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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re International Lutheran Laymen's League

Serial No. 75/364,562

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International Lutheran Laymen's League.

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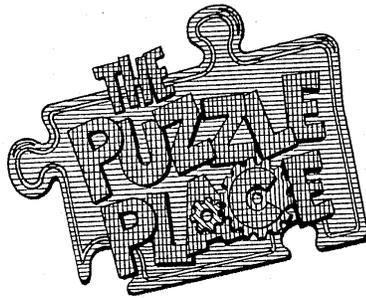
Before Quinn, Hohein and Rogers, Administrative Trademark
Judges.

Opinion by Rogers, Administrative Trademark Judge:

International Lutheran Laymen's League has filed an
application to register the mark THE PUZZLE CLUB in
International Class 41 for services identified as
"educational and entertainment services, namely, production
of animated television films, videos and CD-ROMs featuring
a religious message for families."¹

¹ Serial No. 75/364,562, filed September 29, 1997, and alleging a
date of first use and first use in commerce of August 20, 1997.

The Examining Attorney has refused registration of applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of the prior registration of the marks THE PUZZLE PLACE² and THE PUZZLE PLACE and design³, shown below, both for "entertainment services, namely, producing a children's television series" in class 41.



When the Examining Attorney made the refusals of registration final, applicant appealed. Both applicant and the Examining Attorney have filed briefs, but an oral argument was not requested. We reverse both refusals.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are

² Registration No. 1,962,893, issued March 19, 1996, based on claimed dates of first use of January 16, 1995.

³ Registration No. 1,958,130, issued February 20, 1996, based on a claimed date of first use of January 16, 1995. The drawing of the mark is lined for the colors yellow, blue, pink and green.

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relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion presented by this case, key considerations are the similarities or dissimilarities of the marks, the similarity or dissimilarity of the services, and the classes of consumers for the involved services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first consider the involved services. We note that registrant's identification of services contains no limitation as to the content of its television series, except insofar as it is intended for children. That is to say, registrant's identification encompasses even an animated children's television series and one with religious content, i.e., a series with the same characteristics as applicant's television films and videos.

In addition, we note the Examining Attorney's reliance on third-party registrations, for marks used in commerce, which are probative evidence that a single entity can produce television films, a television series and videos. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993). In an attempt to overcome this evidence from the Examining Attorney, applicant argues that this

case is more akin to the *Digirad* case, because none of the services listed in the third-party registrations include production of videos, films or television programs featuring a religious message for families. *In re Digirad Corp.*, 45 USPQ2d 1841 (TTAB 1998). We agree with the Examining Attorney, however, that the *Digirad* case is factually distinguishable and provides no support for applicant's argument. In *Digirad*, the third-party registrations introduced by the Examining Attorney were not helpful in establishing whether the applicant's and registrant's goods were similar. In this case, we find the third-party registrations are clear evidence that purchasers of registrant's and applicant's services are accustomed to obtaining them from the same source and, thus, that such services are indeed similar.

In regard to classes of consumers, applicant argues that registrant's services are directed to children, while applicant's services "are directed to families. Although 'families' may include 'children', Applicant's services are also intended for adults, and are purchased by adults." Further, applicant argues that "families who are seeking a 'religious message' are discriminating purchasers." In making these arguments, however, applicant focuses on the ultimate viewers of the productions of applicant and

registrant and loses sight of the fact that the involved identifications are for the *services* of producing, respectively, a television series, and animated television films, videos and CD-ROMS. The purchasers of the respective services presumably are businesses or organizations that could show or resell the productions resulting from purchases of the services. In fact, the usual class of consumers for applicant's television films and registrant's television series would be television broadcasters, not children or families. Accordingly, applicant's argument is inapposite. Notwithstanding the error in applicant's analysis, we do presume those businesses, including television broadcasters, and other organizations that would purchase the respective services, are likely to be sophisticated consumers, and therefore less likely to be confused by the use of the respective marks in connection with these similar services. This is a factor that militates against finding a likelihood of confusion.

Turning to the marks, applicant submits that "PUZZLE" is defined as "a question, problem, or contrivance designed for testing ingenuity"; concedes that this definition "applies to Applicant's services" so that "PUZZLE" is highly suggestive of applicant's services; and asserts that

"PUZZLE" is also highly suggestive of registrant's services because "children's television typically involves a story or game that is designed to test a child's skill" and because the "puzzle piece" design in registrant's word and design mark "obviously bears some relationship to the registrant's services." Applicant concludes that, notwithstanding that each mark includes "THE PUZZLE," the inclusion of the terms "CLUB" and "PLACE" results in marks that, considered in their entireties, look and sound different and have different meanings.

The Examining Attorney asserts that applicant is speculating in regard to the content of registrant's productions and disagrees with applicant's conclusion that "PUZZLE" is highly suggestive as used by registrant.⁴ The Examining Attorney therefore asserts that "PUZZLE" is the dominant term in each mark and that "CLUB" and "PLACE," as used in connection with the respective services, have a similar connotation, thereby yielding each complete mark a similar look, sound and meaning.

⁴ Specifically, the Examining Attorney argues that applicant engages in pure speculation by arguing that children's programs necessarily involve tests of children's skill; and argues that the design elements in registrant's design mark may be seen as reinforcement for the literal portion of the mark and cannot be assumed to be indicative of the content of registrant's television series.

We take judicial notice of the following definitions of "CLUB" and "PLACE", which are the most apt in this case:

club 3. a group of persons organized for a social, literary, athletic, political, or other purpose. 4. the building or rooms occupied by such a group.
The Random House College Dictionary 255 (Rev. Ed. 1982).

place 3. the portion of space occupied by a person or thing. 4. a space or spot set apart or used for a particular purpose. 18. a building, location, etc., set aside for a specific purpose.
The Random House College Dictionary 1013 (Rev. Ed. 1982).

We note, too that applicant's specimens explain that "THE PUZZLE CLUB" is "a trio of adventuresome children... who together with their mentor, Tobias, solve mysteries...." The specimens also explain that Tobias allows the children to "use the attic above his store as their headquarters."

We agree with the Examining Attorney that applicant engages in improper speculation regarding the content of registrant's productions. We disagree, however, with the Examining Attorney's argument that registrant must be viewed as having adopted the puzzle piece design element for its composite mark solely to reinforce the arbitrary term "PUZZLE". We view the puzzle piece, and the term "PUZZLE" in registrant's marks, as more likely suggestive

than arbitrary. Applicant concedes that "PUZZLE" is "highly suggestive" of its own services.

We find it unnecessary, however, to choose between the applicant's and the Examining Attorney's contrary views of what term dominates the respective marks. We view applicant's mark and registrant's typed mark, each considered in its entirety, as being sufficiently dissimilar in sound, appearance and connotation. "CLUB" and "PLACE" look and sound different, and lend the respective marks different connotations. We find that prospective purchasers of applicant's services, whether for production of animated television films, videos or CD-ROMs, will perceive "CLUB" as referring to the group of children identified in applicant's specimens.⁵ In contrast, registrant's marks do not carry the connotation of a group of persons with a common purpose; they carry the connotation only of a particular place set aside for a particular purpose.

In sum, though we find the services similar, the marks have definite differences and the consumers of the services are presumptively sophisticated, so that we find no likelihood of confusion.

⁵ The specimens place no emphasis on the children's meeting room. The focus is clearly on the children and their mentor, Tobias.

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Decision: The refusals under Section 2(d) of the
Trademark Act are reversed.

T. J. Quinn

G. D. Hohein

G. F. Rogers

Administrative Trademark
Judges, Trademark Trial
and Appeal Board