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11/01/01

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sage Health Management Solutions

Serial No. 75/257,016

Stuart R. Hemphill of Dorsey & Whitney for Sage Health Management Systems.

Florentina Blandu, Trademark Examining Attorney, Law Office 112, (Janice O'Lear, Managing Attorney).

Before Hanak, Walters and Wendel, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Sage Health Management Solutions (applicant) seeks to register in typed drawing form SAGE HEALTH MANAGEMENT SOLUTIONS for "consulting services in the field of health care utilization management using proprietary health care practice guidelines." The intent-to-use application was filed on March 14, 1997.

Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with two marks previously registered to the same entity, namely S SAGE

and design in the form shown below and SAGE. Registration
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and 2,154,824. The services of both registrations are
virtually identical. The services for the SAGE per se
registration read as follows: "providing nursing home
services, assisted living facilities, home health care
services and senior retirement community services." The
registration for S SAGE and design reads the same except
that in place of the phrase "assisted living facilities,"
this latter registration has "assisted living services."

When the refusal to register was made final,
applicant appealed to this Board. Applicant and the
Examining Attorney filed briefs. Applicant did not

request an oral hearing.

In any likelihood of confusion analysis, two key,

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although not exclusive, considerations are the similarities of the marks and the similarities of the services or goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the marks, we will compare applicant's mark to the registered mark SAGE because the similarities between these two marks are greater than are the similarities between applicant's mark and the registered mark S SAGE and design. At the outset, we note that at the request of the Examining Attorney, applicant disclaimed the exclusive right to use the term HEALTH MANAGEMENT SOLUTIONS. However, it is important to remember that in comparing applicant's mark to the registered mark SAGE, we cannot ignore the disclaimed matter in applicant's mark (HEALTH MANAGEMENT SOLUTIONS). American Home Products v. B. F. Ascher, 473 F.2d 903, 176 USPQ 532, 533 (CCPA 1973). While the only arbitrary portion of applicant's mark (SAGE) is identical to the registered mark SAGE, nevertheless, the remainder of

applicant's mark (HEALTH MANAGEMENT SOLUTIONS) causes applicant's mark to be at least somewhat dissimilar from the registered mark in terms of visual appearance, pronunciation and meaning. In short, this is not a case

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where the marks in question are identical or even virtually identical.

Turning to a consideration of applicant's services and registrant's services, it is critical to keep in mind that in order for there to exist a likelihood of confusion, both sets of services must be marketed to the same relevant purchasers. Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1390 (Fed. Cir. 1992). The evidentiary record in this case demonstrates that there are no common purchasers of applicant's services and registrant's services, and accordingly, we find that there exists no likelihood of confusion.

To elaborate, registrant's nursing home services and the like are marketed to ordinary consumers. On the other hand, the record demonstrates that applicant's consulting services in the field of health care

utilization are marketed only to health care providers and health maintenance organizations in an effort to assist such facilities in enhancing the level of care while reducing cost. The importance that there be some common individual purchasers of applicant's services and registrant's services in order for there to exist a likelihood of confusion cannot

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be emphasized too much. For example, in the case of Astra Pharmaceutical Products v. Beckman Instruments, 718 F.2d 1201, 220 USPQ 786(1 Cir. 1983), the Court found that there was no likelihood of confusion when both parties used the identical arbitrary mark ASTRA on health care products which were sold to the very same purchasing institutions. In so doing, the Court emphasized that while the same institutions bought health care products from both parties under the identical mark ASTRA, different individuals within these institutions made the purchasing decisions for plaintiff's products and defendant's products. Our primary reviewing Court has cited with approval the Astra Pharmaceutical Products decision. See Electronic Design & Sales v. Electronic

Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1390 (Fed. Cir 1992). In Electronic Design & Sales, the Court found that there was no likelihood of confusion resulting from the contemporaneous use of the virtually identical marks EDS and E.D.S. despite the fact that both marks were used on products sold to the identical companies because different individuals within those companies purchased, on the one hand, opposer's products and, on the other hand, applicant's products. 21 USPQ2d at 1391.

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Thus, following the analysis of Electronic Design & Sales and Astra Pharmaceutical Products, we find that because there is no overlap of purchasers of registrant's consumer oriented services and applicant's institutional oriented services, there is no likelihood of confusion. Indeed, the present case is a more compelling case for finding no likelihood of confusion because in the Electronic Design & Sales and Astra Pharmaceutical Products cases, the marks were identical or virtually identical and the services of the parties were marketed to the same companies, albeit not to the same individuals within those companies.

While not necessary for a finding of no likelihood of confusion, we also hasten to add that there are two additional factors which support a finding of no likelihood of confusion. First, it is undisputed that the purchasers of applicant's consulting services in the field of health care utilization are professionals who are clearly sophisticated. As our primary reviewing Court has made clear, purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care." Electronic Design & Sales, 21 USPQ2d at 1392.

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Second, by their very nature, applicant's consulting services in the field of health care utilization are expensive. In this regard, applicant's president indicated that on an annual basis, a customer will pay in the range of \$20,000 to \$325,000 annually to partake of applicant's consulting services. (Gray declaration paragraph 7). Moreover, prior to purchasing applicant's health care utilization consulting services, customers engage in extensive negotiations with applicant. As our primary reviewing Court has made clear, "there is always

less likelihood of confusion where goods [or services] are expensive and purchased after careful consideration."

Electronic Design & Sales, 21 USPQ2d at 1392.

Decision: The refusal to register is reversed.