

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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Vtech Holdings Limited  
v.  
Jervis B. Webb Company  
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Opposition No. 114,419  
to application Serial No. 75/365,109  
filed on September 30, 1997  
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Richard Eugene Dick, Herbert H. Finn, and Jeffrey P.  
Dunning of the Law Offices of Dick and Harris for Vtech  
Holdings Limited.

David R. Haarz and Marc A. Bergsman of Dickinson Wright  
PLLC for Jervis B. Webb Company.  
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Before Simms, Hairston and Wendel, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Jervis B. Webb  
Company to register VTEC as a trademark for the following  
goods:

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Computer system comprising computer hardware, computer peripherals and computer software, namely, a computer program for use in generating two, three, and four dimensional representations of structures for use in facilitating the modeling of material handling systems.<sup>1</sup>

Registration has been opposed by Vtech Holdings Limited under Section 2(d) of the Trademark Act. Opposer asserts that applicant's mark, when used in connection with the identified goods, so resembles opposer's previously used and registered mark VTECH for "computers, mouse input devices, touch tablet input devices and voltage adapters,"<sup>2</sup> as to be likely to cause confusion.

Applicant, in its answer, admitted that the VTEC mark it seeks to register is "similar in sight, pronunciation and sound" to opposer's mark VTECH. Applicant denied the other allegations of the likelihood of confusion claim.<sup>3</sup>

The record consists of the pleadings; the file of the involved application; status and title copies of opposer's pleaded registration and other registrations for VTECH marks all made of record by opposer's notice of

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<sup>1</sup> Serial No. 75/365,109, filed September 30, 1997, based on a bona fide intention to use the mark in commerce.

<sup>2</sup> Registration No. 1,667,461 issued December 10, 1991; Section 8 affidavit accepted; Section 15 affidavit received.

<sup>3</sup> Applicant also included a counterclaim to cancel opposer's VTECH mark, but applicant subsequently withdrew the counterclaim without prejudice.

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reliance;<sup>4</sup> and applicant's responses to opposer's request for admissions

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<sup>4</sup> Although not pleaded in the notice of opposition, these additional registrations were specifically identified in opposer's notice of reliance. Inasmuch as applicant has not objected thereto, we consider the notice of opposition amended pursuant to Fed. R. Civ. P. 15(b) to plead ownership of these registrations and a likelihood of confusion therewith. The most relevant of these registrations will be discussed infra.

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introduced by way of opposer's notice of reliance. No evidence was introduced by applicant and only opposer filed a brief on the case. An oral hearing was not requested.

Inasmuch as status and title copies of opposer's registrations are of record, there is no issue with respect to opposer's priority. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination of likelihood of consideration under Section 2(d) must be based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In *re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Given the sparse record in this case, there are only two relevant factors to be considered, namely the similarities/dissimilarities between the marks and the relatedness or lack thereof between the involved goods.

At the outset, we note that opposer, in its brief on the case, has focused its likelihood of confusion arguments on only three of its marks. The first is the mark VTECH (typed drawing form) in its pleaded

registration, and the other two marks are reproduced below:

# VTECH

for "telephones, videophones, and telephone answering machines; computers, computer monitors, and computer keyboards; computer operating systems and application programs recorded on magnetic or optical media for use in word-processing, spreadsheets, database management, games, scheduling, computer aided drawing, computer programming, publishing, finance management and education, computer peripherals, namely computer printers, computer disk drives, computer memory modules and computer interface modules, computer video and/or audio cards, computer mouse, computer trackballs, audio tape recorders and players; video tape recorders and players' video cassette recorders and players; apparatus for receiving video and signals transmitted from satellites and antennas, namely satellite dishes, antennas and signal decoders."

Registration No. 2,029,481 issued January 14, 1997; and



for "telephones, videophones, and telephone answering machines; computers, computer monitors, and computer keyboards; computer operating systems and application programs recorded on magnetic or

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optical media for word-processing, database management, computer peripherals, namely computer printers, computer disk drives, computer memory modules and computer interface modules, computer video and/or audio cards, computer mouse, computer trackballs, audio tape recorders and players; video tape recorders and players' video cassette recorders and players; apparatus for receiving video and signals transmitted from satellites and antennas, namely satellite dishes, antennas and signal decoders."

Registration No. 2,432,432 issued March 6, 2001.

Considering first the marks, as previously noted, applicant has admitted that its VTEC mark is similar in sight and pronunciation/sound to opposer's mark VTECH in typed drawing form. With respect to opposer's other two VTECH marks, the slight stylization and the background design in those marks are minor, and it is the term VTECH that is dominant. Applicant's mark VTEC is identical in sound and virtually identical in appearance to the term VTECH in opposer's marks. Moreover, VTEC and VTECH have identical connotations, particularly inasmuch as the goods listed in applicant's application and opposer's registrations are technology-related. In view of the foregoing, we find that opposer's VTECH marks and applicant's VTEC mark are substantially identical in overall commercial impression.

We turn next to a consideration of the goods of the parties. It has been repeatedly held that, when

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evaluating likelihood of confusion, we are constrained to compare the goods and/or services as identified in the defendant's involved application with the goods and/or services as identified in the plaintiff's registration. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

In this case, the computers and computer-related products in opposer's registrations are broadly identified and there are no limitations as to channels of trade or classes of purchasers. Thus, for purposes herein, we must assume that opposer's computers and computer-related products may be used in generating two, three, and four dimensional representations of structures for use in facilitating the modeling of material handling systems. Accordingly, we must consider opposer's computers and computer-related products and applicant's computer system comprising computer hardware, computer peripherals and computer software, namely, a computer program for use in generating two, three, and four dimensional representations of structures for use in facilitating the modeling of material handling systems to

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be the same. We note in this regard that opposer's Registration No. 2,029,481 includes computers and computer-related products for "computer aided drawing." Also, we can draw no legal distinction between the parties' trade channels and classes of purchasers, but rather must consider them to be the same.

In view of the substantial similarity of the marks, and the legal identity of the goods, the trade channels and purchasers, we find that there is a likelihood that purchasers would be confused if applicant were to use the mark VTEC for a computer system for use in generating two, three, and four dimensional representations of structures for use in facilitating the modeling of material handling systems in view of opposer's previously registered VTECH marks for computers and computer-related products.

**Decision:** The opposition is sustained.