

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB JUNE 30, 00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re S.R.O. Management Inc.

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Serial No. 75/395,643

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David B. Bernstein of Mintz Levin Cohn Ferris Glovsky and  
Popeo PC for S.R.O. Management Inc.

Christine M. Baker, Trademark Examining Attorney, Law  
Office 106 (Mary I. Sparrow, Managing Attorney)

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Before Seeherman, Walters and Holtzman, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

S.R.O. Management Inc. has appealed from the refusal  
of the Trademark Examining Attorney to register SRO as a  
mark for "business management in the entertainment  
industry, namely, accounting services; promoting the  
concerts of others; management of performing artists"  
(Class 35) and "financial management in the entertainment

industry" (Class 36).<sup>1</sup> Registration has been refused pursuant to Section 2(d) of the Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the following marks, registered by two separate entities, that, as used in connection with applicant's identified services, it is likely to cause confusion or mistake or to deceive:

SRO for "financial analysis and consultation and administration of employee benefit plans and pension plans";<sup>2</sup> and

SRO PRODUCTIONS, ("Productions" disclaimed), for "entertainment services in the nature of production of plays of new playwrights."<sup>3</sup>

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

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **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

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<sup>1</sup> Application Serial No. 75/395,643, filed November 25, 1997, alleging first use on January 1, 1974 and first use in commerce on June 28, 1974.

<sup>2</sup> Registration No. 1,987,545, issued July 16, 1996, to Management Compensation Group/Southeast, Inc.

<sup>3</sup> Registration No. 2,028,183, issued January 7, 1997, to Andrew R. Sackin.

the goods. **Federated Food, Inc. v. Fort Howard Paper Co.**,  
544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the refusal based on Registration No. 1,987,545 for SRO, the marks are, obviously identical. The registered mark is for "financial analysis and consultation and administration of employee benefit plans and pension plans." Applicant has tried to limit the scope of this identification by focusing on the portion which refers to "administration of employee benefit plans and pension plans," and has ignored that portion covering "financial analysis and consultation. Moreover, although applicant points out that its financial management services are in the entertainment area, it ignores the fact that the identification in the cited registration is not limited to any particular field, and thus must be deemed to encompass financial analysis and consultation in the entertainment area, too.

Applicant focuses much of its argument on the specifics of the services it actually renders, stating, at various points in its brief, that its clients are "entertainers and recording artists such as the rock group 'Rush'," brief, p. 5, and "Rock & Roll bands." However, it is well established that the question of likelihood of confusion must be determined on the basis of the

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identification of goods set forth in the subject application and cited registrations. **In re William Hodges & Co., Inc.**, 190 USPQ 47 (TTAB 1976).

Based on the services as they are identified in the application and registration, we find that the registrant's financial analysis and consultation services is closely related to, and potentially overlapping with, applicant's financial management in the entertainment industry, and the use of the identical mark SRO by applicant and registrant for their services is likely to cause confusion.

We would also add that, even if the registrant's identification were to be read, as applicant has, with the "financial analysis and consultation" portion merely modifying employee benefit plans and pension plans, rather than as a separate service, confusion would still be likely. (We reiterate that we do not believe this is the correct reading, since it is grammatically incorrect. If, indeed, "financial analysis and consultation" were to be considered as modifiers, the identification would have read, "financial analysis of, consultation for, and administration of employee benefit plans and pension plans.) Applicant's identification of "financial management in the entertainment industry" is so broad that such management could encompass purchasing or arranging for

employee benefit plans. Again, the fact that the entertainment figures who are applicant's current clients, and who may have no need of employee benefit plans, does not have an impact on our analysis, since our determination is made based on the services as they are identified in the application, not on what the services are in actual practice.

Applicant's arguments regarding the fame of its mark, made for the first time in its brief, are without support. The mere fact that applicant began using its mark in 1974 is not sufficient to make it famous. Even if we were to accept, *arguendo*, applicant's claim that its mark is very well known among the customers to which its services are directed, applicant's services, as identified, encompass a broader audience. Similarly, because applicant has focused its arguments on its actual services, rather than on its identified services, its arguments regarding channels of trade and sophistication of purchasers are of little value. Moreover, with respect to the latter, it seems to us that even if the clients for applicant's financial management services and the financial analysis, etc. of employee benefit plans were to be limited to rock & roll bands, such bands are unlikely to be sophisticated purchasers. Rather, these musicians are likely to assume that financial

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management services and financial analysis, etc. of employee benefit plans, both offered under the mark SRO, emanate from the same source.

This brings us to a consideration of the refusal based on Registration No. 2,028,183 for SRO PRODUCTIONS for "entertainment services in the nature of production of plays of new playwrights." The Examining Attorney states that, "[g]iven the nature of the entertainment industry, it is very likely that consumers of the registrant's services will also be in need of the applicant's services, particularly, its accounting and business services, management skills and promotional efforts in order to bring a play to the stage. ... Thus, the same class of consumers will encounter the respective marks and services in commerce and falsely assume that they originate from a single source." Brief, p. 6.

We agree with the first part of the Examining Attorney's argument. Certainly it is possible that a new playwright, who has need of the registrant's producing services, may also come into contact with the management services identified in applicant's application, such as if the playwright wishes to hire a particular performer who has a manager. However, the Examining Attorney has provided no evidence that the same entities who produce

plays also manage performing artists, or promote concerts, or perform accounting services, or provide financial management services. Third-party registrations listing both the types of services identified in applicant's application and the cited registration, or articles from the NEXIS database or trade magazines mentioning companies which both produce shows and manage performing artists, for example, would have supported the Examining Attorney's position. Without evidence that such services are offered by a single entity, we cannot find that consumers encountering applicant's identified services offered under the mark SRO, and the registrant's identified services offered under the mark SRO PRODUCTIONS, are likely to believe that these services emanate from the same source.

In reaching this conclusion, we have also taken note of the suggestive nature of SRO. Although the Examining Attorney asserts that SRO is an arbitrary acronym, SRO or S.R.O. actually is a recognized acronym for "standing room only,"<sup>4</sup> a meaning that would be apparent to those in the entertainment industry. Given this suggestiveness, the

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<sup>4</sup> Webster's Third New International Dictionary, unabridged, © 1993; The Random House Dictionary of the English Language, 2d ed., unabridged, © 1983; The American Heritage Dictionary of the English Language, new coll. ed. (© 1976).

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scope of protection to be accorded the cited mark is necessarily smaller than with an arbitrary mark.

Decision: The refusal of registration based on Registration No. 1,987,545 is affirmed; the refusal of registration based on Registration No. 2,028,183 is reversed.

E. J. Seeherman

C. E. Walters

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

Without such evidence, and given the suggestive nature of however, we cannot find that the Office has met its burden, particular However, merely stating conclusions, and citing various cases for principles of law, is not sufficient to As a result, we cannot conclude that the same class of consumers who encounter these various services would assume that they emanate from the same source have need of can accept the Examining Our difficulty with this argument, however, is that the Examining Attorney has provided no evidence to show that someone