



**Opposition No. 104,535**

assisting the user in writing an autobiography or biography" in Class 16.<sup>1</sup>

WRQ, Inc. filed an opposition to registration of the mark for the Class 9 goods on the ground of likelihood of confusion, under Section 2(d) of the Trademark Act. Opposer alleges the use of the mark REFLECTION for software since 1985; the ownership of a family of REFLECTION marks for networking and connectivity software and of federal registrations for the same;<sup>2</sup> the long-established and

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<sup>1</sup> Serial No. 74/672,254, filed May 11, 1995, based on an assertion of a bona fide intention to use the mark in commerce.

<sup>2</sup> The following registrations are listed for Class 9:

Registration No. 1,475,672, issued February 9, 1988, for the mark REFLECTION for "computer programs for terminal emulation and file transfer and instruction manuals therefor sold as a unit," Section 8 & 15 affidavit filed and accepted;

Registration No. 1,698,819, issued July 7, 1992, for the mark REFLECTION for "computer programs and instructional manuals sold as a unit for use in the fields of communications, networks, terminal emulation, programming, file transfer, printing and business productivity," Section 8 & 15 affidavit filed and accepted.

Registration No. 1,688,349, issued May 19, 1992, for the mark REFLECTION NETWORK SERIES for "computer programs and instructional manuals sold as a unit; namely, network programs for both personal computers and main-frame computers," Section 8 & 15 affidavit filed and accepted. A disclaimer has been made of the phrase NETWORK SERIES.

Registration No. 1,838,998, issued June 7, 1994, for the mark REFLECTION TO GO for "computer programs and instructional manuals sold as a unit for use in the fields of communications, networks, terminal emulation, programming, file transfer, printing and business productivity"; and

Registration No. 1,992,867, issued August 13, 1996, for the mark REFLECTION COMPLETE for "computer programs and instructional manuals sold as a unit for use in the fields of cellular communications, intercomputer communications and communications within and between computer networks with specific applications featuring terminal emulation, computer programming, file transfer, printing computer files to paper or digital files, and cross-platform programming."

Although listed as applications in the notice of opposition, the following have since issued as registrations:

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outstanding reputation of opposer and its REFLECTION software products; the use by individuals associated with companies, organizations or government offices of opposer's software to connect personal computers, either at home, on the road or in the office, to each other, and to various networks, host computers and the Internet; and a likelihood of confusion as to source if applicant's PERSONAL REFLECTIONS software were also used by these same individuals on their personal computers.

Applicant, in its answer, denied the salient allegations of the notice of opposition.

The Record

The record consists of the file of the involved application and opposer's trial testimony deposition, with accompanying exhibits, of Shaun Wolfe, Director of Product Marketing for opposer. Applicant took no testimony and made

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Registration No. 2,051,391, issued April 8, 1997, for the mark REFLECTION SELECTSUITE for "computer programs and instructional manuals sold as a unit for use in the fields of cellular communications, intercomputer communications and communications within and between computer networks with specific applications featuring terminal emulation, computer programming, file transfer, printing computer files to paper or digital files, and cross-platform programming," and

Registration No. 2,095,859, issued September 9, 1997, for the mark REFLECTION SUITE FOR THE ENTERPRISE for "computer programs and instructional manuals sold as a unit for use in the fields of cellular communications, intercomputer communications and communications within and between computer networks with specific applications featuring terminal emulation, computer programming, file transfer, printing computer files to paper or digital files, and cross-platform programming." A disclaimer has been made of the word ENTERPRISE.

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no evidence of record. Only opposer filed a brief and no oral hearing was requested.

The testimony of Mr. Wolfe establishes that the software produced by opposer under the REFLECTION mark and related marks consists of connectivity products that enable users of personal computers to connect with other systems, particularly mainframe computers, server systems, HP mid-range computers and the like. The software resides in the personal computer and thus could be part of computers used for personal or home use as well as office use. Mr. Wolfe testified that, although opposer's software is for business use, because it connects to mainframes, individuals within an organization often use the products to connect their home PCs into the corporate network as well.

Approximately 60% of opposer's software products are sold domestically through opposer's direct sales force, with the remaining 40% going through traditional business software channels, which include, in part, VAR (value added reseller) channels and corporate resellers that service large accounts. Opposer also markets through the Internet and such marketing is expanding.

