

03/29/01

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

Paper No. 13
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **TicketAmerica, Inc.**

Serial No. 75/526,870

Glenn M. Seager of Crompton, Seager & Tufte, LLC for
TicketAmerica, Inc.

Ann Kathleen Linnehan, Trademark Examining Attorney, Law Office
114 (K. Margaret Le, Managing Attorney).

Before **Hanak**, Chapman and Holtzman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

TicketAmerica, Inc. has appealed from the final refusal of
the Trademark Examining Attorney to register the mark
TICKETAMERICA for "printed tickets" in Class 16; "entertainment
ticket agencies" in Class 35; and "arranging for ticket
reservations for shows and other entertainment events" in Class
41.¹

¹ Application Serial No. 75/526,870, filed July 28, 1998 alleging a
bona fide intention to use the mark in commerce.

Registration has been refused under Section 2(d) of the Trademark Act² on the ground that applicant's mark so resembles the registered mark AMERICA'S TICKET for "ticket reservation services for entertainment events" as to be likely to cause confusion.³

When the refusal was made final, applicant appealed. Both applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services.

Turning first to the respective goods and services, applicant argues that although both applicant's and registrant's goods and services may be "commercially related" in that they all "relate broadly to entertainment ticketing," they are

² In the first Office action, the Examining Attorney had also refused registration on the ground that the mark is geographically descriptive of applicant's goods and services. That refusal was subsequently withdrawn.

³ Registration No. 1,602,993 issued June 19, 1990; combined affidavit under Sections 8 and 15 filed. The word TICKET has been disclaimed.

specifically different in nature. In explaining this distinction, applicant relies on the declaration of Jeffrey C. Robbins, applicant's Senior Vice President, General Counsel and Secretary, who contends that while applicant acts as an agent of a would-be audience member seeking tickets to an entertainment event, registrant acts as an agent of the entertainer, such as a theatrical troupe, musician, or sports team. Applicant maintains that "members of the public who wish to engage the applicant as their agent to obtain entertainment tickets would do so only after the registrant, acting as the agent of the entertainer, has completed its obligation to the entertainer, and is unable to supply a ticket to the would-be audience member."

Applicant's attempt to distinguish the respective goods and services is not persuasive. The services identified in the application, "entertainment ticket agencies" and "arranging for ticket reservations for shows and other entertainment events" are essentially identical to those in the cited registration, "ticket reservation services for entertainment events." Moreover, the complementary nature of ticket reservation services and the issuance of printed tickets for those events is obvious.⁴

⁴ We also note applicant's assertions, based on Mr. Robbins' declaration, regarding applicant's lack of intent to trade on the goodwill of the registrant's mark. Suffice it to say that this evidence is not particularly probative of applicant's intent.

As the Examining Attorney points out, the question of likelihood of confusion is based on the goods and/or services as identified in the application and registration rather than any evidence of actual or intended use, channels of trade or classes of purchasers. See *J & J Snack Foods Corp. v. McDonalds' Corp.*, 932 F.2d 1460, 1464, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991) and *Saks & Co. v. Snack Food Association*, 12 USPQ2d 1833 (TTAB 1989). There is no language in either the applicant's or registrant's description of goods and/or services which would limit or restrict the manner in which the reservation services are provided or the tickets are sold, or the customers for those goods and services. We must therefore presume that the goods and services travel through the channels of trade normally associated with those goods and services and that registrant's services reach all classes of customers including applicant's customers.

We turn then to the marks. The Examining Attorney argues in this regard that the two marks "are highly similar and, consequently, create the same commercial impression." It is the Examining Attorney's position that applicant's mark is merely a transposition of registrant's mark and that the transposition does not change the overall commercial impression the mark creates. Applicant, on the other hand, argues that the marks create different commercial impressions; applicant's mark suggesting a ticket agent that can provide broad access to

entertainment venues and registrant's mark suggesting a slogan that it is "AMERICA'S TICKET to desirable entertainment venues."

It is true that the marks share the same words and that applicant's mark, TICKETAMERICA is essentially a transposition of the two words in the registered mark, AMERICA'S TICKET. It is also true that ordinary purchasers are not infallible in their recollection of trademarks and may well transpose elements of mark in their minds and as a result, confuse the source of the goods or services offered under those marks. However, it has been held that the reversal of even nearly identical elements may not result in confusion where the transposed words create different commercial impressions. See *In re Best Products Co., Inc.*, 231 USPQ 988 (TTAB 1986); *In re Nationwide Industries Inc.*, 6 USPQ2d 1882 (TTAB 1988) and *In re Mavest, Inc.*, 130 USPQ 40 (TTAB 1961). We agree with applicant that the two marks in this case, when considered in their entireties, convey different meanings and create distinctly different commercial impressions. Applicant's mark TICKETAMERICA suggests that applicant provides tickets to entertainment events throughout the country. Registrant's mark AMERICA'S TICKET, on the other hand, suggests that registrant provides the country with exactly what it needs in ticketing services. Thus, registrant's mark not only alludes to registrant's ticketing services but also forms an idiomatic expression suggesting the ideal solution, the perfect ballot, or,

Ser. No. 75/526,870

in its broadest sense, that registrant can give the American public exactly what it needs.

Notwithstanding the identity of the services in this case, we conclude that the differences in **the respective marks makes confusion unlikely.**

Decision: The refusal to register is reversed.