

THIS DISPOSITION IS NOT CITABLE AS  
PRECEDENT OF THE TTAB 11/4/98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Moore Business Forms, Inc.

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Serial No. 75/148,395

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Robert A. Vanderhye of Nixon & Vanderhye P.C. for Moore  
Business Forms, Inc.

Melvin T. Axilbund, Trademark Examining Attorney, Law  
Office 103 (Michael Szoke, Managing Attorney)

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Before Hanak, Quinn and Chapman, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Moore Business Forms, Inc. (applicant) seeks  
registration of LANDMARK VISTA in typed capital letters for  
"pre-recorded computer programs related to real estate sold  
to real estate agents and sales people." The intent-to-use  
application was filed on August 12, 1996.

The Examining Attorney refused registration pursuant  
to Section 2(d) of the Lanham Trademark Act on the basis

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that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark shown below, previously registered for "general real estate brokerage." Registration No. 749,538. The mark shown below will hereinafter be referred to as the "registered mark."

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the marks, we note that the Examining Attorney refers to the registered mark as simply LANDMARK CORPORATION and design. (Examining Attorney's brief page 4). The Examining Attorney characterizes the

design component of the registered mark as being "minor."  
(Examining Attorney's brief page 7).

On the other hand, applicant argues that the design element appearing at the beginning of the registered mark is so unusual that a person encountering the registered mark would have to use imagination and ingenuity to reach the conclusion that this design element is somehow equivalent to the letter "L" and thus that the first word in the registered mark is LANDMARK. (Applicant's brief page 11). Continuing, applicant argues that even assuming that one can ascertain that the first word in the registered mark is LANDMARK, that at a minimum this person would "not soon forget" the unusual design element having gone "through the mental the exercise of trying to figure [it] out." (Applicant's brief page 11).

We agree with applicant that it is debatable as to whether most viewers of the registered mark would perceive it as the equivalent of the words LANDMARK CORPORATION. However, even assuming that with if the use of ingenuity and imagination the registered mark would be perceived as such, the fact remains that in terms of visual appearance, the registered mark is still decidedly different from applicant's mark LANDMARK VISTA. Moreover, assuming again that people would perceive the registered mark as LANDMARK

CORPORATION, then in terms of meaning or connotation, the registered mark is distinct from applicant's mark LANDMARK VISTA. The former suggests a business. The latter, as applicant persuasively argues, suggests a view or location. (Applicant's brief page 10).

In sum, we find that if individuals are unable to perceive the design element in the registered mark as constituting or containing the letter "L," then the registered mark and applicant's mark are quite dissimilar. On the other hand, if individuals are able to perceive the design element in the registered mark as constituting or containing the letter "L," that nevertheless the registered mark and applicant's mark are still very dissimilar in terms of visual appearance, and are somewhat dissimilar in terms of connotation and pronunciation.

Turning to a consideration of applicant's goods and registrant's services, both relate (obviously) to real estate. However, applicant's goods have specifically been restricted to computer programs which are "sold to real estate agents and sales people." In other words, applicant's goods are sold only to professionals. Hence, the only overlap between applicant's goods and registrant's services involves real estate professionals. Given the dissimilarities in the marks and the fact that applicant's

goods and registrant's services are related simply in the sense that both involve real estate, we find that there exists no likelihood of confusion amongst the only individuals who would encounter both marks, namely, real estate professionals. When it comes to matters involving real estate, such real estate professionals are somewhat sophisticated purchasers. As our primary reviewing Court has noted, when considering 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 USPQ2d 1388, 1392 (Fed. Cir. 1992).

Decision: The refusal to register is reversed.

E. W. Hanak

T. J. Quinn

B. A. Chapman  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

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