

12/19/00

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

Paper No. 11  
DEB

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Triada, Ltd.

Serial No. 75/408,277

John G. Posa and Allen M. Krass of Gifford Krass Groh Sprinkle  
Anderson & Citkowski for Triada, Ltd.

Michael W. Baird, Trademark Examining Attorney, Law Office 109  
(Ronald R. Sussman, Managing Attorney).

Before Hohein, Bucher and Bottorff, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Triada, Ltd. has filed an intent-to-use application seeking  
registration on the Principal Register of the mark depicted  
below:



for goods identified in the application as "computer software  
for use in data management in the fields of information analysis

and interpretation; and computer hardware for use in information analysis and interpretation" in International Class 9.<sup>1</sup>

The Trademark Examining Attorney has refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), citing a registration for the mark "ATHENA" for "computer programs, and instruction manuals sold therewith, which collectively provide a set of integrated network services; namely, user authentication, file service, name service, messaging service, mail service, network management service, and print service," also in International Class 9.<sup>2</sup>

When the refusal was made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney have filed main briefs, and applicant has filed a reply brief. No oral hearing was requested.

We affirm the refusal to register.

Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973). Upon careful consideration of the evidence of record pertaining to these factors, we find as follows.

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<sup>1</sup> Serial No. 75/408,277 was filed December 19, 1997.

Applicant's mark consists of the word "ATHENA," directly above the phrase "GUIDING THE ANALYST TO WISDOM." The design portion of the mark is a woman's head connected to the first letter "A" in the word Athena by a sweeping arc. Although applicant argues that its proposed mark is "dramatically different" from the mark in the cited registration, we agree with the Trademark Examining Attorney that these two marks have the same connotation, and hence create the same overall commercial impression in the minds of consumers.

Applicant argues correctly that its mark has five additional words not found in registrant's mark - "GUIDING THE ANALYST TO WISDOM." However, as the Trademark Examining Attorney contends, these words are displayed in much smaller lettering than the prominent lettering of the word "ATHENA." The entire phrase of *five words* appears, in a subordinate manner, under T-H-E-N-A - the last *five letters* of the word "ATHENA." Furthermore, we note that rather than distinguishing the marks, this additional wording in applicant's mark merely reinforces for the analyst/purchaser the commonly understood significance of "Athena," the Greek goddess of wisdom.

Similarly, in the context of this composite mark, applicant's design element is not an arbitrary design feature.

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<sup>2</sup> Reg. No. 1,789,164 issued on August 24, 1993; combined Section 8 and 15 affidavit accepted and acknowledged.

Rather, the classical pose of the woman's head would be seen by many consumers as representing the goddess Athena, once again reinforcing pictorially the common impression of applicant's composite mark as connoting "ATHENA" - the totality of registrant's mark.

Turning to the goods, we note that applicant's computer hardware and software are designed for use in data management and information analysis. Registrant's software, by contrast, integrates essential services provided on computer networks. These goods are not competitive, but the question is whether these respective computer products are related in a way that purchasers and prospective purchasers would mistakenly believe that they came from a common source. To support his contention that this question should be answered in the affirmative, the Trademark Examining Attorney has submitted for the record a variety of types of evidence of a source-relationship between these two specific computer products.

The Trademark Examining Attorney has placed into the record a representative sample of sixteen registrations where third-party registrants, in each instance, claim use of the same mark on computer software dealing with "networking" as well as software programs designed for "data management / data analysis / information analysis." Furthermore, the file contains copies of brochures, catalogues, Web pages and a classified directory

showing networking software and data base programs on the same page, or even within a single frame of an advertisement where both products are marketed under the same house mark.

Consequently, on a system of networked computers, it appears likely that these respective products could well be used together.

Hence, in spite of the fact that these marks have some difference in sound and appearance, given that the marks generate the same connotations, leading on balance to the same overall commercial impression, and because these are related goods that move through the same channels of trade to the same class of purchasers, we agree with the Trademark Examining Attorney that confusion is likely.

Decision: The refusal to register is affirmed.