

SUMMARY OF FINAL DECISIONS ISSUED BY THE TRADEMARK TRIAL AND APPEAL BOARD
March 7-11, 2005

Date Issued	Type of Case(1)	Proceeding or Appn. No.	Party or Parties	TTAB Panel(2)	Issue	TTAB Decision	Opposer's or Petitioner's Mark and Goods or Services	Applicant's or Respondent's Mark and Goods or Services	Mark and Goods Cited by Examining Attorney	Examining Attorney	Citable as Precedent of TTAB
3-7	EX	78156904	ConsulNet Computing, Inc.	Holtzman Rogers Drost*	2(d)	Refusal Affirmed		“QUANTUM LEAP SUCCESS WEB SITE” [direct marketing advertising for mortgage and real estate industries; developing promotional and marketing campaigns for mortgage and real estate industries]	“QUANTUM LEAP” [in Class 35: providing advertising agency services to others, namely, creating, producing, and arranging for the distribution of advertising materials promoting the goods and services of others; production and distribution of TV and radio commercials; and dissemination of advertising for others via an on-line electronic communications network; in Class 42: design of advertising and promotional computer software for others]	Spils	No

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3-7	EX	76976356	Kathryn M. Ireland, Inc.	Seeherman Walters Drost*	2(d)	Refusal Affirmed		"KATHRYN IRELAND" [interior decorating services and interior decoration consultation services]	"KATHY IRELAND HOME" [in Class 11: electric lighting fixtures and lamps; in Class 20: dining room, living room, kitchen, bedroom, occasional, casual, and upholstered wall units; in Class 24: tapestries of textiles, bed linen, fabrics for the manufacture of home furnishings, textile wall coverings and table linen; in Class 27: rugs, carpets, wall hangings not of textile, wallpaper and mats, namely, textile floor mats for use in the home]	Cordova	No
3-8	EX	76121702	Direct Response Corp.	Hanak Bucher Rogers*	genericness	Refusal Affirmed		"TEACHERS' INSURANCE PLAN" [insurance services, namely, underwriting insurance in the fields of property, casualty, and automobile insurance; insurance claim administration and processing; insurance consultation and insurance brokerage services]		Matthews	No

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3-8	OPP OPP (SJ)	91159413 91161263	Cheese-burger In Paradise, Inc. v. Jimmy Buffett	Hohein Hairston Chapman [Opinion "By the Board" (Baxley)]	whether, because of a settlement agreement in a civil action between the parties, opposer has standing to oppose registration of applicant's marks	Opposition Dismissed in both cases as to all opposed applications (applicant's motion for summary judgment granted) [Note: <i>Opposer given time to respond to applicant's motion to amend its answer to assert a counter-claim to cancel opposer's registrations</i>]	"CHEESE BURGER IN PARADISE" (and design) [restaurant and bar services]; "CHEESE BURGER" (and design) [pots, frying pans, spatulas, serving spoons, and mixing spoons; containers for household use or kitchen use; trivets; coasters not of paper or table linen; dishes; beverage glassware; water bottles sold empty; and mugs; promotional merchandise, namely, ornamental novelty pins, ornamental buttons]; "CHEESE BURGER" [restaurant and bar services; headwear; footwear, and clothing, namely, caps, shirts, t-shirts, tanktops, blouses, jackets, coats, sweaters, sweatshirts, shorts, pants, beachwear, swimwear, swimsuits, pareos, caps, visors, and hats]	"CHEESEBURGER IN PARADISE" (and design) [in Class 14: jewelry, lapel pins and watches; in Class 21: beverage glassware, shot glasses and foam drink holders; in Class 25: clothing, namely, shirts, t-shirts, sweatshirts and baseball caps; in Class 41: nightclub services and providing information in the field of nightclub services, namely, live entertainment event calendars, location information and driving directions via the Internet; in Class 45: restaurant and bar services, and providing information in the field of restaurant and bar services, namely, food and drink menus, location information and driving directions via the Internet] and "CHEESEBURGER IN PARADISE" (and design) [the same goods listed above in Classes 14, 21 and 25]			No

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3-8	OPP (SJ)	91159978	Pacific Sunwear of California, Inc. v. Pepperdine University	Quinn Walters Bottorff [Opinion "By the Board" (Butler)]	2(d)	Opposition Dismissed (applicant's motion for summary judgment granted)	"KIRRA" (and design) [<i>a wide variety of clothing items, including, among many others: hats, caps, socks, boxer shorts, t-shirts, tank tops, sweat shirts, sweat pants, crew neck sweaters, and denim shorts</i>]; and two other marks incorporating the word KIRRA and/or a "wave" design [<i>both marks for various clothing items of the sort listed above</i>]	design mark [clothing, namely, tee-shirts, sweatshirts, sweatpants, hats, caps, sweaters, jackets, boxer shorts, socks, tanktops, and shorts]			No
3-9	EX	75861779	Americare, Inc.	Seeherman Bucher* Holtzman	2(d)	Refusal Affirmed as to both cited registrations		"AMERICARE A TRADITION OF CARING" (and design) [home health care services]	2 cited registrations, both owned by the same entity and both for the mark: "A TRADITION OF CARING" [providing home health care services, physical and speech therapy, and housekeeping and psychological counseling services] and [newsletters concerning home health care services, physical and speech therapy, and housekeeping and psychological counseling services]	Stine	No

