

1/25/01

**THIS DISPOSITION
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Paper No. 12
HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SRC Computers, Inc.

Serial Nos. 75/519,930; 75/520,150;
and 75/520,151

Wendy J. Pifher of Holland & Hart L.L.P. for
SRC Computers, Inc.

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

Before Chapman, Wendel and Bottorff, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

SRC Computers, Inc. has filed applications to register
the mark SRC COMPUTERS¹ and the two SRC and design marks
shown below, all three for "custom manufacturing of
computers for others" in Class 40 and "design of computers
for others" in Class 42.

¹ Serial No. 75/519,930, filed July 16, 1998, claiming a first
use date of August 28, 1996 and a first use in commerce date of
November 1996 for both classes. A disclaimer has been made of
the word COMPUTERS.

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Serial No. 520,151³

Registration has been finally refused in each application under Section 2(d) on the ground of likelihood of confusion with the mark SRC DIRECT,⁴ which is registered for "supplies volume purchasing services, namely, telephone order and mail order services in the field of office and business equipment, machines, computers, printers, accessories and supplies used therewith" in Class 42.⁵

The refusals have been appealed and applicant and the Examining Attorney have filed briefs in each application. No oral hearing was requested. In view of the common questions of law and fact which are involved herein, we find it in the interests of judicial economy to consolidate

² Serial No. 75/520,150, also filed July 16, 1998, claiming the same first use dates.

³ Serial No. 75/520,151, also filed July 16, 1998, claiming the same first use dates. The statement has been entered that the mark is lined for the color red.

⁴ Registration No. 1,901,707, issued June 27, 1995, setting forth first use dates of March 15, 1994. A disclaimer has been made of the term DIRECT.

⁵ The mark is also registered for "catalogues featuring office and business equipment, machines, computers, printers and accessories and supplies used therewith" in Class 16. The Examining Attorney has stated in her brief, however, that the refusal is based only on the Class 42 services.

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the cases for purposes of final decision. Thus, we have issued this single opinion.

We make our determination of likelihood of confusion on the basis of those of the *du Pont*⁶ 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 or services with which the marks are being 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).

Considering first the marks involved here, we are guided by the well established principle that although the marks must be considered in their entirety, there is nothing improper, in appropriate circumstances, 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). Thus, despite applicant's arguments that when the marks are properly viewed in their entirety, the visual and phonetic differences will be readily apparent, we need not necessarily give equal weight to those portions

⁶ *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

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of the marks which create these visual and phonetic differences. Here all of the marks contain the same three letters "S" "R" and "C" in the same seemingly arbitrary arrangement or series.⁷ The remainder of each mark of applicant's marks consist either of the generic term (COMPUTERS) or a triangle design (in black or red), and the remainder of registrant's mark consists of the descriptive term DIRECT.

Although it is acknowledged that descriptive or disclaimed matter cannot be ignored in comparing the marks, it is also a fact that consumers are more likely to rely on the non-descriptive portion of a mark as an indication of source. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). The term COMPUTERS in applicant's mark is simply the generic term for the products involved and would have no role in indicating the particular source of these products. The descriptive word DIRECT in registrant's mark is similarly

⁷ While both applicant and the Examining Attorney refer to this series of letters as an "acronym," we find this a misnomer. An "acronym" as defined is "a word formed from the initial letters or groups of letters in a set phrase or series of words," not the initials of the name of a person or a company. See *Random House Dictionary of the English Language* (2nd Ed. 1987). Applicant's SRC mark is said to be derived from the initials of its founder, Seymour R. Cray, whereas registrant's mark is perhaps derived from its company name, Standard Register Company. Neither of these origins are likely to be recognized by potential purchasers, upon viewing the marks per se.

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without significance as the indicator of a single source. Applicant itself has pointed out that the term is frequently used to identify a method of obtaining goods and is "routinely" used in connection with mail order or volume purchasing. Thus, it is the arbitrary series of letters SRC which dominates both the mark SRC COMPUTERS and the mark SRC DIRECT and which would be the portion looked to by purchasers as the indication of origin.

In like fashion, it is the word portion of a mark, rather than the design feature, unless particularly distinctive, that is more likely to be remembered and relied upon by purchasers in referring to the goods or services, and thus it is the word portion that will be accorded more weight. See *Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A.*, 32 USPQ2d 1192 (TTAB 1994). Despite applicant's arguments as to the distinguishing features of the "highly stylized graphic elements" of its SRC and design marks, we find the triangles used therein to be no more than commonplace background designs with little trademark significance. Once again, it is the letter series SRC that dominates the marks. The situation here is not the same as the use of a common word in two marks, although applicant attempts to draw such a parallel. Instead, we have the use of the

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identical letter series, with the additional matter in the marks being such that it can be accorded little weight in comparing the marks as a whole.

Accordingly, we find the overall commercial impressions created by registrant's SRC DIRECT mark and applicant's SRC COMPUTERS and SRC and design marks to be highly similar. In fact, in view of the minimal trademark significance which may be attached to either the words DIRECT or COMPUTERS or to the design features of applicant's other marks, we find the commercial impressions virtually the same. See *In re Dixie Restaurants Inc.*, 41 USPQ2d 1531 (Fed. Cir. 1997)(neither background design element nor generic term in applicant's mark THE DELTA CAFÉ and design sufficient to create different commercial impression from registered mark DELTA). The dominant portion of each mark is SRC, which is obviously identical in terms of appearance and sound in each mark. Moreover, as previously discussed, there is no meaning of the letters which purchasers would readily attach to the marks, so as to distinguish between applicant's and registrant's uses of the series SRC. See *Alberto-Culver Co. v. F.D.C. Wholesale Corp.*, 16 USPQ2d 1597 (TTAB 1990)(neither party's combination of letters shown to have any special meaning to purchasers aside from trademark significance).

