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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lenders Direct Capital Corporation

Serial No. 76592790

James K. Sakaguchi of Vista IP Law Group, LLP for Lenders
Direct Capital Corporation.

Allison Holtz, Trademark Examining Attorney, Law Office 111
(Craig D. Taylor, Managing Attorney).

Before Seeherman, Drost and Walsh, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Lenders Direct Capital Corporation has appealed from
the final refusal of the Trademark Examining Attorney to
register HOME RUN LOAN, with the word LOAN disclaimed, as a
mark for services identified as "mortgage lending."¹
Registration has been refused pursuant to Section 2(d) of
the Trademark Act, 15 U.S.C. §1052(d), on the ground that

¹ Application Serial No. 76592790, filed May 12, 2004, and
asserting first use and first use in commerce on January 1, 2004.

applicant's mark, when used in connection with its services, so resembles the mark HOMERUNNER, previously registered for "mortgage loan services,"² that it is likely to cause confusion or mistake or to deceive.

The appeal has been fully briefed. Applicant did not request an oral hearing.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

There is no question that the services--mortgage lending, and mortgage loan services-- are legally identical. As such, they must be deemed to be offered in the same channels of trade to the same classes of

² Registration No. 2453057, issued May 22, 2001.

consumers. These consumers would be that portion of the general public who are trying to buy homes or own their homes and wish to refinance. While obtaining a mortgage is not an impulse purchase, there is no evidence that these purchasers are sophisticated, and we therefore consider them as exercising only ordinary care in their purchasing decision.³ Thus, the duPont factors of the similarity of the services, channels of trade and conditions of purchase favor a finding of likelihood of confusion.

This brings us to a consideration of the marks. It is this factor on which applicant relies to argue that there is no likelihood of confusion. Essentially, it is applicant's position that the marks are sufficiently different that, even when used in connection with identical services, confusion will not result.

Applicant's mark is HOME RUN LOANS. The cited mark is HOMERUNNER. Obviously the LOANS portion of applicant's mark, being a generic term for the services, has no source-indicating value; it is the term HOME RUN that consumers would look to as identifying the source of the services and it is, therefore, the dominant element of applicant's mark.

³ Even if we were to treat them as careful purchasers, because of the similarities of the marks, as discussed below, they would likely assume that these identical loan services emanated from or were associated with the same source.

See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety).

There are strong similarities in appearance and pronunciation between HOME RUN LOANS and HOMERUNNER. Both begin with HOME RUN. Although in applicant's mark HOME RUN is depicted as two words, and in the registrant's mark the letters are all run together, the word HOME would clearly be recognized as the first word of HOMERUNNER, while the second word, RUNNER, would be viewed as a form of "run." Because consumers would recognize HOMERUNNER as being composed of these two words, they would pronounce it in this way (HOME RUNNER as opposed to, for example, HOMERUNNER), and the marks therefore are similar in pronunciation as well as appearance. The fact that the registered mark has the ending of "ER," and applicant's mark includes the generic word LOANS, are not sufficient to significantly affect the similar sound of the marks.

With respect to connotation, applicant argues that the marks are different because its mark is a reference to the baseball term, while the registrant's mark has the

connotation of someone who manages (runs) a home.

Applicant also dismisses the evidence submitted by the Examining Attorney to show that HOMERUNNER has a baseball connotation. This evidence includes definitions of "home run" and "runner" that actually specify they are baseball terms:

Runner: 2.a. *Baseball*. One who runs the bases

Home run: *Baseball*. A hit that allows the batter to make a complete circuit of the diamond and score a run."⁴

The Examining Attorney has also submitted Internet web pages which use the term "homerunner," as follows:⁵

The Home Runner
(title of the Official Newsletter of
the Chatsworth Junior Baseball League)

However, fate did not leave the story
of Bonds' 600th home runner without a
sense of irony.

C.T. Rossi, "Major League Baseball fans
with minor league standards"
(article about conduct of fans in
attempting to get significant home run
balls, posted August 10, 2002)

This single use of "home runner" in the C.T. Rossi
article is not sufficient for us to find that "homerunner"

⁴ The American Heritage Dictionary of the English Language, 3d. ed. © 1992.

⁵ The Examining Attorney also submitted an article from the www.timesonline.co.uk website that described Barry Bonds as "the record home-runner." However, because this website has a UK internet address, and appears to be from the "London Times," we have not considered it as reflecting usage or familiarity with the term "home-runner" in the United States.

is another term for a home run. However, the dictionary definitions show that both "home run" and "runner" are baseball terms, and consumers are likely to see the combination "homerunner" as being a conflation of the two words. Certainly they will view "homerunner" as having a baseball connotation related to a home run, and perhaps the achievement of hitting one. This is borne out by the newsletter titled "The Home Runner"; clearly, the Chatsworth Junior Baseball League adopted this name because it has a baseball significance, even if it does not have a precise meaning.

In short, although "homerunner" may not have precisely the same meaning as "home run," consumers will still relate it to the baseball term "home run," and the marks are therefore similar in connotation. Certainly consumers are more likely to view "homerunner" as related to the baseball term "home run" than they would to view it as one who manages a house, the meaning applicant has propounded.

When used in connection with mortgage lending services, both HOMERUNNER and HOME RUN LOANS have double or even triple entendres, relating to baseball, one's home and a laudatory suggestion of achievement. As such, both marks convey similar commercial impressions. The factor of the

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similarity of the marks, too, favors a finding of likelihood of confusion.

We recognize that there are specific differences in the marks, but when marks are used in connection with virtually identical goods or services, the degree of similarity 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). Here, because applicant's and the registrant's services are legally identical, the similarity of the marks, as discussed above, is sufficient to support a finding of likelihood of confusion.

Decision: The refusal of registration is affirmed.