Opposer sells about a million units of REFLECTION products a year and estimates that there are three and a half to four million users of its products. While Mr. Wolfe testified to the extent of opposer's worldwide advertising

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expenses for its REFLECTION products, no figures were made of record with respect to these expenses in the United States, the only figures which would be relevant here. Mr. Wolfe did introduce copies of a collection of reprints or photocopies of trade journal articles about the REFLECTION products, illustrating both publicity for such products and the high independent ratings and the magazine awards which have been obtained by them. (Exhibit 8). Mr. Wolfe also testified that opposer had policed its mark against infringements.

Status and title copies of opposer's registrations for its REFLECTION marks have been made of record (Exhibit 7),<sup>3</sup> as well as samples of opposer's packaging for various REFLECTION products and of packaging used by applicant. (Exhibits 2-6 and 9).

The Opposition

Priority is not an issue here in view of opposer's submission of status and title copies of its pleaded registrations proving ownership of valid and subsisting registrations for the marks REFLECTION, REFLECTION COMPLETE, REFLECTION NETWORK SERIES, REFLECTION SELECTSUITE,

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<sup>3</sup> In addition to certified status and title copies of the pleaded registrations, opposer introduced certified copies of four pending applications filed under Section 1(b). Inasmuch as these applications are evidence of nothing more than an assertion by applicant of an intention to use the marks in the future, we have given no consideration to these applications or the marks sought to be registered therein.

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REFLECTION SUITE FOR THE ENTERPRISE and REFLECTION TO GO.  
King Candy Co., Inc. v. Eunice King's Kitchen, Inc., 496  
F.2d 1400, 182 USPQ 108 (CCPA 1974).

Thus, we turn to the issue of likelihood of confusion, considering all factors which are relevant to the circumstances at hand. See *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

With respect to the factor of the similarity or dissimilarity of the marks, opposer argues that applicant's mark PERSONAL REFLECTIONS is very similar in appearance and sound to opposer's REFLECTION marks. Opposer further contends that the term PERSONAL carries the connotation of being a product for use on personal computers, a connotation which would be applicable to opposer's products, as well as applicant's. In addition, opposer stresses that Internet search engines would not distinguish between fore-name or post-name additions to the term "reflection" and thus applicant's mark and opposer's marks would both be pulled up in any search under "reflection."

Before reaching these arguments, we find it necessary to consider opposer's allegations of ownership of a family of REFLECTION marks. It is well established that ownership of a number of marks sharing a common feature (or ownership of registrations therefor) is insufficient to establish a claim of ownership of a "family" characterized by the

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feature. There must be evidence showing that prior to first use by the other party, the marks were used and promoted in such a manner as to create among purchasers an association of common ownership based on the "family" characteristic. See *Hester Industries Inc. v. Tyson Foods Inc.*, 2 USPQ2d 1646 (TTAB 1987) and the cases cited therein. Opposer here has introduced no evidence of any promotion of a family of REFLECTION marks, such as by advertisements in which various REFLECTION marks are promoted together. All opposer has shown is that it owns registrations for various REFLECTION marks for related software products. This ownership of registrations cannot be equated with ownership of a "family" of marks, such that purchasers would be apt to associate any mark containing the term REFLECTION used in connection with a software product with opposer.

Thus, we must consider the issue of likelihood of confusion with respect to each of opposer's pleaded registrations. Looking to the specific marks, we immediately note not only the obvious differences in appearance and sound between opposer's various REFLECTION marks and applicant's mark PERSONAL REFLECTIONS, but also the differences in format and connotation. All of opposer's marks are either REFLECTION alone or REFLECTION followed by other terms, which are either descriptive or highly suggestive of features of the products with which they are

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being used. By contrast, in applicant's mark the term PERSONAL precedes the word REFLECTIONS and the mark as a whole has a directly related connotation to applicant's goods, namely, software for assisting a person in writing an autobiography or biography. Opposer argues that PERSONAL suggests use of the program on a personal computer, and thus applicant's mark would be equally applicable to opposer's software. We find, however, that the entire phrase PERSONAL REFLECTIONS, when used in connection with applicant's software, has the much more specific connotation of the personal thoughts of one writing an autobiography or biography.

Whether or not an Internet search engine would retrieve both marks with the entry of the word "reflection," as opposer asserts, is clearly not indicative of a similarity in commercial impressions of the two marks. Even if both marks would be retrieved, that would be evidence only that both marks contain the term "reflection."

Opposer further argues that applicant's trade dress is quite similar to opposer's trade dress, referring specifically to Exhibits 5 and 9, samples of opposer's and applicant's packaging, respectively. As our primary reviewing court has stated, trade dress, although normally not even considered for a word mark, may provide evidence of whether the marks project similar commercial impressions.