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While applicant raises the factor of use of similar marks by others for similar services by its argument that there has been frequent use of the series SRC in third-party marks, applicant has provided little evidence to support this contention. In the first place, the four third-party registrations in Appendix 1 of applicant's brief⁸ are not evidence of actual use of the marks shown therein or of familiarity of the public with the marks, and, thus, they can be given little or no weight in determining the strength of a mark. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). Furthermore, of the four registrations two are for marks used with totally unrelated goods and services and the other two are for very specific types of software. None relates to the use of similar marks in connection with computer design, manufacture or sale.

Thus, we go forward with our analysis on the basis that registrant's mark SRC DIRECT is not a weak mark but rather is entitled to the full scope of protection and that applicant's SRC marks (either SRC COMPUTERS or SRC and design) create commercial impressions virtually identical

⁸ We note that the Board has previously held that Appendix 1 will be considered as part of the record, although Appendix 2 will not. Thus, only Appendix 1 has been taken into consideration in making our decision.

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to registrant's mark. This high degree of similarity brings into play the recognized standard that the greater the degree of similarity in the marks, the lesser the degree of similarity that is required between the services on which the marks are being used to support a likelihood of confusion. If the marks are the same or almost the same, as is the case here, there need only be a viable relationship between the services in order to support a holding of likelihood of confusion. See *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Turning to the respective services, we note that the most relevant services of registrant are its telephone and mail order sales in the field of computers.⁹ Applicant's services are the custom manufacturing and design of computers for others. Although applicant contends that its "specialized" services in fact entail the development of high performance "supercomputers" for use by skilled professionals within the scientific, governmental and educational communities, these qualifications are not reflected in its services as identified in the applications. Thus, any limitations of this nature are not

⁹ Although the services as identified in the registration are prefaced with the phrase "supplies volume purchasing services," we interpret this as an indication of sales on a volume scale, and not of a purchasing service per se.

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to be considered, since we must make our comparison for purposes of determining likelihood of confusion on the basis of the services as identified in the applications and the cited registration. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

As such, we find that the custom design and manufacture services being offered by applicant might reasonably be associated by purchasers with the computer sales of registrant and be assumed to originate from a common source. Contrary to applicant's contentions, we find no basis for assuming that registrant's computers are manufactured by third parties and simply distributed by registrant. Instead, in view of the identification of the products being sold as "computers," we must construe registrant's sales to include those of computers manufactured and designed by registrant itself. Under these circumstances, if purchasers familiar with registrant's computer sales were to encounter applicant's SRC marks being used in connection with the design and custom manufacture of computers, we find it highly likely for these purchasers to assume a close association between the sources of, or common origin for, the two services. Purchasers might well believe that applicant is a branch or

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division of registrant which will custom design and manufacture computers to the particular needs of a purchaser, thus covering those situations in which the pre-designed computers sold by registrant under its SRC mark will not suffice.¹⁰

Despite applicant's contentions otherwise, there is a much closer relationship here than the mere fact that the services involve computers. We are not applying a per se rule, which, in any event, has long since been rejected by the Board,¹¹ but rather find a viable relationship to exist between registrant's computer sales and the design and custom manufacture services of applicant. Not only do applicant's services ultimately also entail the sale of computers, but there is ample reason for purchasers to associate applicant's design and custom manufacturing services with the selling of computers, even if not custom designed, by registrant.

Applicant further argues that the channels of trade are unrelated, asserting that registrant's computer sales

¹⁰ While the Examining Attorney has advanced the argument that custom design and manufacture services would lie within registrant's own "natural zone of expansion" under the services recited in the registration, we find no need to explore this theory. We would simply note that no evidence has been made of record by the Examining Attorney which would allow us to draw any conclusions on this basis.

¹¹ See *Viacom International Inc. v. Komm*, 46 USPQ2d 1233, 1238 (TTAB 1998) and the cases cited therein.

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are targeted to general consumers of commodity office equipment whereas applicant's services are engaged only by means of individual bid proposals submitted to an exclusive segment of consumers within the scientific, governmental and educational communities. The problem with this argument, however, is that there are no restrictions in the applications as to channels of trade or type of purchasers. Thus, we must assume that the services of applicant are offered through all the normal channels of trade for custom design and manufacture of computers. See *Kangol Ltd. v. KangaROOS U.S.A.*, 974 F2d. 161, 23 USPQ2d 1945 (Fed. Cir. 1992). As such, we can draw no distinction between the channels of trade for the services of applicant and of registrant; both might be offered to general purchasers of computers for office purposes or the like.

Similarly, we cannot distinguish between the types of purchasers for the respective services. While applicant may argue that its custom services are very expensive and are tailored to meet the needs of a sophisticated audience of technical professionals, the recitation of services does not reflect any such level of sophistication or expertise. There is no basis upon which to presume that the services of applicant would be purchased with any greater degree of care, or by any more sophisticated purchasers than those of

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registrant. Instead, we must assume that the same purchasers may well encounter the SRC marks of both applicant and registrant being used in connection with services involving the sale of computers, whether custom designed to the particular needs of the purchaser or mass produced.

Applicant has also raised the issue of lack of actual confusion, despite the marks' coexistence on the market for nearly four years. This factor can be given little weight, however, because registrant has not had the opportunity to be heard from on this point. See *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984). In addition, as has often been stated, the test under Section 2(d) is likelihood of confusion, not actual confusion. See *Weiss Associates, Inc., v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990).

Accordingly, balancing all of the relevant *du Pont* factors and giving each the appropriate weight, we find confusion likely. To the extent that there may be any remaining doubt, we follow the well-established principle that any doubt regarding likelihood of confusion must be resolved against applicant, as the newcomer in the field. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

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