

THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B.

Mailed: May 13, 2009

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Superior Access Insurance Services, Inc.

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Serial No. 77399607

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Tawnya R. Wojciechowski of TRW Law Group for Superior  
Access Insurance Services, Inc.

Shannon M. Twohig, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney).

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Before Bucher, Kuhlke and Cataldo, Administrative Trademark  
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

On February 18, 2008, Superior Access Insurance  
Services, Inc. applied to register the mark CIS TEXAS in  
standard characters on the Principal Register based on a  
bona fide intention to use the mark in commerce under  
Section 1(b) of the Trademark Act, 15 U.S.C. §1052(b), for  
services identified as "insurance brokerage services,  
insurance consultation services, wholesale insurance  
underwriting services in the fields of automobile,  
commercial automobile, marine, homeowners, apartment, fire,

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earthquake, flood, personal property, personal liability, personal umbrella, professional liability, contractor liability, life, health, accident, medical, worker's compensation, in-home business, commercial umbrella, unemployment, bond and multiple lines of business insurance" in International Class 36. In addition, in response to a requirement from the examining attorney, applicant disclaimed the word TEXAS.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified services, so resembles the registered marks CIS RISK GROUP in typed form with the wording "RISK GROUP" disclaimed for "insurance services, namely, insurance underwriting, insurance claims administration, and insurance agencies in the field of property, casualty, life, automobile, boat, farm and ranch, flood, workers compensation, mortgage protection, renters, townhouse, condominium, and homeowners; insurance brokerage in the field of automobile insurance and home insurance," in International Class 36

owned by Computer Risk Management, Inc.,<sup>1</sup> and  for "insurance agencies in the field of property, general

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<sup>1</sup> Registration No. 2969264, issued on July 19, 2005.

business liability, automobile, workers' compensation, professional liability, employment practices, fidelity crime, equipment breakdown, excess liability and employee benefits liability" owned by Commercial Insurance Solutions Group, L.L.C.,<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Applicant has appealed the final refusal and the appeal is fully briefed. We affirm the refusal to register.

As a preliminary matter, we address an evidentiary issue. The exhibits attached to applicant's main brief and reply brief are untimely and the examining attorney's objection to them is sustained. Trademark Rule 2.142(d). In view thereof, we have not considered them.<sup>3</sup>

When there is a question of likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion

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<sup>2</sup> Registration No. 3385082, issued on February 19, 2008.

<sup>3</sup> We add that consideration of this material would not change the decision. Registrations for unrelated goods or services are not evidence of any meaning or significance CIS may have in the insurance industry. In addition, a printout of a search result

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analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Applicant's wholesale insurance underwriting services in various fields are encompassed by the insurance underwriting services in various fields in Reg. No. 2969264. Further, applicant's insurance brokerage services are closely related to the insurance agency services in Reg. Nos. 2969264 and 3385082. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods [or services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods [or services], the particular channels of trade or the class of purchasers to which the sales of goods [or services] are directed"). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). The examining attorney has submitted several third-party use-based registrations that

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list from a search engine has limited probative value. In re *Fitch IBCA, Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002).

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show numerous entities have adopted a single mark for the services identified in applicant's application and the services in registrants' registrations. See, e.g., Reg. No. 3194990 (DICEROS for insurance agency, insurance brokerage, and insurance underwriting services); Reg. No. 3522491 (Design Mark for insurance services, namely, insurance brokerage services; insurance general agency services); Reg. No. 3217851 (DACOTAH INSURANCE for insurance agency and brokerage); and Reg. No. 3292226 (RESPONSIBILITY. WHAT'S YOUR POLICY? for insurance underwriting, insurance brokerage services). See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) (third-party registrations serve to suggest that the goods and/or services listed therein are of a kind that may emanate from a single source).

Furthermore, inasmuch as registrants' services encompass or are closely related to applicant's services, we must presume that the purchasers and channels of trade for such services would also overlap. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' foods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of

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purchasers through the same channels of trade"). Finally, applicant has conceded that the services are "admittedly very similar." Br. p. 6.

In view of the above, we find that the services are related and the channels of trade, and classes of customers overlap.

In determining the similarity between the marks we analyze "the marks in their entirety as to appearance, sound, connotation and commercial impression." *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) quoting *du Pont*, 177 USPQ at 567. While it is a basic principle that "marks must be compared in their entirety...[t]hat a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Finally, where as in the present case as to Reg. No. 2969264, registrant's services encompass, at least in part, applicant's services, the degree of similarity between the marks which is necessary to support a finding of likelihood of confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

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The letters CIS are the dominant feature in applicant's and registrants' marks. The additional words in Registration No. 2969264, RISK GROUP, and applicant's mark, TEXAS, are respectively descriptive and geographically descriptive. Disclaimed wording is typically less significant in determining the similarity between marks. See *In re National Data Corp.*, 224 USPQ at 751. Thus, CIS is likely to be most noted and remembered inasmuch as it is the sole distinctive term in the marks.

Further, the triangle design in Reg. No. 3385082 merely serves as a background or carrier design for the literal element CIS and makes less of a visual impression than CIS. It is well-settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). Thus, CIS is the portion of registrant's mark to which the viewer is drawn, and the portion that the viewer is most likely to remember, and the portion by which consumers will refer to or request the identified services.

