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AUG. 17,99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Moore Business Forms, Inc.

Serial No. 75/152,840

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

Howard Smiga, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Quinn, Wendel and Bottorff, Administrative Trademark
Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Moore Business Forms, Inc. has applied to register the
mark MIDAS for "design and consultation services relating
to the integration of equipment used to automate document
production."¹

¹ Intent-to-use application Serial No. 75/152,840, filed August
19, 1996.

The Trademark Examining Attorney has refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with applicant's services, so resembles the registered mark MIDAS TECHNOLOGY for "computer programs for use in multiple document processing in personal computers in the legal and accounting fields of the business and industry markets as well as the legal and accounting fields of the governmental market, specifically excluding the banking field in those markets"² as to be likely to cause confusion, or to cause mistake, or to deceive.

When the refusal was made final, applicant appealed. Applicant and the Trademark Examining Attorney have filed briefs. No oral hearing was requested.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods*,

² Registration No. 1,859,480, issued October 25, 1994.

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

Turning first to a consideration of the marks, we find that applicant's mark MIDAS and the registered mark MIDAS TECHNOLOGY are confusingly similar when viewed in their entireties in terms of appearance, sound, connotation and commercial impression. The dominant feature of both marks is the word MIDAS, which appears as the only term in applicant's mark and as the first word in registrant's mark. Additionally, MIDAS appears on this record to be an arbitrary term as applied to the goods and services involved in this case.³ Conversely, TECHNOLOGY is a weak term as applied to the computer programs identified in the registration, and it therefore contributes relatively little to the commercial impression created by the registered mark. While we cannot ignore the presence of the word TECHNOLOGY in the registered mark, we certainly cannot accept applicant's argument that TECHNOLOGY is the dominant feature of the registered mark.

Given the presence in both marks of the identical, arbitrary term MIDAS, as the first word in registrant's

³ We have given no consideration to the third-party registrations submitted by applicant with its appeal brief, and sustain the Trademark Examining Attorney's objection to such untimely submission. See Trademark Rule 2.142(d).

mark and as the only word in applicant's mark, we find that the overall commercial impressions created by the marks are the same.

The next step in our likelihood of confusion analysis is a determination of whether applicant's services as recited in the application are similar to registrant's goods as identified in the registration. It is settled that in cases involving identical or highly similar marks, such as the present case, "it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). We find that the requisite commercial relationship exists in this case between the services recited in the application and the goods identified in the registration, in that both the services and the goods could and would be used by accountants and lawyers in connection with their document production efforts.

That is, lawyers and accountants using registrant's "multiple document processing" computer programs to create legal or accounting documents certainly are engaged in automated document production, within the normal meaning of those words as they appear in applicant's recitation of services. Furthermore, those law and accounting offices

use various pieces of equipment in connection with their automated production of legal or accounting documents, such as computers, printers, document scanners, modems, facsimile machines and the like.⁴ It is reasonable to assume that they would require or desire that those pieces of equipment be efficiently integrated, and that they could or would utilize "design and consultation services relating to the integration of equipment used to automate document production" to achieve that end.

We reject applicant's argument that the term "document production" in applicant's recitation of services should be construed to refer only to large volume, high speed manufacture of business forms and the like by corporations and other "high speed document manufacturers," but not to the production of documents by lawyers and accountants by means of the "multiple document processing" computer programs identified in the registration. The

⁴ In this regard, we take judicial notice of the dictionary definition of "document processing" from the New World Dictionary of Computer Terms (6th Ed. 1997), submitted by the Trademark Examining Attorney with his brief (emphasis added):

Document Processing: The use of computer technology during every stage of the production of documents, such as instruction manuals, handbooks, reports and proposals. A complete document processing system includes all the software and hardware needed to create, organize, edit, and print such documents, including generating indexes and tables of contents.

likelihood of confusion determination must be made on the basis of the services set forth in the application, rather than on the basis of the (perhaps more restricted) services applicant actually intends to render in connection with the mark. See *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *In re Trackmobile Inc.*, 15 USPQ2d 1152 (TTAB 1990).⁵

Likewise, because applicant's recitation of services does not include any limitations as to trade channels or classes of customers, we must presume that the services are offered in all normal trade channels and to all normal classes of customers for such services. See *In re Shoemaker's Candies, Inc.*, 222 USPQ 326 (TTAB 1984). As discussed above, those trade channels and classes of

⁵ To the extent that applicant is arguing that the words "document production" in applicant's recitation of services have a particular, specialized meaning in the trade (i.e., that of the large volume, high speed manufacture of documents) which distinguishes applicant's services from registrant's goods, we note only that applicant has submitted no extrinsic evidence of any such special meaning. Cf. *In re Trackmobile Inc.*, *supra*. Accordingly, we will give the words their ordinary meaning, a meaning which would include the document production engaged in by lawyers and accountants using registrant's computer programs. Additionally in this regard, the dictionary definition of "document processing" quoted *supra* at footnote 4, of which we have taken judicial notice, shows that the "document processing" computer programs covered by the registration and the "equipment used to automate document production" to which applicant's recited services are directed are more closely related than applicant's argument would allow.

customers would include lawyers and accountants engaged in automated document production.

In short, we find that the services recited in applicant's application are sufficiently commercially related to the goods identified in the cited registration that use of the confusingly similar and essentially identical marks MIDAS and MIDAS TECHNOLOGY on or in connection with such goods and services is likely to result in source confusion.

Decision: The refusal to register is affirmed.

T. J. Quinn

H. R. Wendel

C. M. Bottorff

Administrative Trademark Judges
Trademark Trial and Appeal Board