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

Paper No.  
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EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Wacom, Co. Ltd. v. Walcom, Inc.

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Opposition No. 118,149 to Application Ser. Nos.  
75/433,700 and 75/433,701 filed February 13, 1998

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Leonard D. DuBoff for Wacom, Co. Ltd.

Gregory D. Seeley for Walcom, Inc.

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Before Hanak, Walters and Drost, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Walcom, Inc. (applicant) seeks to register WALCOM in  
typed drawing form and WALCOM and design in the form  
shown below for "rental of computer hardware to companies  
for employee computer training; leasing computer  
facilities to companies for employee computer training;  
registration of participants for others at computer  
conferences and seminars; computer consulting services to  
businesses for the optimum layout of computer hardware."  
Both applications were filed on February 13, 1998 with a  
claimed first use date for WALCOM per se of August 19,

1995 and a claimed first use date of WALCOM and design of November 15, 1997.

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Wacom, Co. Ltd. (opposer) filed a notice of opposition alleging that prior to August 1995, it both used and registered the mark WACOM for "computer input hardware, namely, digitizers." Continuing, opposer alleged that the contemporaneous use of its mark and applicant's marks for their respective goods and services is likely to cause confusion, deception and mistake among consumers. (Notice of opposition paragraph 13). While the notice of opposition did not make specific reference to Section 2(d) of the Trademark Act, it is clear that this is the basis for the notice of opposition.

Subsequently, applicant filed an answer which denied the pertinent allegations of the notice of opposition. Opposer properly made of record a certified status and title copy of its Registration No. 1,353,811 for the mark WACOM depicted in typed drawing form for "computer input

hardware, namely, digitizers." This registration was issued on August 13, 1985. This is the only evidence of record. Applicant

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did not make of record any evidence. Opposer filed its brief in a timely fashion. Applicant filed an untimely brief, which opposer has moved to strike. However, we have elected to consider applicant's brief.

Because opposer has properly made of record a certified status and title copy of its aforementioned registration of WACOM for "computer input hardware, namely, digitizers," priority rests with opposer. King Candy Co. v. Eunice King's Kitchen Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Hence, the only issue in this proceeding is one of likelihood of confusion.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential

characteristics of the goods and differences in the marks." ).

Considering first the marks, they are almost identical. Opposer's mark WACOM depicted in typed drawing form and applicant's mark WALCOM depicted in typed drawing form

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differ simply by one internal letter. As for applicant's other mark -- WALCOM depicted in block letters within a simple rectangle -- we find that it, too, is almost identical to opposer's mark WACOM. Consumers viewing the marks WACOM and WALCOM could easily overlook the L in applicant's marks. Thus, in terms of visual appearance, opposer's mark and applicant's marks are almost identical.

Likewise, in terms of pronunciation, we find that opposer's mark and applicant's two marks are again almost identical. Of course, in terms of pronunciation, the rectangle in the second of applicant's marks would not be pronounced. Opposer's mark and applicant's marks are almost identical, especially when one takes into account "that there is no correct pronunciation of a trademark."

In re Belgrade Shoe, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969).

Finally, in terms of meaning or connotation, we find that both marks are almost identical in that they either lack any meaning or they would be perceived as almost identical surnames. In this regard, we note that at page 3 of its brief applicant states that the mark "WALCOM is derived from the owner's name."

In sum, the first Dupont "factor weighs heavily against

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applicant" because opposer's mark and applicant's two marks are almost identical. In re Martin's Famous Shoppe Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of opposer's goods and applicant's services, we note that because the marks are almost identical, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). However, in

this case we find that opposer's goods and at least certain of applicant's services are clearly related. As set forth in its registration, opposer's goods are "computer input hardware, namely, digitizers." This identification of goods is broad enough to include digitizers used for employee computer training. Certain of applicant's services as set forth in its two applications are the "rental of computer hardware to companies for employee computer training." Because there is no restriction on the type of computer hardware in the two applications, this computer hardware encompasses, among many other types of hardware, digitizers.

Thus, opposer's identification of goods is broad enough

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to include the sale of digitizers for employee computer training. Likewise, applicant's identification of services is broad enough to include the rental of computer hardware, including digitizers, to companies for employee computer training. There is very little difference in the sale of a digitizer for employee computer training and the rental of a digitizer for

employee computer training. Accordingly, at least certain of applicant's services are closely related to opposer's goods.

Given the fact that opposer's mark and applicant's marks are almost identical and the fact that opposer's goods and applicant's services are, at least in part, closely related, we find that there exists a likelihood of confusion. Moreover, while we have no doubt that there exists a likelihood of confusion, we feel compelled to comment upon the following statement made by applicant at page 4 of its brief: "Doubt as to the likelihood of confusion should not be resolved in favor of the senior user." Such is not the law. Indeed, just the opposite is true, namely, that doubt on the issue of likelihood of confusion is resolved in favor of the senior user, in this case, opposer. In re Martin's Famous Pastry Shoppe, Inc.,

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748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Decision: The opposition is sustained.

