

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Hearing:

June 7, 2000

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Paper No. 21

PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Patriot Computer Corporation

Serial No. 75/324,788

Michael A. Grow and Sheldon Klein of Arent Fox Kintner Plotkin & Kahn, PLLC for Patriot Computer Corporation.

Mark Sparacino, Trademark Examining Attorney, Law Office 103 (Michael Szoke, Managing Attorney).

Before Cissel, Hairston and Wendel, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

This is an appeal from the Trademark Examining Attorney's final refusal to register the mark PATRIOT for "personal computers and computer peripherals, namely printers."

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, if used in connection with the identified goods, would so resemble the registered mark

PATRIOT for "video monitors,"¹ as to be likely to cause confusion.

Both applicant and the Examining Attorney have filed briefs and an oral hearing was held.

We note at the outset that the marks are identical. The Board has stated in the past that "[i]f the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a likelihood of confusion." In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983).

We turn our attention then, as have applicant and the Examining Attorney, to the relationship between the respective goods. The Examining Attorney maintains that video monitors and personal computers, in particular, are related because they are commonly used together and are often sold by the same manufacturers under the same marks.

Applicant, in urging reversal of the refusal to register, argues that the respective goods are distinct, are sold to different purchasers and travel through entirely different channels of trade. Further, applicant contends that marks consisting of or containing the word

¹ Registration No. 1,255,915 issued November 1, 1983; Section 8 & 15 affidavit accepted and acknowledged, respectively.

"PATRIOT" are weak marks which are therefore entitled to only a limited scope of protection. In support of its contention, applicant has submitted copies of ten third-party registrations for "PATRIOT" marks.

As has been frequently stated, it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a likelihood of confusion. It is sufficient that the respective goods of the parties be related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In this case, we find that the Examining Attorney has submitted sufficient evidence to establish a viable relationship between personal computers and video monitors.

In particular, the Examining Attorney made of record an excerpt from the American Heritage Dictionary of the English Language (3d. ed.) which defines "monitor" as "a device that accepts video signals from a computer and displays information on a screen." In addition, he

submitted twenty excerpts from the NEXIS database which show that the monitors which are used with personal computers are described as "video monitors." The following are representative samples of these excerpts:

Seven personal computers feed information from around the world into the four, color video monitors lined up in front of the traders.

(The New York Times, December 2, 1990);

For the budget-conscious, a lower cost alternative to some pricey data display equipment are computer-to-video interfaces that link personal computers to conventional video monitors . . .

(Computer Pictures, November 1992);

Gateway 2000, a major mail-order computer company, has taken a more restrained approach to the range of home entertainment in its new Destination televisions. Each model combines a personal computer with a 31-inch video monitor that doubles as a conventional television.

(The New York Times, May 16, 1996); and

Nortech Engineering Inc.'s operator interface work station, MODEL NWS, is available in a full length, stand-alone cabinet mounted on lockable casters for ease of positioning, according to the firm. A large-screen video-monitor, industrial personal computer and keyboard is mounted to the upper cabinet.

(Rubber & Plastics, May 19, 1997).

Further, the Examining Attorney submitted copies of a number of third-party registrations to show that goods of the type involved herein may emanate from the same source under the same mark. A portion of this evidence is of

limited probative value given the fact that some of the registrations are for house marks or are based under Section 44 of the Act with no claim of any use in this country. Nonetheless, the rest of the registrations tend to suggest that goods of the type involved in this appeal may emanate from a single source under the same mark.² In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988).

With respect to applicant's argument that there is no overlap among purchasers and channels of trade because the registrant's video monitors are specialized in nature and are marketed to the defense and aerospace industry, we note that the identification of goods in the cited registration contains no restrictions as to type, purchasers, or channels of trade. In the absence of any restrictions, we must assume that registrant's video monitors are of a type which could be used with personal computers and that they are marketed to all available purchasers, not only those in the defense and aerospace industry, through all normal channels of trade. In short, for purposes of our likelihood of confusion analysis, we can draw no

² For example, the mark ONLINE and design is registered for, inter alia, personal computer terminals and video monitors (Reg. No. 1,780,112); the mark COMPAQ is registered for, inter alia, personal computers and video monitors (Reg. No. 1,993,756); the mark IR and design is registered for computers and video monitors (Reg. No. 2,012,551); and the mark ELLCON and design is registered for PC's and video monitors (Reg. No. 1,831,944).

distinctions between the purchasers and channels of trade for the respective goods.³

As to applicant's argument that the cited mark is weak and therefore entitled to only a limited scope of protection, we should point out the third-party registrations made of record by applicant, in and of themselves, are entitled to little weight in evaluating whether there is a likelihood of confusion. See, e.g., *AMF Inc. v American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); and *In re Hub Distributing, Inc.*, 218 USPQ 284, 285-86 (TTAB 1983). This is because third-party registrations are not evidence of what happens

³ We note that applicant submitted a print-out of registrant's web site in support of its contention that registrant's video monitors are marketed only to the defense and aerospace industry. Even if we could limit registrant's goods in the manner urged by applicant, the web site would not support such a limitation. Our review of the site reveals that registrant supplies products not only to companies in the defense and aerospace industry, but to utility companies, medical diagnostic and treatment centers and financial services companies. Also, such a limitation on registrant's goods would not necessarily avoid a likelihood of confusion here because applicant's identification of goods contains no restrictions.

in the marketplace. Also, we note that none of the third-party registrations include goods of the type involved in this appeal.⁴

Finally, to the extent that we have any doubt on the issue of likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

In view of the foregoing, we conclude that purchasers familiar with registrant's video monitors offered under the mark PATRIOT would be likely to believe, upon encountering applicant's mark PATRIOT for personal computers, that the goods originated with or were somehow associated with or sponsored by the same entity.

⁴ In particular, applicant contends that its mark should be allowed in view of the coexistence of the cited mark and Registration No. 1,902,410 for the mark PATRIOT for "gaming equipment, namely slot machines and video slot machines with video output capability." Applicant's reasoning is that video slot machines are more closely related to video monitors than are applicant's personal computers. We are not convinced that these goods are more closely related and, in any event, as has often been stated, each case must be decided on its own set of facts. In re Half Price Books, Records, Magazines, Inc., 225 USPQ 219, 221 (TTAB 1984). We are not privy to the file record of this third-party registration and thus have no way of knowing the reason(s) why such registration was allowed.

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Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.

R. F. Cissel

P. T. Hairston

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