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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 14  
HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re New Century Schools, Inc.

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Serial No. 75/454,526

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**J. Andrew McKinney, Jr.** of Epstein, Edell & Retzer  
for New Century Schools, Inc.

**Irene Williams**, Trademark Examining Attorney, Law Office  
112 (Janice O'Lear, Managing Attorney).

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Before Hanak, Walters and Wendel, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

New Century Schools, Inc. has filed an application to  
register the mark NEW CENTURY SCHOOLS CONSULTING AND DESIGN  
for "consulting services for educational institutions in  
the field of school design and curriculum management."<sup>1</sup>

A disclaimer has been entered of the words SCHOOLS  
CONSULTING AND DESIGN.

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<sup>1</sup> Serial No. 75/454,526, filed March 23, 1998, claiming first use  
dates of January 1, 1992.

Registration has been refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the mark NEW CENTURY which has been registered by the same entity for "educational printed materials - namely, instruction books, workbooks, teachers' manuals, and response worksheets"<sup>2</sup> and for "CD ROM disks used for educational purposes and manuals sold therewith."<sup>3</sup>

The final refusal has been appealed and both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We make our determination of likelihood of confusion on the basis of those of the *du Pont*<sup>4</sup> factors which are relevant in view of the evidence of record. Two key considerations in any analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods with which the marks are being

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<sup>2</sup> Registration No. 911,221, issued April 13, 1971; Section 8 & 15 affidavits accepted and acknowledged, respectively; first renewal.

<sup>3</sup> Registration No. 1,594,998, issued May 8, 1990 Section 8(6-yr) and 15 affidavits, accepted and acknowledged, respectively; Section 8 (10-yr) accepted; first renewal. Although the Examining Attorney only relied upon the "CD ROM disks used for educational purposes and manuals sold therewith" in her refusal, the most recent Office records show that the mark also remains registered for "computer programs used for educational purposes." Other goods which were present in the original registration have been deleted.

<sup>4</sup> In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

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used. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ 1209 (TTAB 1999).

The Examining Attorney maintains that the present marks are highly similar in that the dominant portion of applicant's mark is the term NEW CENTURY, which constitutes the whole of registrant's mark. Applicant, on the other hand, contends that the differences in appearance, sound and connotation in the marks as a whole must be taken into consideration. Applicant further argues that the commercial impressions of the marks differ, because, although the marks share the phrase NEW CENTURY, applicant's mark has the additional suggestion of the consulting services being offered.

While marks must be considered in their entirety in determining likelihood of confusion, it is well established that there is nothing improper in giving more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (fed. Cir. 1985). Although disclaimed matter cannot be ignored, the fact remains that consumers are more likely to rely upon the non-descriptive portion of the mark as an indication of source. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

We agree with the Examining Attorney that the term NEW CENTURY is the dominant portion of applicant's mark and the portion most likely to be looked to by purchasers as an indication of source. While it is true that the additional wording SCHOOLS CONSULTING AND DESIGN in applicant's mark results in differences in appearance and sound in the marks as a whole, we find the overall commercial impressions of the marks to be highly similar. Although the highly descriptive wording SCHOOLS CONSULTING AND DESIGN may refer to the particular services which applicant is offering under its mark, we are convinced that the portion of the mark which purchasers would rely upon and remember over a period of time as the indication of origin of these services would be NEW CENTURY. Any role which the descriptive, if not generic, wording might play as a source identifier is minimal.

Turning to the goods and services involved here, we note that it is sufficient to support a finding of likelihood of confusion if the goods and services with which the respective marks are being used are related in some manner such that they would be seen by the same individuals under circumstances which would cause them to believe that the goods and services emanate from the same source. See *In re Peebles*, 23 USPQ2d 1795 (TTAB 1992);

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General Mills Fun Group, Inc. v. Tuxedo Monopoly Inc., 204 USPQ 396 (TTAB 1979), *aff'd*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981). Furthermore, if there are no restrictions in the registration(s) or application as to channels of trade, the goods and services must be assumed to travel in all the normal channels of trade for goods and services of this nature. See Kangol Ltd. v. KangaROOS U.S.A. Inc., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992).

The Examining Attorney takes the position that a relationship exists between applicant's consulting services, particularly in the field of curriculum management, and registrant's educational materials in printed and CD ROM form, since the latter are likely to be used as curriculum materials and might be assumed to have been recommended by applicant.

Applicant insists, however, that its services are consulting services directed at school administrators and managers engaged in designing schools and managing curricula and that the offering of consulting services of this nature is distinctly different from selling goods in the educational area. Applicant argues that there are a variety of channels of trade for educational items and that while teachers and principals would be engaged in developing curricula and choosing materials such as those

offered by registrant, school board members, administrators and other managers would be engaged in designing schools and managing curricula. Applicant further argues that both levels of purchasers would be sophisticated persons who exercise great care in making their selections and who would not be likely to mistakenly consider registrant to be the source of applicant's consulting services or vice versa.

The basic problem with applicant's arguments is that there are no restrictions in either its application or the cited registrations as to channels of trade or specific purchasers. Thus, we must assume that the respective goods and services travel in all the normal channels of trade for goods and services of this nature. As such, we see no reason to draw a line between the purchasers of applicant's consulting services, particularly those directed to curriculum management,<sup>5</sup> and the purchasers of registrant's curriculum materials. It seems highly likely that school administrators or school principals might well be involved in both the assessment and development of curriculum as applicant offers in its consulting services and the

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<sup>5</sup> We note that in making a determination of likelihood of confusion, it is sufficient if likelihood of confusion is found respect to use of the mark in connection with any one of the services recited in the application. See *Tuxedo Monopoly Inc.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

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purchase of the actual materials to be used in implementing this newly formulated curriculum.

Under these circumstances, we find it likely that these individuals, upon encountering the highly similar NEW CENTURY marks of applicant and registrant being used in connection with the respective services and goods, might well assume a common origin for the consulting services and the curriculum materials. Despite the sophistication of these purchasers and care which they might exercise in making their selections, we find it most reasonable for these persons to mistakenly believe that there is a sponsorship by, or association with, applicant of the curriculum materials of registrant.

Accordingly, upon weighing all the relevant *du Pont* factors, we find confusion likely.

Decision: The refusal to register under Section 2(d) is affirmed.

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