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See Specialty Brands Inc. v. Coffee Bean Distributors Inc., 748 F.2d 669, 223 USPQ 1282 (Fed. Cir. 1984). Looking at Exhibits 5 and 9, we agree that the trade dress for both products includes a monochromatic background and that the packaging of at least one product of opposer and of applicant includes cloud imagery. However, the color of each party's monochromatic background is different. Further, applicant's cloud imagery also contains facial features which directly tie in with the connotation of PERSONAL REFLECTIONS, whereas there is no such correlation between opposer's trade dress and its REFLECTION marks. Opposer's trade dress contains many additional items. Thus, there are several distinct features in the trade dress of each.

This is a far cry from the situation in Kenner Parker Toys Inc. v. Rose Art Industries, Inc., 953 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992), where the Court pointed to the "multitude of similarities" in trade dress of the two parties as an enhancement of the "inherently similar commercial impressions." Instead, we find the overall commercial impressions created by the present marks to be readily distinguishable, even if consideration is given to the trade dress being used by each party.

We turn next to the similarity or dissimilarity of the goods involved. While the goods need not be identical or

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even competitive in order for confusion to be likely, there must be a viable relationship between the goods and/or the circumstances surrounding their marketing must be such that they are likely to be encountered by the same persons who, because of the similarity of the marks used thereon, might assume that they originate from, or are in some way associated with, the same source. *Devries v. NCC Corp.*, 227 USPQ 705 (TTAB 1985). Given the ubiquitous use and myriad producers of computer software, the fact that both parties' products are computer software is not sufficient, in and of itself, to establish a relationship between the goods. See *Electronic Data Systems Corp. v. EDSA Micro Corp.*, 23 USPQ2d 1460, 1463 (TTAB 1992).

Opposer's only argument with respect to the similarity of the parties' goods is that both are software programs designed for use on personal computers. This same can be said of a myriad of software programs designed for totally different purposes. Opposer has failed to establish any viable relationship between its business-oriented connectivity software, which is used for purposes of intercomputer communications, communications within and between computer networks or linking a personal computer to a mainframe or other systems in a corporate network, and applicant's software, which is a program designed for personal use in the writing of an autobiography or

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biography. The fact that the software of both may end up on the same personal computer is clearly not sufficient reason for users to associate the two distinctly different programs with the same source.

Opposer's further argument that the goods of both are likely to be sold through similar trade channels, such as software "storefront outlets" and over the Internet, is equally unpersuasive. In the first place, Mr. Wolfe testified that opposer's products presently are sold predominately through direct contact by sales representatives with businesses or through other business software channels. These are not the typical software outlets that are frequented by purchasers of software for personal use. It is true, however, that opposer's registrations do not limit the channels of trade to business outlets, and thus we must consider all the normal channels of trade for products of this nature. See *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Nonetheless, even if opposer's software products were marketed in the same "storefront outlets" offering applicant's product, opposer's products are for business use and the purchasers would accordingly be business oriented. Applicant's product is for personal use and its purchasers would be so limited. Although both opposer's software products and applicant's product could be

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offered on the vast Internet market, once again the potential purchasers for the respective products would not be the same, and as a result might not even encounter the goods of the other party.

Finally, opposer argues that its marks are famous and its products have wide-spread market recognition. Mr. Wolfe has testified to the absence of any third-party use of the term "reflection" in marks for software products. The sales figures and number of users of opposer's software products sold under its various REFLECTION marks are not insubstantial.

Nonetheless, we find the circumstances here similar to those in *Electronic Data Systems Corp. v. EDSA Micro Corp.*, *supra*. While opposer's REFLECTION marks may be well recognized in opposer's particular area of business-oriented connectivity software, this recognition cannot be held to entitle opposer to such an expanded scope of protection for its marks as to encompass all software products. Opposer has failed to establish any relationship between the goods involved here other than the fact that the software products may both be used on personal computers. We have no reason for extending the scope of protection for opposer's marks to bar registration by applicant of its PERSONAL REFLECTIONS mark for its totally distinct software.

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Accordingly, we find that, upon considering all the relevant du Pont factors, opposer has failed to prove its case. In particular, because of the differences in commercial impressions between opposer's REFLECTION marks and applicant's PERSONAL REFLECTIONS mark and because of the absence of a viable relationship between the parties' software products, we find no likelihood of confusion.

Decision: The opposition is dismissed.

R. F. Cissel

E. J. Seeherman

H. R. Wendel  
Trademark Administrative Judges,  
Trademark Trial and Appeal Board

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