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**THIS DISPOSITION  
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Paper No.

EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re Team Financial Management Systems, Inc.  
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Serial No. 75/584,594  
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Dennis L. Thomte for Team Financial Management Systems,  
Inc.

Lesley LaMothe, Trademark Examining Attorney, Law Office  
103 (Michael Hamilton, Managing Attorney).  
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Before Cissel, Hanak and Chapman, Administrative  
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Team Financial Management Systems, Inc. (applicant)  
seeks to register in typed drawing form TELE TEAM for  
"computer software for use in an automated telephone time  
keeping and attendance management system, namely,  
computer software for use in verification of employee  
attendance and location, employee scheduling and work  
scheduling." The application was filed on November 4,  
1998 with a claimed first use date of February 1, 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 goods, is likely to cause confusion with the mark TELETEAM, previously

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registered in typed drawing form for "computer software and instructional manuals sold therewith for integration of telephone technology, equipment, systems and services into a call center or help-desk environment."

Registration No. 1,994,575.

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

In this case, applicant's mark TELE TEAM and the cited mark TELETEAM are virtually identical. Thus, the critical issue in this case is whether applicant's goods and registrant's goods are related in a manner such that the use of virtually identical marks on both sets of goods would be likely to cause confusion amongst the relevant purchasing public.

At the outset, we note that the Examining Attorney has made of record no evidence. Thus, the Examining Attorney has not established that the same companies

market both computer software for employee attendance verification and scheduling (applicant's goods) and computer software for use in a call center or help-desk environment (registrant's goods).

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Obviously, both applicant's goods and registrant's goods are computer software. However, computer software covers a vast array of very different products that are employed in everything from toys to nuclear reactors. Indeed, over fifteen years ago this Board took note of this very fact in making the following observations:

As a result of the veritable explosion of technology in the computer field over the last several years and the almost limitless number of specialized products and specialized uses in this industry, we think that a per se rule relating to source confusion vis-a-vis computer hardware and software is simply too rigid and restrictive an approach and fails to consider the realities of the marketplace.

In re Quadram Corp., 228 USPQ 863, 865 (TTAB 1985). See also Information Resources v. X-Press Information Services, 6 USPQ2d 1034, 1038 (TTAB 1988) ("Moreover, there is no 'per se' rule mandating that likelihood of confusion is to be found in all cases where the goods or services in question involve computer software and/or

hardware." ).

The Examining Attorney states that "both the applicant's software and the registrant's software are business applications which would be marketed and sold to the same consumers," namely, "larger organizations such as corporations or universities." (Examining Attorney's brief

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pages 4 and 5). While the Examining Attorney has offered no evidence in support of the foregoing argument, even if we accept its accuracy, this does not mean that applicant's computer software and registrant's computer software are related in a manner such that the use of nearly identical marks is likely to result in confusion. In this regard, we note that our primary reviewing Court found no likelihood of confusion resulting from the contemporaneous use of opposer's mark EDS and applicant's virtually identical mark E.D.S. despite the fact that opposer had proven that "the two parties conduct business not only in the same fields but also with some of the same companies." Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed.

Cir. 1992).

Thus, absent a showing that the relevant purchasing public would expect that both computer software for employee attendance verification and scheduling (applicant's goods) and computer software for use in a call center or help-desk environment (registrant's goods) would emanate from a common source, we cannot find that there exists a likelihood of confusion. This is particularly true given the Examining Attorney's argument that the common purchasers of both types

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of software are "larger organizations such as corporations or universities" whose buyers "are sophisticated or knowledgeable." (Examining Attorney's brief pages 5 and 6). 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.

In short, based upon this particular evidentiary record (or lack thereof), we cannot find that there exists a likelihood of confusion when virtually identical

marks are used on applicant's specialized computer software and registrant's specialized computer software.

Decision: The refusal to register is reversed.