discriminating

individuals after significant discussions with a telephone company to plan, install and operate the private line telephone system. It has been noted that with regard to the issue of likelihood of confusion, purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care."

Electronic Design & Sales v. Electronic Data System, 954 F.2d 713, 21 USPQ 2d 1388, 1392 (Fed. Cir. 1992). This is especially true when the goods or services involved pre-purchase discussions and negotiations, as is the case with private line telephone communications services.

Turning to a comparison of the marks, we agree with the Examining Attorney that the most prominent feature of applicant's mark is the word QUICKLINE, which is of course, registrant's mark in its entirety. However, applicant's mark also includes the name of its newspaper THE PLAIN DEALER, which the Examining Attorney concedes "is a well-read publication." (Examining Attorney's brief page 9). Given the fact that applicant's information services and registrant's private line telephone services have little relationship to each other, we find that in its entirety, applicant's mark is dissimilar enough from registrant's mark

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such that their contemporaneous use is not likely to result in confusion.

Decision: The refusal to register is reversed.

R. L. Simms

E. W. Hanak

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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