

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB1/13/00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Triada, Ltd.

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Serial No. 75/209,917

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**John G. Posa** of Gifford, Krass, Groh, Sprinkle,  
Anderson & Citkowski for Triada, Ltd.

**Robert Clark**, Trademark Examining Attorney, Law Office 108  
(David Shallant, Managing Attorney).

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Before Cissel, Wendel and Holtzman, Administrative  
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Triada, Inc. has filed an application to register the  
mark NGRAM TRANSFORM for "computer utility software and  
user manuals sold as a unit for information analysis,  
namely pattern recognition, database design and data  
compression."<sup>1</sup>

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<sup>1</sup> Serial No. 75/209,917, filed December 9, 1996, claiming a first  
use date of June 1, 1991 and a first use in commerce date of July  
1, 1995.

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the following registered marks:

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| VSAM    | for computer software providing automated conversion of mainframe-based sequential access databases to relational databases, residing on mainframe or midrange hardware platforms; <sup>2</sup>                                   |
| Gateway | for computer software providing interface among software conversion tools; <sup>3</sup> and   |
| 2000    | for computer software providing automated location of two digit date fields, records and references in computer databases and programs and conversion of the same to four digit date fields, records and references. <sup>4</sup> |

All of the registrations were issued to the same entity, namely, Information Management Resources, Inc.<sup>5</sup> An

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<sup>2</sup> Registration No. 2,036,608, issued February 11, 1997. A disclaimer has been entered of the term VSAM.

<sup>3</sup> Registration No. 2,029,751, issued January 14, 1997. A disclaimer has been entered of the term GATEWAY.

<sup>4</sup> Registration No. 1,993,208, issued August 13, 1996.

<sup>5</sup> While applicant has raised an objection in its reply brief to the fact that the Examining Attorney first pointed out this identity of ownership in his appeal brief, applicant's objection is not well taken. The identity of ownership is self-evident. Moreover, despite applicant's contentions to the contrary, the Examining Attorney has not made any argument that these marks constitute a family of marks.

additional registration for the mark TRANSFORM for "computer programs and user manuals sold therewith" was cited, but this registration has been cancelled since the briefs were filed in this case and thus will be given no consideration.<sup>6</sup> Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

Here, as in any determination of likelihood of confusion, two key considerations in our analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods and/or services with which the marks are being used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Insofar as the goods are concerned, the Examining Attorney has characterized the software products of both applicant and registrant as software for use in database conversions. Applicant has made no argument that the goods are other than related and has in fact pointed to the use of the term "transform" in the marks as a suggestive reference to the data conversion function of the involved software. Thus, we go forward with our analysis on the

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<sup>6</sup> Registration No. 1,437,154, cancelled under Section 18 of the Trademark Act on October 4, 1999, following the entry of judgment against registrant in Cancellation No. 27,962.

assumption that the software products of applicant and registrant are related goods.

Applicant's main focus is upon the respective marks. Applicant argues that when the marks are considered in their entireties, the leading term NGRAM in applicant's mark NGRAM TRANSFORM creates an entirely different commercial impression from that of the cited marks. It is applicant's contention that its mark would lead purchasers to believe that NGRAM is a type of TRANSFORM, whereas in the cited marks, the placement of the term TRANSFORM first implies that the goods do the "transforming." Applicant argues that the only common term, the word "transform," is the weak portion of each of the marks, being suggestive of the function of the goods. According to applicant, in its mark the unusual "non-word" NGRAM is the dominant term and must be given the greater weight.

The Examining Attorney, on the other hand, maintains that the term TRANSFORM is the dominant feature of each of the cited marks, the terms VSAM and Gateway having been disclaimed and the term 2000 being a non-literal portion of the mark. He argues that the cited marks and applicant's mark as a whole create similar commercial impressions and that, when used on related software, this similarity would

led purchasers to believe that the goods originate from the same source.

Although it is true that in determining likelihood of confusion, marks must be considered in their entirety, it is well established that there is nothing improper in giving more or less weight to a particular feature of a mark. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). While descriptive portions of a mark cannot be ignored, the fact remains that purchasers are more likely to rely upon the non-descriptive portion as the indication of source. Hilson Research Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993).

We agree that in each of the cited marks the term TRANSFORM is the dominant feature. Although this term may well be suggestive of the function of the software, the disclaimed terms VSAM and Gateway are admittedly descriptive and would have less trademark significance. The term 2000 likewise appears to have little trademark significance.

The Examining Attorney has failed, however, to establish that the term NGRAM, as used in applicant's mark, is similarly descriptive, or that it is even suggestive of the goods. Applicant represents that the term is a "non-word." The Examining Attorney has made no evidence of

record to show that, despite not being listed in the dictionary, the term has significance in the computer industry. He has never requested information from applicant as to any meaning which might be attributed to the term by others knowledgeable in the field.

Thus, on the record before us, we cannot agree with the Examining Attorney that that mark NGRAM TRANSFORM creates a commercial impression similar to the cited marks. In that this record shows NGRAM to be an apparently arbitrary term with no recognized meaning in the field, we can only view the term as the dominant feature of applicant's mark. The format is not the same as in the cited marks; the term TRANSFORM in applicant's mark is secondary in significance. Whether or not purchasers would believe that NGRAM is a type of TRANSFORM, as argued by applicant, is beside the point. The mark as a whole creates a different commercial impression.

Accordingly, regardless of the similarity of the goods upon which the marks are used, we find the dissimilarities in the registered marks and applicant's mark, when the marks are viewed in their entireties, sufficient to obviate the likelihood of confusion.

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Decision: The refusal under Section 2(d) is reversed.

R. F. Cissel

H. R. Wendel

T. E. Holtzman  
Trademark Administrative Judges,  
Trademark Trial and Appeal Board

**Ser No.** 75/209,917