Finally, we note that CIS is the first portion of applicant's mark and the mark in Reg. No. 2969264. It is "a matter of some importance since it is often the first

part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered." *Presto Products, Inc., v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). See also *Palm Bay Imports*, 73 USPQ2d at 1692. In view of the above, we find applicant's mark to be similar to each of the marks in the cited registrations.

In making our finding, we have considered applicant's evidence and argument that the CIS is weak in the field of insurance. In support of this argument applicant submitted three third-party registrations. Registrations are not evidence of use of the marks shown therein; thus, they are not proof that consumers are familiar with such marks so as to be accustomed to the existence of the same or similar marks in the marketplace. See *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462 (CCPA 1973); *AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1407, 177 USPQ 268 (CCPA 1973); and *Richardson-Vicks, Inc. v. Franklin Mint Corp.*, 216 USPQ 989 (TTAB 1982). However, these registrations, similar to a dictionary definition, may be used to demonstrate that a particular term has some significance in an industry. This record, consisting of three third-party registrations (or five including the cited registrations) does not support a finding that CIS has a specific meaning in this field such that consumers

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would look to other elements to determine source. First, Reg. No. 1299872 for the mark  for the "administration of insurance" and Reg. No. 2452720 for the mark  for "consultation, administration, underwriting and claims processing in the field of crop insurance" are cancelled and as such have little probative value. In re Phillips-Van Heusen Corp., 63 USPQ2d 1047, 1048 (TTAB 2002). In addition, both marks are very different from the cited marks and applicant's mark. It is not clear that consumers would even perceive the mark in Reg. No. 1299872 as incorporating CIS rather than merely CS in view of the added wording Consolidated Services in the mark.<sup>4</sup> In Reg. No. 2452720 the letters C.I.S. appear with the wording Crop Insurance Services clearly indicating it is the abbreviation for this wording. The third example, Reg. No. 3147799, for the mark CIS Construction Insurance Solutions, also includes the phrase for which CIS is an abbreviation. We further note that the services in this registration are limited to a very specific field in the insurance industry, namely, the "construction industry." These examples do not point to a specific meaning for CIS

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<sup>4</sup> While we recognize the registration includes a description of the mark as comprising the letters CIS, consumers in the marketplace are not privy to this information.

in the insurance industry, but rather, merely show that CIS can be an abbreviation for a variety of words.

Applicant also submitted evidence in the form of web pages from 14 different third-party websites where CIS is displayed. Applicant argues that CIS is "widely used as an acronym in the insurance services industry." Br. p. 6.

The following examples are illustrative:

CIS GROUP ... Commercial Insurance Services, Inc. specialized products and services for the commercial insurance buyer. cisinsgroup.com;

City County Insurance Services ... The CIS Workers' Compensation Group Program is structured much like an insurance company, with the distinction that we write exclusively municipal government risks in the context of a pooling structure. cciservices.com;

CIS Insurance & Financial Services ... Our mission is to provide, risk management and insurance solutions through a caring team of professionals who are dedicated to client satisfaction. cisins.com; and

CIS ... Center For Insurance Studies ... CIS is committed to helping CSUF traditional and nontraditional students and alumni find professional employment and assist industry recruiters in targeting ideal potential employees. business.fullerton.edu.

First, the probative value of this evidence is limited because applicant presented no evidence concerning the extent to which these third-party designations are used in commerce. For example, it is not known how frequently these websites are viewed or how broad the consumer base is

for these apparently specialized services. Second, several of the services are quite specialized (commercial insurance, workers compensation for municipal government employers and education services). This record simply does not establish that CIS has been severely diluted in the field of insurance, and, in particular, in underwriting and brokerage services. See *Broadway Chicken, Inc.*, 38 USPQ2d 1559 (TTAB 1996) (BROADWAY weak for restaurant services based on evidence that *hundreds* of restaurants and eating establishments use that word). Thus, applicant's evidence does not establish that there is widespread use of similar marks for insurance underwriting or brokerage services such that registrants' marks are weak and entitled to only a narrow scope of protection.

In any event, even if we were to find, based on applicant's evidence, that registrants' marks are weak and entitled to a narrow scope of protection, the scope is still broad enough to prevent the registration of a highly similar mark for identical or closely related services. See *In re Farah Mfg. Co., Inc.*, 435 F.2d 594, 168 USPQ 277, 278 (CCPA 1971).

Finally, applicant argues that the examining attorney has "ignored the co-existence of the cited registrations" for "identical services" and contends its application may

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"co-exist peacefully on the Principal Register." Reply Br. p. 1. As noted by the examining attorney, the Board is not bound by decisions made in other applications. See *In re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994). See also *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). Each case must be decided on its own facts and "we will not compound the problem of the registration of a confusingly similar mark by permitting such a mark to register again." *In re Thomas*, 79 USPQ2d 1021, 1028 (TTAB 2006).

In conclusion, we find that because the marks are similar, the services are legally identical or closely related, and the channels of trade and purchasers overlap, confusion is likely between applicant's mark for its identified services and the marks in the cited registrations.

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