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

Paper No. 16  
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Center For Change, Incorporated

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Serial No. 75/696,547

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Barnard N. Madsen for Center For Change, Incorporated.

Jennifer D. Chicoski, Trademark Examining Attorney, Law  
Office 115 (Tomas V. Vlcek, Managing Attorney).

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Before Simms, Seeherman and Hanak, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Center For Change, Incorporated (applicant) seeks to register in typed drawing form CENTER FOR CHANGE for "counseling and medical services, namely, an in-patient and out-patient care treatment program providing psychotherapy, medical treatment, nutrition counseling, and recreational therapy, all of these services provided for women suffering from eating disorders." The application was filed on May 3, 1999 with a claimed first use date of November 1, 1989 and a claimed first use date in interstate commerce of

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September 30, 1990. At the request of the Examining Attorney, applicant disclaimed the exclusive right to use CENTER apart from the mark as shown.

Citing Section 2(d) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with the mark CENTER FOR CREATIVE CHANGE and design, previously registered in the form shown below for "psychotherapy." Registration No. 2,234,395.

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 any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the goods or services and the similarities of the marks.

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 [or services] and differences in the marks.").

Considering first the services, they are legally identical. Registrant's services are "psychotherapy." Because the registration does not contain any limitations as to the type of "psychotherapy," the registration covers all types of "psychotherapy." One of applicant's services is "psychotherapy ... provided for women suffering from eating disorders." Thus, applicant's specialized psychotherapy is encompassed by the identification of services in the cited registration, namely "psychotherapy" per se.

At pages 2 and 3 of its brief, applicant argues that its services and registrant's services are "dissimilar" because it offers specialized psychotherapy services whereas registrant offers "general psychotherapy services," and because applicant is located in Utah, and purportedly registrant is located in New Jersey. Applicant's arguments are legally insufficient. It is clear that in Board proceedings, "the question of likelihood of confusion must be determined based on an analysis of the mark as applied

to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services recited in [the cited] registration, rather than what the evidence shows the goods and/or services to be." Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ 1813, 1815 (Fed. Cir. 1987). As just noted, as described in the cited registration, registrant's services (psychotherapy) encompass the specialized psychotherapy services described in the application. Moreover, because applicant is seeking a nationwide registration, the fact that applicant and registrant may be currently operating in different parts of the United States is irrelevant.

Considering next the marks, we note at the outset that when the services are in part legally identical, as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). Marks are compared in terms of visual appearance, pronunciation and meaning or connotation.

In terms of visual appearance, we acknowledge that the prominent design feature in registrant's mark causes the two marks to be somewhat dissimilar. However, the word portion of registrant's mark (CENTER FOR CREATIVE CHANGE)

is extremely similar in visual appearance to applicant's mark CENTER FOR CHANGE in that the first two words and the last word of both marks are identical.

In terms of pronunciation, we find that the two marks are clearly similar. Again, the first two words and the last word of both marks are identical. A person hearing of the registered mark would obviously not "hear" the design portion. Rather, she would hear simply CENTER FOR CREATIVE CHANGE. If she were later to hear of applicant's mark CENTER FOR CHANGE, she could easily have forgotten that the prior mark included the word CREATIVE and assume that both marks were the same.

Finally, in terms of meaning or connotation, we again find that both marks are very similar. Both marks convey the notion that the psychotherapy services emanate from a "center for change." We simply reject applicant's argument that there is a distinct difference between "change" per se and "creative change."

In sum, given the fact that the two marks are very similar in terms of pronunciation and meaning, and are used for, in part, legally identical services, we find that there exists a likelihood of confusion, and accordingly affirm the refusal to register.

One final comment is in order. At page 2 of its brief, applicant correctly notes that registrant disclaimed all of the word portion of its mark, namely, CENTER FOR CREATIVE CHANGE. Continuing at page 2 of its brief, applicant also correctly notes that registrant "has therefore disclaimed any exclusive right to use the only part of its mark that is similar to the applicant's mark." Obviously, applicant's mark contains no design feature. In essence, applicant appears to argue that registrant has no rights in the word portion of its mark (CENTER FOR CREATIVE CHANGE) and hence there can be no likelihood of confusion.

In response, we simply note that "the technicality of the disclaimer ... has no legal effect on the issue of likelihood of confusion. The public is unaware of what words have been disclaimed during the prosecution of the trademark application at the PTO." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In other words, the public will not be aware of what words the registrant or applicant have disclaimed, and will simply see and hear the marks as they are. It is critical to remember that "the basic principle in determining confusion between marks is that marks must be compared in their entirety." National Data Corp., 224 USPQ at 750. When compared in their entirety, as this Board has done,

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we find that the marks are similar enough such that their use on services, which in part are legally identical, will result in a likelihood of confusion.

Decision: The refusal to register is affirmed.