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

Paper No. 9  
RFC

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Pegasus Communications

Serial No. 75/925,969

David E. Dougherty of Dougherty & Troxell for Pegasus Communications.

Ronald McMorrow, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On February 22, 2000, applicant, a Pennsylvania corporation, filed the above-identified application to register the mark "PGTV" on the Principal Register for "communication services[, ] namely broadcasting audio, television, and Internet programming by satellite and cable transmission," in Class 38; and "satellite and cable distribution of TV, radio and Internet programs for others, education entertainment services in the field of TV, radio

and the Internet and production of TV, radio and Internet programs," in Class 41. The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with these services.

In addition to requiring applicant to amend the recitation of services to eliminate indefinite terminology, the Examining Attorney refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d), on the grounds that if applicant were to use the mark it seeks to register in connection with the services set forth in the application, applicant's mark would so resemble three registered marks, all owned by the same entity, that confusion would be likely.

All three of the cited registered marks are certification marks in Class B, which is for marks used to certify services. The first cited mark is shown below.



This mark is registered<sup>1</sup> for the certification of "entertainment services rendered through the medium of motion pictures." The second cited mark is shown below.



This mark is registered<sup>2</sup> for the certification of the same services. The third registered mark cited as a bar to registration of applicant's proposed mark is "RATED PG," which is registered<sup>3</sup> for the certification of "the content of entertainment services rendered through the medium of motion pictures." In this registration, registrant disclaims the exclusive right to use the word "RATED" apart from the mark as shown.

Responsive to the first Office Action, applicant amended the recitation of services to read as follows:  
"communication services, namely, broadcasting audio,

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<sup>1</sup> Reg. No. 1,169,742, issued on the Principal Register on Sept. 15, 1981, to Motion Picture Association of America, Inc.; affidavit under Sections 8 and 15 of the Act accepted and acknowledged; renewed.

<sup>2</sup> Reg. No. 959,581, issued on the Principal Register on May 22, 1973; affidavit under Sections 8 and 15 of the Act accepted and acknowledged; renewed.

<sup>3</sup> Reg. No. 1,439, 617, issued on the Principal Register on May 12, 1987; affidavit under Sections 8 and 15 of the Act accepted and acknowledged.

television and global computer network programming by satellite and cable transmission," in Class 38; and "satellite and cable distribution of television, radio and global computer network programs for others, and production of television, radio and global computer network programming," in Class 41.

Applicant also argued that the refusal to register under Section 2(d) of the Act should be withdrawn because the marks, when viewed in their entireties, are not similar, and the channels of trade through which applicant intends to render its services are different from the trade channels in which the three cited registered marks are used. Applicant took the position that its services are relatively expensive and are sold to sophisticated purchasers, although no evidence was submitted in support of this argument, and no evidence or argument with respect to the level of sophistication of people using the cited registered marks was presented.

The Examining Attorney accepted applicant's amended recitation of services, but was not persuaded by applicant's arguments on the issue of likelihood of confusion. The refusal to register was made final in the second Office Action.

Applicant timely filed a Notice of Appeal, which was followed by an appeal brief. The Examining Attorney then filed his appeal brief, but applicant did not file a reply brief or request an oral hearing before the Board.

Based on careful consideration of the record in this application, the arguments presented by both applicant and the Examining Attorney, and the relevant legal authority, we find that the refusal to register is well taken. The predecessor to our primary reviewing court set out the factors to be considered in determining whether confusion is likely in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Chief among these factors are the similarity of the marks and the similarity of the goods or services set forth in the application and the registrations, respectively.

Section 4 of the Lanham Act provides that certification marks are entitled to the same protection under Section 2(d) of the Act as trademarks and service marks, except in the case where a certification mark is used so as to falsely represent that the owner or user thereof makes or sells the goods or performs the services on or in connection with which the mark is used. In the case at hand, applicant has not contended that the owner of

the cited registered marks uses them to represent falsely that it makes goods or sells services.

