

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB                      JUNE 15, 1999

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Travel Network, Ltd.  
v.  
World Travel Service, Inc.

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Opposition No. 88,447 to application Serial No. 74/180,031,  
filed on June 27, 1991

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Lawrence D. Mandel of Klauber & Jackson for Travel Network, Ltd.  
Fred V. Hanson, Vice President, for World Travel Service, Inc.

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Before Seeherman, Hohein and Chapman, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

World Travel Service, Inc. has filed an application to  
register the mark "SUNWORLD TRAVEL NETWORK" and design, as shown  
below,

for "travel agency" services.<sup>1</sup>

Travel Network, Ltd. has opposed registration on the ground that, since 1976, opposer has continuously used the mark "TRAVEL NETWORK" for "franchising services, namely, offering technical assistance to others in the establishment and/or operation of travel agencies, and for management consulting services in the fields of advertising, sales promotion, marketing, accounting and tax planning, rendered to the travel industry"; that opposer is presently the owner of two federal registrations for its service mark, namely, "Registration Nos. 1,462,176 and 1,107,486"; that opposer also has pending an application "to register its mark GLOBAL TRAVEL NETWORK, Serial No. 74-115,197, for substantially similar services as those of the applicant," as well as a pending application "to register [its mark] ORIGINAL TRAVEL NETWORK, Serial No. 74-250,697"; that as "a direct result of the high quality of the services provided ... and through extensive advertising and promotional activities, the mark TRAVEL NETWORK has come to identify Opposer"; and that applicant's mark "so resembles Opposer's marks as to be likely, when applied to the [travel agency] services of applicant, to cause confusion, or to cause mistake, or to deceive".

Applicant, in its answer, has "acknowledge[d] ... Opposer's use of the ... marks of TRAVEL NETWORK and its mark of

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<sup>1</sup> Ser. No. 74/180,031, filed on June 27, 1991, which alleges dates of first use of October 1990. It is stated in the application that: "The lining on the drawing is a feature of the mark and is not intended to indicate color."

GLOBAL TRAVEL NETWORK." In addition, applicant has admitted the allegation in the notice of opposition that "the services as to which applicant seeks registration are substantially similar ..., if not identical, to the services with which Opposer has used its [TRAVEL NETWORK] mark." Applicant, however, has denied the remaining salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the involved application; and, as opposer's case-in-chief, a timely filed notice of reliance on certified copies of registrations, which are subsisting and owned by opposer, for the following marks and services:

(a) the mark "BUSINESS TRAVEL NETWORK" and design, as depicted below,

for "franchising services, namely offering technical assistance in the establishment and/or operation of retail travel agencies";<sup>2</sup>

(b) the mark "TRAVEL NETWORK" and design, as reproduced below,

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<sup>2</sup> Reg. No. 1,952,438, issued on January 30, 1996, which sets forth dates of first use of May 1, 1986. The phrase "BUSINESS TRAVEL" is disclaimed, but the words "TRAVEL NETWORK" are registered pursuant to a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.

for "franchising services, namely offering technical assistance to others in the establishment and/or operation of travel agencies, and for management consulting services in the fields of advertising, sales promotion, marketing, accounting and tax planning rendered to the travel industry";<sup>3</sup>

(c) the mark "ORIGINAL TRAVEL NETWORK" for "franchising services; namely, offering technical assistance to others in the establishment and/or operation of travel agencies and for management consulting services in the fields of advertising, sales, promotion accounting and tax planning which are rendered to the travel industry, and use by our franchisees in the operation of retail travel agencies";<sup>4</sup> and

(d) the mark "GLOBAL TRAVEL NETWORK" for "franchising services; namely, offering technical assistance in the establishment and/or operation of travel agencies".<sup>5</sup>

Neither party took testimony or introduced any other evidence.<sup>6</sup>

Only opposer filed a brief. An oral hearing was not requested.

Opposer's priority of use of the marks which are the subjects of the registrations which it has made of record is not in issue since, as indicated previously, the certified copies of such registrations demonstrate that they are subsisting and owned

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<sup>3</sup> Reg. No. 1,950,248, issued on January 23, 1996, which sets forth dates of first use of August 1979. The term "TRAVEL" is disclaimed, but the words "TRAVEL NETWORK" are registered pursuant to a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.

<sup>4</sup> Reg. No. 1,890,655, issued on April 18, 1995, which sets forth dates of first use of December 1, 1993. The words "ORIGINAL TRAVEL" are disclaimed.

<sup>5</sup> Reg. No. 1,769,468, issued on May 4, 1993, which sets forth dates of first use of February 1992; combined affidavit §§8 and 15.

<sup>6</sup> Inasmuch as no objection has been raised by applicant to opposer's reliance on certain registrations and marks which were not pleaded in the notice of opposition as filed, the pleadings are hereby deemed to be amended to conform to the evidence of record in accordance with Fed. R. Civ. P. 15(b).

