

**THIS DISPOSITION IS
NOT CITABLE AS PRECEDENT
OF THE TTAB**

12/2/2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Premera Blue Cross

Serial No. 78173032

Claire Foley of Christensen O'Connor Johnson Kindness PLLC
for Premera Blue Cross.

Alec Powers, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hanak, Hohein and Holtzman, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Premera Blue Cross (applicant) seeks to register in
typed drawing form the mark MYPHARMACYPLUS for "online
prescription renewal services for members; maintaining
personal prescription drug history and pharmacy benefit
plan information, files, and databases online for members;
and providing online health and health plan information to
members." The application was filed on October 10, 2002
with a claimed first use date of November 1, 2001.

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 MY PHARMACY, previously registered in typed drawing form for "retail pharmacy services featuring pharmaceuticals, health care products, and home medical equipment." Registration No. 2,323,735 issued February 29, 2000. In addition, the Examining Attorney refused registration on the basis that applicant's "identification of services needed clarification because it was indefinite and could be classified in multiple international classes." (Examining Attorney's brief page 6).

When the refusals to register were made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. 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, we note that registrant's services include "retail pharmacy services featuring pharmaceuticals," and that applicant's services include "online prescription renewal services for members." In other words, registrant operates retail pharmacies offering all types of pharmaceuticals including prescription pharmaceuticals, and applicant offers, among other services, online prescription renewal services for its members. As described in the cited registration and the application, the services are, at least in part, extremely closely related. One of applicant's members could go to registrant's MY PHARMACY to have his or her prescription filled. Later, that same member could utilize applicant's services to have his or her prescription renewed online.

Turning to a consideration of the marks, we note at the outset that when the services of the parties are extremely closely related 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).

In comparing the marks, applicant has taken the registrant's mark MY PHARMACY in its entirety and simply deleted the space between the two words and added the word PLUS. The word "plus" is defined as meaning "added to" or "in addition to." Webster's New World Dictionary (2d ed. 1995).

A consumer familiar with registrant's MY PHARMACY pharmacy store services, upon seeing MYPHARMACYPLUS used in connection with online prescription renewal services, could very easily be of the belief that registrant was now offering an additional service to its basic retail pharmacy store services, namely, the ability to refill a prescription online.

In addition, it must be kept in mind that applicant seeks to register MYPHARMACYPLUS in typed drawing form. This means that applicant's mark is not limited to being "depicted in any special form," and hence we are mandated "to visualize what other forms the mark might appear in." Phillips Petroleum Co. v. C.J. Webb Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

If applicant were to obtain a registration, applicant could depict the MYPHARMACY portion of its mark in large lettering of a uniform style, and then depict the PLUS

portion of its mark in much smaller lettering of a different style. When so depicted, applicant's mark would be extremely similar in terms of visual appearance to registrant's mark. Moreover, such a manner of depiction of applicant's mark would only further emphasize that the two marks have essentially the same basic meaning, with the only difference being that applicant's mark contains the subordinate word "plus" to indicate the rendering of an additional but very closely related service.

Finally, in terms of pronunciation, it need hardly be said that in order to pronounce applicant's mark (MYPHARMACYPLUS), an individual must first pronounce registrant's mark (MY PHARMACY). Thus, in terms of pronunciation the two marks are likewise quite similar.

In sum, given the fact that applicant's services and registrant's services are, in part, extremely closely related, and the additional fact that applicant's mark is quite similar to registrant's mark in terms of its connotation, visual appearance and pronunciation, we find that the contemporaneous use of the two marks would result in a likelihood of confusion. Accordingly, we affirm the refusal to register pursuant to Section 2(d) of the Trademark Act on the basis that the use of applicant's mark MYPHARMACYPLUS for, among other services, online

prescription renewal services for its members is likely to cause confusion with the cited mark MY PHARMACY for, among other services, retail pharmacy services featuring pharmaceuticals.

Having affirmed the refusal pursuant to Section 2(d) of the Trademark Act, we elect not to consider the contention of the Examining Attorney that applicant's identification of services is unacceptable because it is "indefinite and could be classified in multiple international classes." (Examining Attorney's brief page 6).

Decision: The refusal to register pursuant to Section 2(d) of the Trademark Act is affirmed.