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Paper No. 9
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Autodesk, Inc.

Serial No. 75/379,524

Michael J. Hughes for Autodesk, Inc.

Barbara Brown, Trademark Examining Attorney, Law Office 102
(Thomas Shaw, Managing Attorney).

Before Seeherman, Bucher and McLeod, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Autodesk, Inc., a Delaware Corporation, seeks registration of the mark "QUICKCAD" for goods identified as "computer programs in the nature of three dimensional animation and graphics software, all for character based and animation and graphics design modeling applications and interactive multimedia applications and instructional manuals sold as a unit therewith," in International Class 9.¹

¹ Serial No. 75/379,524, filed on October 27, 1997. The application is based upon use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), with May 24, 1995 alleged as

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles "QUICKPEN CAD" (with the acronym CAD disclaimed), as shown below:



for "computer software programs used for computer-aided-design, and, computer-aided-manufacturing, and instructional manuals sold as a unit therewith; and, computer peripherals," also in International Class 9,² as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney also made final the requirement to provide a more specific identification of goods.

The appeal has been fully briefed, but an oral hearing was not requested.

Turning first to the issue of likelihood of confusion, our determination under Section 2(d) is based upon an

the date of first use of the mark anywhere and May 24, 1995 alleged as the date of first use of the mark in commerce.

² Reg. No. 1,783,262, issued on July 20, 1993 to QuickPen International Corp., maturing from application Ser. No. 74/153,881, filed on April 3, 1991. The registration sets forth dates of first use of March 1993; §8 affidavit accepted and §15 affidavit received.

analysis of all of the probative facts in evidence that are relevant to the factors bearing on the question of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

With respect to the goods, applicant concedes that the goods in the cited registration are broad enough to encompass the goods sold by applicant.

Furthermore, these identical or closely related goods must be deemed to travel in the same channels of trade, and be sold to the same classes of consumers.

We turn next to a consideration of the marks, noting that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant argues that its own mark is suggestive of "... a CAD program which may be used easily and rapidly." By contrast, applicant argues that the cited mark includes

registrant's house mark ("Quickpen") and therefore has a very different commercial impression.

The Trademark Examining Attorney contends that since both marks contain the words "QUICK" and "CAD" in that order, both connote computer programs that perform computer aided design functions in a rapid or speedy manner. The Trademark Examining Attorney dismisses the stylization of registrant's mark and applicant's deletion of the element, "PEN," as insignificant differences. Finally, the Trademark Examining Attorney points out that it is unwarranted to assume that consumers would be acquainted with the source of registrant's product.

When we consider the marks in their entireties, we find that they are similar. The similarity or dissimilarity of the marks in their entirety is to be considered with respect to appearance, sound, and connotation. See Olde Tyme Foods, Inc. v. Roundy's, Inc., 961 F.2d 200, 202-03, 22 USPQ2d 1542, 1544-45 (Fed. Cir. 1992). Given the construction of these two marks, we find that they have a similar overall appearance and sound. "Quick..." is the first word of both marks, and both end with the acronym "CAD." Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon

their imperfect recollections. Dassler KG v. Roller Derby Skate Corporation, 206 USPQ 255 (TTAB 1980). In addition to their similarities in appearance and pronunciation, they also have the same meaning.

There is no evidence in the record supporting applicant's assertion that registrant uses "Quickpen" as a house mark, or that consumers of the identified goods would be acquainted with such asserted house mark usage. Thus, on this record, we must consider the term "pen" in registrant's mark as suggestive of the identified computer program, i.e., that the images created by this computer application were once hand-drawn by a pen. Hence, applicant's mark is essentially registrant's mark, absent the suggestive term "pen" buried in the middle.

While we acknowledge that these two marks are not identical, we find nonetheless that because of their similarities in appearance, sound and connotation, the marks in their entireties convey similar commercial impressions.

The fact that purchasers more sophisticated than members of the general public would use applicant's and registrant's goods does not avoid a likelihood of confusion. That is, when the goods are deemed to be identical and the marks are quite similar, even

knowledgeable purchasers are likely to believe the goods come from the same source.

Finally, any doubt we may have on this issue must necessarily be resolved in favor of registrant. In re Hyper Shoppes (Ohio), 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988). Accordingly, the refusal to register under Section 2(d) of the Act is affirmed.

In the interest of completeness, we turn now to the other outstanding issue, and that is whether or not applicant's identification of goods is acceptable.

As noted earlier, the latest amendment to the identification of goods now reads as follows:

"computer programs in the nature of three dimensional animation and graphics software, all for character based and animation and graphics design modeling applications and interactive multimedia applications and instructional manuals sold as a unit therewith." (emphasis supplied)

The Trademark Examining Attorney made final a requirement for a more specific and definite identification of goods. Specifically, the Trademark Examining Attorney wanted applicant to (1) clarify that the 3-D and graphics software is for the "design of" interactive multimedia applications, or (2) indicate the particular function of the interactive multimedia applications.

In the event the entire identification of goods were merely "interactive multimedia applications," we agree with the Trademark Examining Attorney that would be indefinite. Consistent with Office practice, such an identification of goods should be further modified by listing the function, subject matter or purpose of the application.

However, even if we accept the argument of the Trademark Examining Attorney that this portion of the identification of goods, as now drafted, is ambiguous, this phrase must be read within the context of the entire wording in the identification of goods. When the identification of goods is read in its entirety, it is clear that "interactive multimedia applications" reflects a type of three-dimensional animation and graphics software. That is, the term "interactive multimedia applications" modifies "three-dimensional animation and graphics software" in the same manner as does the phrase "character-based and animation and graphics design modeling applications." Accordingly, while the identification as written may be a bit inartful, it is not indefinite. Hence, we reverse the requirement of the Trademark Examining Attorney for further amendment to the identification of goods.

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Decision: The refusal to register under Section 2(d) is affirmed while the requirement for an acceptable identification of goods is reversed.

E. J. Seeherman

D. E. Bucher

L. K. McLeod

Administrative Trademark
Judges, Trademark Trial
and Appeal Board