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3-9	OPP	91118366	Coverall North America, Inc. v. Cover-All, Inc.	Quinn* Chapman Bucher	2(d)	Opposition Sustained	"COVERALL" [maintenance and cleaning of offices and commercial buildings]; and several other marks incorporating the word COVERALL, registered for the same or related goods and/or services]	"COVER-ALL" [installation of floor coverings]			No
3-9	EX	75982917	Alexandria Real Estate Equities	Bucher* Rogers Drost	2(e)(1)	Refusal Affirmed as to Class 35; Refusal Reversed as to Classes 36 and 42		"LABSPACE" [in Class 35: business consulting services; business incubator services, namely, business management and business development services in the form of start-up support for businesses of others; rental and leasing of office machinery and equipment; in Class 36: investment brokerage, consultation, and management; financial portfolio management; financial services, namely, financial consultation, financial analysis, financial planning, financial management, financial portfolio management, financing services, and providing debt and equity capital; incubator financing services; in Class 42: rental and leasing of computers]		Cataldo	No

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3-9	EX	76506911	Teletellme LLC	Hairston* Walters Drost	whether applicant's specimens show use of its mark in connection with the services recited in its application	Refusal Affirmed		"ANSWERS" [providing multiple user dial-up and dedicated access to the Internet in response to telephone requests from individuals requesting this access]		Kazazian	No
3-9	EX	78248647	Maxilon Laboratories, Inc.	Seeherman Hairston* Bucher	2(e)(4)	Refusal Affirmed		"EBNER" (in stylized lettering) [surgical instruments for removing and collecting hard tissue, namely, cures]		Jackson	No
3-10	EX	78064146	Verbum AB	Chapman Bucher* Bottorff	2(e)(1)	Refusal Reversed		"BERLING" [computer software for use in displaying and printing digital typeface designs and typographic ornaments]		Perkins	No
3-10	EX	76231575	General Semiconductor, Inc.	Quinn Chapman* Rogers	2(d)	Refusal Affirmed as to both cited registrations		"SMF" [semiconductors]	<i>2 cited registrations, both owned by the same entity: "SMF-28" and "SMF28e2" [both marks for optical fiber]</i>	Wahlberg	No
3-10	EX	76302105	Pioneer Investment Management, Inc.	Seeherman Quinn* Drost	2(d)	Refusal Reversed		"UNI-K PLAN" [financial investment and advisory services, namely, providing 401(k) retirement plans for small businesses and owner-only businesses]	"UNIPLAN" [training others in implementing qualified retirement plans through training seminars, and providing prototype qualified retirement plans in connection therewith]	Matthews	No

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3-11	CANC	92040782	Physicians Formula Cosmetics, Inc. v. Cosmed, Inc.	Quinn Walters Drost [Opinion "By the Board" (Greenbaum)]	fraud	Summary judgment entered for cancellation petitioner on grounds of fraud; but petitioner given time to indicate whether it wishes to proceed to trial on its other pleaded grounds	"PHYSICIAN'S FORMULA" [<i>various cosmetics and skin products</i>]	"PHYSICIANS COMPLEX" [<i>various cosmetics</i>]			No
3-11	EX	75587761	Allianz Life Insurance Company of North America	Quinn* Hohein Rogers	genericness; 2(e)(1); whether, if not generic, applicant's mark is registrable under Section 2(f)	Refusal Affirmed (on the grounds that the mark, while not generic, is merely descriptive and not shown to be distinctive under Section 2(f))		"WEALTHCARE" [insurance services, namely, underwriting, claims processing, claims administration, consultation and brokerage, in the fields of health care insurance, life insurance and annuities]		Herman	No

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3-11	EX EX (R)	78102333 78102336	BrainLAB AG	Seeherman Bottorff Rogers*	whether applicant's identification of certain goods in Class 10 is sufficiently definite <i>[Note: Identification of most of the goods in Class 10 was found sufficiently definite, as were the identification of goods in Class 9 and recitation of services in Class 42]</i>	Request for Reconsideration Granted to the extent that: Board's decision of 1-7-05, affirming the refusal of registration, is set aside and the applications are remanded for entry of a proposed amendment to the identification of goods in each application		"CardioSUITE" and "BrainSUITE" [both marks for a wide range of goods in Class 10; the items held to be indefinite were identified as "electronic apparatus and image presentation apparatus for medical purposes"]		Leipzig	No

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