

**SUMMARY OF FINAL DECISIONS ISSUED BY THE TRADEMARK TRIAL AND APPEAL BOARD
July 3-7, 2006**

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
7-5	EX	76577255	Avraham Kadar	Grendel* Rogers Drost	2(d) [only as to one of three classes]	Refusal Affirmed		"FWD" [providing information about trends in fashion]	"FWD" and design [design and development of new products for others, namely, products used in advertising and marketing and clothing and footwear products]	Verhosek	No
7-5	OPP (SJ)	91101367	Brothers Research Corporation v. Dura Lube, LLC (by mesne assignments from original applicant Howe Laboratories, Inc.)	Hairston Drost Kuhlke [Opinion "By the Board" (Butler)]	2(d) [collateral estoppel]	Opposition Sustained	"DURAGLOSS" (two registrations) [vehicle polishes and waxes] [various cleaners, polishes and conditioners and care kits for vehicles and vehicle parts; all-purpose cleaning preparations; marine polishes and cleaners] and "DURAGLOSS" and design [virtually the same identification as second, above]	"DURA SHINE" [car polish]			No
7-5	EX	76552342	Comcast Corporation	Hairston Walters Walsh*	2(d)	Refusal Affirmed		"THE FAN" [entertainment services, namely providing access to articles, files and audio and video clips in the fields of international, national and local news, entertainment, motion pictures, music, television and sports through an online multimedia player]	"THE FAN" [radio broadcasting services]	Dawe	No

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7-5	EX	76439661	Howard Leight Industries, LLC	Grendel* Holtzman Drost	2(e)(5); alternatively, lack of acquired distinctive- ness under Section 2(f)	Refusals Affirmed		"Configuration of an ear plug" ["The mark consists of a bullet-shaped earplug with a vertical axis, a rounded bottom, and a radially outwardly flared top"] [earplugs for noise protection formed of slow recovery resilient foam material]		Lapter	Yes
7-5	EX	76560855	GMAC Mortgage Corporation	Seeherman Quinn Grendel*	2(e)(1) [descriptive]	Refusal Affirmed		"WORKPLACEHOME-LOANS" [real estate mortgage banking and lending services; loan origination and financing via a global communications network]		Clark	No
7-6	EX	76561135	Vanilla Gorilla, L.P.	Grendel Drost* Kuhlke	2(e)(1) [descriptive]	Refusal Affirmed		"3-0'S" [automobile parts, namely, car wheel rims]		Chicoski	Yes

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7-6	CU	94001250	CDS, Incorporated v. I.C.E.D. Management, Inc.	Seeherman Drost* Walsh	Whether the concurrent use applicant is entitled to the concurrent use registration it seeks	Concurrent use applicant granted registration but for lesser territory than it sought; defending registrant's registration restricted to exclude territory of concurrent use applicant	"THE COPY CLUB" [CU applicant's mark] [various copying, record and document management, word processing, layout and reproduction of documents, and typing services, in Class 35; various document processing, color separation, electronic document imaging, and receipt of digitized information for conversion to documents services, in Class 40; various electronic publishing services, in Class 41; and desktop publishing, graphic design, typesetting, composition, compilation, and pre-production services, in Class 42]	"COPY CLUB" [defending registrant's mark] [various document copying, record and document management, indexing and cataloging, word processing, layout and pre-production, and typing services, and rental and leasing of business office equipment, in Class 35; facsimile transmission and audio, video and data telecommunication services, in Class 38; binding, collating, sorting, stapling, etc. services, color separation and electronic document imaging services, and receipt of digitized information and conversion services, in Class 40; electronic publishing for others using a personal computer, in Class 41; and desktop publishing, graphic design, typesetting, composition, compilation, color proofing and paste-up, and photography services, and rental of computers for use on premises, in Class 42]			Yes

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7-6	EX	78052625	Top Network LLC dba Tennis Network	Walters* Holtzman Walsh	2(e)(1) [descriptive]	Refusal Affirmed		"TENNIS NETWORK" [application service provider featuring software for web sites in field of tennis, and for hosting computer software applications of others; web site design, creation, hosting, maintaining, etc.; hosting digital content on the internet; displaying web sites and images of others; computer graphics services; data conversion; creating indexes of information, sites and other resources available on computer networks; providing search engines; and various computer consultation services]		Gaskins	No
7-7	EX	76527476	Bare Escentuals, Inc.	Seeherman* Rogers Kuhlke	2(d)	Refusal Reversed		"WEARABLE LIP" [cosmetics, namely, lipsticks and non-medicated lipbalms]	"WEARABLE TREATMENT" [lipstick, non-medicated lip balms, cosmetic creams and exfoliants for hair and skin, skin lotions and skin gels]	LaMothe	No
7-7	EX	75733693	Farmers & Merchants Bank and Trust Co.	Seeherman* Hairston Zervas	2(d)	Refusal Affirmed		"F & M BANK & TRUST" (stylized) [banking, trust investment, investment brokerage, and mortgage lending services]	"F & M BANK" (stylized) [banking services]	Zak	No

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7-7	EX	78594227	Rick D. Hutchinson, dba Hutchinson Winery	Seeherman* Hohein Cataldo	2(d)	Refusal Affirmed		"SEVEN SISTERS NAKED EYE" [wine]	"SEVEN SISTERS" and design [restaurant services]	Yontef	No
7-7	OPP	91158096	ESPN, Inc. v. Kurt Luttermoser	Hairston* Bucher Zervas	2(d); 2(a) (false suggestion of a connection); and 2(f), 43(c) (dilution)	Opposition Dismissed	"X GAMES" and "X GAMES" and design [both registrations for organizing and conducting competitions featuring a wide variety of sports; an ongoing television series featuring a wide variety of sports events]; "X GAMES" and "X GAMES" and design [both registrations for a wide variety of clothing items; and "X GAMES" [computer game and video game software]	"A GAMES" [entertainment services in the nature of a live sporting event featuring aggressive in-line skating, skateboarding, sky-diving, motor cross racing, barefoot water skiing, wakeboarding, wave runner racing and mountain biking]			No
7-7	OPP (SJ)	91156646	America Online, Inc. v. Franklin Loufrani	Hohein Grendel Walsh [Opinion "By the Board" (Baxley)]	whether mark is non-distinctive, merely descriptive, or generic; fraud	Opposition sustained on all claims but only as to services deleted from application by applicant		"SMILEY" and design of smiling face [wide range of goods and services in numerous classes]			No

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