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by opposer. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). The only issue to be determined, therefore, is whether applicant's "SUNWORLD TRAVEL NETWORK" and design mark, when used in connection with travel agency services, so resembles one or more of opposer's marks for its various franchising and management consulting services that confusion is likely as to the source or sponsorship of the parties' respective services.

Upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that, on this record, opposer has failed to satisfy its burden of demonstrating that confusion as to source or sponsorship is likely to occur. In particular, while applicant's admission in its answer serves to establish that the parties' respective services are "substantially similar . . . , if not identical," in that such services generally relate to travel agencies, it is nevertheless the case that, on their face, opposer's franchising and management consulting services would be rendered to owners and/or operators of travel agencies. Applicant's travel agency services, on the other hand, plainly would be provided, almost without exception, to members of the general public rather than to travel agency management personnel. Although travel agency operators and managers, like members of the general public, concededly would have occasion to utilize travel agency services, it would seem that they would most likely patronize their own travel agencies for their travel related

needs and thus would not typically avail themselves of the services offered by applicant. As our principal reviewing court has cautioned in this regard:

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), quoting from Witco Chemical Co. v. Whitfield Chemical Co., 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g*, 153 USPQ 412 (TTAB 1967).

Moreover, contrary to opposer's contention, we find that applicant's "SUNWORLD TRAVEL NETWORK" and design mark is readily distinguishable from each of opposer's marks. Opposer maintains that applicant has simply appropriated the phrase "TRAVEL NETWORK" from opposer's marks and added thereto the term "SUNWORLD". According to opposer, "cases which have considered the addition of a word to and [sic] already existing mark have held, time and time again, that the mere addition of the additional word does not negate the likelihood of confusion." However, given the highly suggestive nature of the phrase "TRAVEL NETWORK," contemporaneous use of the parties' marks is not likely to cause confusion as to the source or sponsorship of the services rendered thereunder. The principle of law asserted by opposer, it should be noted, has been more fully and accurately set forth, for example, in *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984), in which the Board pointed out that:

[T]here is a general rule that a subsequent user may not appropriate another's entire mark and avoid likelihood of confusion therewith by merely adding descriptive or otherwise subordinate matter to it. See: *Bellbrook Dairies, Inc. v. Hawthorn Melody Farms Dairy, Inc.*, 253 F.2d 431, 117 USPQ 213 (CCPA 1958), and *In re South Bend Toy Manufacturing Co., Inc.*, 218 USPQ 479 (TTAB 1983). An exception to the rule may be found in those cases where the appropriated mark is highly suggestive or merely descriptive or has been frequently used by others in the field for the same or related goods or services. See: *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975) and *Jean Patou, Inc. v. Jacqueline Cochran, Inc.*, 133 USPQ 242 (SDNY 1962), affirmed[, ] 312 F.2d 125, 136 USPQ 236 (2nd Cir. 1963).

Applying such principle to this case, applicant's mark is readily differentiated by the fanciful term "SUNWORLD" and its associated sun design due to the high degree of suggestiveness inherent in the phrase "TRAVEL NETWORK" when used in connection with travel agency services. Similarly, while we are mindful that two of opposer's registrations indicate that the phrase "TRAVEL NETWORK" has acquired distinctiveness with respect to the franchising and management consulting services rendered by opposer to travel agencies, it is still the case that such phrase is at best highly suggestive of opposer's services. This is particularly so in light of the absence of any evidence (such as sales figures, advertising expenditures and/or length of use) in the record to support the assertion in opposer's brief that such phrase "has garnered ... a high degree of recognition among consumers of travel agency and related services" and, thus, would be entitled to a wide latitude of legal protection. See, e.g., *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d

350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), *cert. denied*, 113 S.Ct. 181 (1992).

Consequently, as is the case with applicant's mark, the phrase "TRAVEL NETWORK" in each of opposer's marks would be regarded by customers as subordinate matter, suggestive of an interconnected or interrelated travel group, and which in view thereof is entitled to only a limited scope of protection. When the respective marks are considered in their entirety, which is how the marks will be encountered by prospective customers, consumers would regard the mark "SUNWORLD TRAVEL NETWORK" and design, with the image evoked by the fanciful term "SUNWORLD" underscored by a prominently displayed sun design feature, as distinguishable from the marks "TRAVEL NETWORK" and "BUSINESS TRAVEL NETWORK," with their noticeably different design element, and the marks "GLOBAL TRAVEL NETWORK" and "ORIGINAL TRAVEL NETWORK". Each of the latter three of opposer's marks, in particular, neither sounds nor looks substantially the same as or similar to applicant's mark, and the connotation and overall commercial impression conveyed by each of such marks is appreciably distinct from applicant's mark.

Accordingly, given the differences in the typical customers for applicant's travel agency services and opposer's franchising and management consulting services for travel agencies, and in light of the high degree of suggestiveness in the phrase "TRAVEL NETWORK" when used in connection with such services, confusion as to the source or sponsorship thereof is

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simply not likely--as a practical matter--to occur from the contemporaneous use of the parties' respective marks.

**Decision:** The opposition is dismissed.

E. J. Seeherman

G. D. Hohein

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