

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      JUNE 15, 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 **The National Computing Centre Limited**

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Serial No. 75/268,840

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**Thomas W. Brooke and Anthony R. Masiello** of **Gadsby & Hannah**  
for **The National Computing Centre Limited**.

**David H. Stine**, Trademark Examining Attorney, Law Office  
114 (**Mary Frances Bruce**, Managing Attorney).

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Before **Simms, Quinn** and **Hairston**, Administrative Trademark  
Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

An application has been filed by The National  
Computing Centre Limited to register the mark shown below,

for "computer software designed to test competence and skills in using and operating a personal computer."<sup>1</sup>

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to the identified goods, so resembles the mark NCC COMPUTER which is registered for "computers" and "retail store services in the field of computer[s] and computer related products,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

We turn first to a consideration of the goods and services herein. Applicant, in urging reversal of the refusal to register, maintains that the Examining Attorney has accorded too broad a scope of protection to the cited registration. In particular, applicant argues that it is

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<sup>1</sup> Serial No. 75/268,840 filed April 3, 1997, based upon applicant's bona fide intention to use the mark in commerce and asserting a claim of priority under Section 44(d) of the Trademark Act. The term "PC" and the word "TEST" are disclaimed apart from the mark as shown. The lining shown in the drawing is simply a feature of the mark and is not intended to indicate color.

<sup>2</sup> Registration No. 1,858,409 issued October 18, 1994. The word "COMPUTER" is disclaimed apart from the mark as shown.

not enough that its goods and registrant's goods and services are in the computer field.

Further, according to applicant, because its computer software is targeted to a specific audience, it is unlikely that there would be significant customer overlap between its goods and registrant's goods and services.

It is well settled that goods and services need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods and services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, e.g., *Monsanto Co. v Enviro-Chem Corp.*, 199 USPQ 590, 595-96 (TTAB 1978); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

Moreover, in the absence of any limitations in applicant's application, we must presume that applicant's goods would travel in all of the normal channels of trade for computer software, including retail stores which offer computers and computer-related products, to all available

purchasers, including ordinary consumers, who desire to test their personal computer skills. Thus, applicant's computer software and registrant's computers and retail store services would be encountered by the same class of customers.

We recognize that there is no *per se* rule relating to likelihood of confusion in the computer field. In re Quadram Corp., 228 USPQ 863, 865 (TTAB 1985). However, applicant's particular software is designed to test a person's computer skills, and a consumer may well purchase this product when purchasing a computer. In addition, it is not uncommon for retail stores which specialize in computers and related products to offer instructional computer classes. Thus, applicant's software could be used in classes offered in retail stores such as registrant's. We conclude, therefore, that the conditions surrounding the marketing of applicant's goods and registrant's goods and services are such that they could be encountered by the same persons under circumstances that could give rise to confusion as to source if they were marketed under the same or similar marks.

With respect to the marks, it is well settled that marks must be compared in their entirety. Nevertheless, in articulating reasons for reaching a conclusion on the

issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark. . . ." 224 USPQ at 751.

Here, the dominant element of registrant's mark is NCC inasmuch as COMPUTER is generic and has been disclaimed. NCC is also the dominant element of applicant's mark as PC and TEST are descriptive/generic and have been disclaimed. The word DRIVING in applicant's mark appears in smaller font than NCC and the design element is subordinate origin-indicating manner.

In view thereof, while differences admittedly exist between the marks when viewed on the basis of a side-by-side comparison,<sup>3</sup> when considered in their entireties,

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<sup>3</sup> Such a comparison, however, is not the proper test to be used in determining the issue of likelihood of confusion inasmuch as it is not the ordinary way that customers will be exposed to the marks. Instead, it is the similarity of the general overall commercial impression engendered by the marks which must

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applicant's NCC PC DRIVING TEST and design mark is substantially similar to registrant's NCC COMPUTER mark. Moreover, even if consumers were to notice the differences in the respective marks, they may well believe that due to the shared term NCC, the computer software offered by applicant under its NCC PC DRIVING TEST and design mark represents a new product from the same source as the company which offers computers and retail store services in the fields of computers and computer-related products under the NCC COMPUTER mark.

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determine, due to fallibility of memory, whether confusion as to source or sponsorship is likely. The proper emphasis is on the average purchaser who normally retains a general rather than a specific impression of marks. See, e.g., *Envirotech Corp. v. Soloron Corp.*, 211 USPQ 724, 733 (TTAB 1981).

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**Decision:** The refusal to register is affirmed.

R. L. Simms

T. J. Quinn

P. T. Hairston  
Administrative Trademark Judges  
Trademark Trial and Appeal Board