We thus turn to consideration of whether applicant's mark is similar to the cited registered marks. Although applicant argues to the contrary, these marks are similar because they create similar commercial impressions.

Applicant argues that the stylization in two of the registered marks results in differences which would allow consumers to distinguish easily among these marks. It is well settled, however, that the literal portions in marks are usually their dominant and most significant features because consumers in the marketplace call for goods and services by the letters and words in them, rather than by trying to describe their design elements. In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987). Clearly, the letters "PG" are the dominant element in each of the two registrations incorporating design elements and/or other language, as well as in the third registered mark, "PG RATED," which combines the letters with the descriptive word "RATED," which has been disclaimed.

In a similar sense, the dominant portion of the mark applicant seeks to register is the same two-letter combination, "PG." The "TV" portion of applicant's mark is descriptive in connection with television broadcasting

services and distribution and production of television programming, and hence would not be accorded as much significance as the first portion of the mark would be.

Applicant argues that the "PG" portion of the registered marks is weak, as evidenced by a search it conducted of the Patent & Trademark Office's Trademark Electronic Search System. The dictionary definition submitted with the Examining Attorney's brief (of which we may take judicial notice) notes that the letters "PG" are "used to certify that a motion picture is of such a nature that all ages may be allowed admission but parental guidance is suggested." While we recognize that these letters possess some suggestive significance, this fact does not persuade us that when the marks of the applicant and registrant are considered in their entirety, they create different commercial impressions.

As the Examining Attorney also points out, applicant submitted no evidence in support of its arguments with regard to the alleged differences in trade channels or the alleged sophistication of the purchasers of the services specified in the application or the users of the registered certification marks.

In comparing the services set forth in this application with the statements in the cited registrations

regarding what these certification marks are used to certify, it is clear that if similar marks are used in connection with both, confusion will be likely. Applicant's services include producing, distributing and broadcasting television programming. The cited registered marks are used to certify that entertainment services rendered through the medium of motion pictures meet the standards set by the registrant with respect to whether parental guidance is suggested because some material in the motion picture may not be suitable for pre-teenagers. In that movies are produced for, distributed to, and broadcast by television stations, if applicant were to use "PGTV" in connection with its services of producing, distributing or broadcasting television programming, viewers who are familiar with the certification marks of the registrant, which are dominated by the letters "PG" and are used to rate movies, would be likely to assume, mistakenly as it would turn out, that "PGTV" programming meets registrant's certification standards or is in some other way endorsed, sponsored by or affiliated with the owner of the registered certification marks.

Applicant's arguments to the contrary are not persuasive. Applicant contends that its mark "serves as an abbreviation for Pegasus and is suggestive, for example, it

might also be interpreted as an abbreviation for professional golf, program guide, personal guide, pocket guide or a number of other abbreviations." (Response to first Office Action, p. 5). When the mark is considered in connection with the services identified in the application, however, these are not likely scenarios. What is likely is that viewers of applicant's programming will assume that "PGTV" indicates that the programming is suitable for viewing by pre-teens if parental guidance is exercised, e.g., that it has met the standards symbolized by the cited registered certification marks. This is exactly the kind of confusion that the Lanham Act is designed to preclude.

In summary, confusion would be likely because applicant's mark and the cited registered marks, when considered in their entirety, create similar commercial impressions because of the dominant letters "PG," and the services with which applicant intends to use its mark are related to the services certified by the registered mark.

We do not doubt that we have reached the correct disposition of this appeal, but even if we were not completely sure that confusion would be likely if applicant were to use the mark it seeks to register in connection with its services, any such doubt would have to be resolved in favor of registrant and against applicant, which, as the second

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comer, has a duty to select a mark which is not likely to cause confusion with marks already in use in its field of commerce. *Burroughs-Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 191 (TTAB 1979).

DECISION: The refusal to register is affirmed.