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Mailed:
June 21, 2005

Grendel

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Adept Data Technologies, Inc.

Serial No. 78110053

Marc A. Bergsman of Dickinson Wright PLLC for Adept Data Technologies, Inc.

Rebecca A. Smith, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Seeherman, Grendel and Drost, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark depicted below

DocSS

for Class 9 goods identified in the application as "downloadable computer software for electronic and scanned image document management for storing, organizing, and retrieving data and documents via Internet, Intranet, or local computer network with integration of ability to fax and e-mail documents in and out of the software."¹

The Trademark Examining Attorney has issued a final refusal of registration, on the ground that applicant's mark, as applied to applicant's goods, so resembles the mark DOCSITE, previously registered on the Principal Register (in standard character form) for Class 9 goods identified in the registration as "computer software programs for use in the field of document management, and in the field of electronic publishing on a global computer network and related instruction manuals sold or licensed as a unit,"² as to be likely to cause confusion, to cause mistake or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant has appealed the final refusal. Applicant and the Trademark Examining Attorney have filed main appeal

¹ Serial No. 78110053, filed on February 20, 2002. The application is based on use in commerce, and August 1, 2000 is alleged in the application as the date of first use of the mark anywhere and the date of first use of the mark in commerce.

² Registration No. 2507680, issued November 13, 2001.

briefs, and applicant has filed a reply brief.³ Applicant initially requested an oral hearing, then later withdrew that request.

The evidence of record on appeal, all submitted by applicant, consists of a computer dictionary definition showing that "docs" is short for "documents"; eighty third-party registrations or applications of marks containing the designations "doc" or "docs," covering goods or services allegedly similar to those involved in this case;⁴ the

³ On June 22, 2004, the Board issued an electronic order forwarding a copy of applicant's main appeal brief and allowing the Trademark Examining Attorney sixty days to submit her appeal brief. It is undisputed that, due to an apparent failure in the Office's electronic filing system and through no fault of her own, the Trademark Examining Attorney did not actually receive the Board's order until September 2, 2004. She then submitted her appeal brief on October 21, 2004, along with a motion requesting that we consider the brief. In these circumstances, and for purposes of Trademark Rule 2.142(b)(1), we find that applicant's brief was "sent to" the Trademark Examining Attorney on the date that she actually received an electronic copy thereof, i.e., on September 2, 2004, and that her appeal brief filed on October 21, 2004 therefore is timely. We deny applicant's August 24, 2004 motion to reverse the refusal, as well as applicant's requests in its reply brief that we either reverse the refusal or strike the Trademark Examining Attorney's brief as untimely. The inter partes "excusable neglect" cases cited by applicant which deal with docket management issues are inapposite here.

⁴ Of the eighty third-party registrations and applications made of record by applicant, approximately forty-five are either cancelled registrations or abandoned applications. Many of the extant registrations cover document management or production services, rather than software. However, a number of the registrations cover software which appears to be similar to the software identified in applicant's application and in the cited registration. These registered marks include DOCSETTER, DOCSTREAM, VAPP-DOCS, IKON DocSEND, LAW DOCS, DOCSMITH, CONNECT-THE-DOCS, SPECIALTY DOCS, and DOCSTAR.

search result pages from two different GOOGLE searches for websites in which the designations "docs" or "dox" appear in connection with "document management," along with printouts from twenty-one of the websites retrieved by the searches;⁵ and the declaration of applicant's president attesting to the care with which prospective purchasers of applicant's type of software make the decision to purchase the software.

Applicant contends that the only point of similarity between its mark and the cited registered mark is that both marks use the term "docs." Applicant contends that this term is descriptive and weak as applied to document management software, citing to the computer dictionary definition of "docs" as being short for "documents," and to the third-party registrations and applications and the third-party websites retrieved by the GOOGLE search which use the term "docs" or "dox." Applicant further argues that because the only point of similarity between the two marks is their use of the descriptive term "docs," purchasers will be able to distinguish the marks by looking to other elements in the marks, such as the additional word

⁵ These websites mention products or services going by names such as "iManage WorkDocs," "Qdocs," "DOCS On-Line," "Site Docs", "Para-Docs," "Smart-Docs," "UB Docs," "DocsDirect," "Dox," "iDox," "Dox Zone," "Fort Dox," and "InfoDox."

"site" in the cited registered mark which gives the registered mark a different appearance, sound and connotation. According to applicant, applicant's mark, in the stylized form depicted in the application, will be viewed by purchasers as meaning "document storage system," while the cited registered mark will be viewed as "documents site." Applicant also argues that the purchasers of these goods are careful and deliberate in making their decisions to purchase, a fact which weighs against a finding of likelihood of confusion. Finally, applicant argues that there is no evidence that the cited registered mark is famous, a fact which according to applicant also weighs in applicant's favor in this case.

For her part, the Trademark Examining Attorney argues, *inter alia*, that the marks are confusingly similar because they both combine the word "doc" with a "double-S." She notes, correctly, that where the applicant's goods are legally identical to the goods of the cited registration, the degree of similarity between the marks which is required to support a finding of likelihood of confusion declines. She also notes, correctly, that any doubt as to the existence of likelihood of confusion must be resolved against applicant.

In view of the evidence of record showing the prior use and registration of marks containing the term "docs" or a variant thereof for goods involving document management, as well as the dictionary evidence showing the meaning of the term, we find that "doc" or "docs" is quite weak for these goods. It is true that applicant's mark and the cited registered mark are the only marks of record which employ a "double-S" feature in connection with "doc." However, we find that this point of similarity is an insufficient basis to support a conclusion that confusion is likely. Although we cannot find on this record that the connotation of applicant's mark is, as applicant contends, "document storage system," we find that the cited registered mark connotes a "documents site," a connotation which clearly is not present in applicant's mark. We also find that purchasers of these goods are not likely to purchase the goods on impulse but instead may reflect on their decision prior to purchase.

In short, notwithstanding the essentially identical nature of applicant's and registrant's goods, we find that applicant's mark and the cited registered mark are simply too dissimilar to support a likelihood of confusion finding. See *Kellogg Co. v. Pack'Em Enterprises Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d

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1142 (Fed. Cir. 1991). When we also factor in the degree of care with which these goods are purchased, we have no doubt that confusion is unlikely to occur from applicant's use of its mark on its identified goods.

Decision: The refusal to register is reversed.