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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Hartford Courant Company

Serial No. 77404276

Salvador K. Karottki for The Hartford Courant Company.

Chris Doninger, Managing Attorney, Law Office 104.

Before Quinn, Bucher and Ritchie, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Hartford Courant Company filed, on February 22, 2008, an intent-to-use application to register the mark iTOWNS (in standard characters, hereinafter ITOWNS) for "printed newspaper for general circulation" (in International Class 16); and "education and entertainment services, namely, providing a website featuring non-downloadable general circulation newspapers and on-line journals featuring information on current events" (in International Class 41).

The managing attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with applicant's goods and services, so resembles six previously registered marks, all owned by the same entity, as to be likely to cause confusion. Four of the registered marks, all for IVILLAGE in typed form, are as follows:

Newsletters relating to issues of interest for women, children and families in the areas of health, astrology, babies, books, careers, computing, diet and fitness, food, money, parenting, pets, relationships, shopping, automobiles, travel and working from home (in International Class 16);<sup>1</sup>

Dissemination of advertising for others via a global computer network; conducting computer business and market research surveys; health care utilization and review services; preparing advertisements for others; on-line retail store services featuring baby clothes, baby furnishings and accessories, toys, and maternity clothes (in International Class 35);<sup>2</sup>

Electronic transmission of data and documents via computer terminals on a global computer network; electronic mail; delivery of messages by electronic transmission; providing on-line chat rooms and electronic bulletin boards for transmission of messages among computer users concerning health, books, careers, computers, diet and

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<sup>1</sup> Registration No. 2432910, issued March 6, 2001; renewed.

<sup>2</sup> Registration No. 2370761, issued July 25, 2000; renewed.

fitness, food, financial matters, parenting, pets, relationships and travel (in International Class 38);<sup>3</sup> and

Astrological and horoscope forecasting and consulting services; promoting public awareness of the need for information as to particular health issues related to women; career counseling services; computer consultation services; counseling in the field of health; physical fitness, food and nutrition consulting services; providing information of interest to women, children and families in the field[s] of health, physical fitness consultation, food and nutrition consultation, computer consultation, diet planning, child care consultation, career counseling, pet health care consultation, social planning and party planning consultation; and computer services, namely, designing and implementing network web pages for others, via the global computer network (in International Class 42).<sup>4</sup>

The other two registrations, both for IVILLAGE.COM in typed form, are as follows:

Electronic transmission of data and documents via computer terminals on a global computer network; electronic mail services; delivery of messages by electronic transmission; and providing on-line chat rooms and electronic bulletin boards for the transmission of messages among computer users concerning health, books, careers, computers, diet and fitness, food, financial matters, parenting, pets,

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<sup>3</sup> Registration No. 2403655, issued November 14, 2000; renewed.

<sup>4</sup> Registration No. 2374952, issued August 8, 2000; renewed.

relationships and travel (in International Class 38);<sup>5</sup> and

Entertainment and education in the nature of on-going audio visual and multimedia interactive programming information in the nature of a book club distributed over a global computer network, computer network systems and wide area networks; educational services, namely conducting on-line interactive conferences and seminars via a global computer network in the fields of health, beauty, diet and fitness, food, parenting, pets, relationships, travel, and careers; publication of books in the fields of guides for naming babies and guides for care of babies and toddlers, and guides for assisting college bound students in connection with financial aid (in International Class 41).<sup>6</sup>

When the refusals were made final, applicant appealed. Applicant and the managing attorney filed briefs.<sup>7</sup>

The managing attorney maintains that the marks ITOWNS and IVILLAGE and IVILLAGE.COM are similar because the marks

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<sup>5</sup> Registration No. 2428028, issued February 13, 2001; Section affidavit accepted, Section 15 affidavit filed.

<sup>6</sup> Registration No. 2417074, issued January 2, 2001; Section 8 affidavit accepted, Section 15 affidavit filed.

<sup>7</sup> As pointed out in applicant's brief, the managing attorney's final Section 2(d) refusal was based on an additional four registrations of IVILLAGE (and design) marks owned by registrant. In its request for reconsideration (p. 1), applicant alerted the managing attorney to the fact that these four registrations were cancelled, as reflected by the TESS printout attached as Exhibit A to applicant's request for reconsideration. In denying the request for reconsideration no mention was made of this fact. The managing noted in his brief, however, that the registrations were cancelled, and that the refusals are "clearly moot." We agree.

begin with the letter "I" followed by direct synonyms. The managing attorney essentially contends that the words "town" and "village" are frequently used interchangeably in stories, articles and everyday speech. Thus, although the managing attorney "readily concedes that 'village' and 'town' have different technical meanings," he "stands by the fact that in ordinary usage, there is no appreciable difference in the minds or [sic] of ordinary consumers." (Brief, unnumbered p. 15). The managing attorney urges that "the ordinary meaning and usage of the terms 'village' and 'town' are so close as to create confusion in the minds of consumers, who clearly are not experts in the technicalities of the definitions of municipalities, nor do they care about such things when surfing the internet for information about current events, politics, horoscopes or fashion." (Brief, unnumbered pp. 15-16). In support of the refusals, the managing attorney introduced numerous documents, including thesaurus listings; excerpts of articles retrieved from the NEXIS database; excerpts from applicant's and registrant's websites, as well as from third-party websites; and third-party registrations.<sup>8</sup>

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<sup>8</sup> The managing attorney is commended for identifying his evidence by its page number attachment to the Office actions. That is to say, he did not merely identify the Office action wherein the evidence was introduced; rather he took the additional step of identifying the evidence by the attachment page number as

Applicant argues that the marks are readily distinguishable in appearance and sound. Because the prefix "I" or "i" is understood to signify "Internet," the commonality of the prefix in the marks is an insufficient basis upon which to find that the marks are confusingly similar. Further, the remainder of the marks, TOWNS and VILLAGE, sound and look different. Moreover, these words have different meanings, referring to "settlements of different sizes," with "village" conjuring up images of a pastoral, rural community, whereas "town" refers to a larger, more fortified suburban or urban enclave. Applicant also contends that its goods and services are distinct from registrant's goods and services, "especially given that Applicant operates a general circulation newspaper in the Hartford metropolitan area, whereas Registrant's business is 'dedicated exclusively to connecting women at every stage of their lives.'" [citation omitted] (Brief, p. 6).

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative

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reflected in the Office's electronic database. Such cross-referencing greatly eases the burden on the Board in locating specific pieces of evidence in the record, especially in the case of large records. The Board recommends this practice to applicants and examining attorneys alike.

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 Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, 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).

We first turn to consider the goods and/or services. It is not necessary that the respective goods and/or services be competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods and/or services are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods and/or services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originated from the same producer. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991). The question of likelihood of confusion is determined based on the identification of goods and/or services in the application vis-à-vis the goods as set

forth in the cited registrations. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); and *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). The issue is not whether consumers would confuse the goods and/or services themselves, but rather whether they would be confused as to the source of the goods and/or services.

Insofar as the goods are concerned, applicant's "printed newspaper for general circulation" is similar to registrant's "newsletters relating to issues of interest for women, children and families." Contrary to the gist of one of applicant's arguments, the fact that registrant's identification lists "discrete topical areas" while applicant's does not is of no consequence. Applicant's general circulation newspaper is not limited with respect to subject matter and, thus, we must presume that the newspaper covers a variety of topics and issues, including those of interest to women, children and families, thereby encompassing the same topics and issues more specifically listed in registrant's identification of goods.

Likewise, applicant's "education and entertainment services, namely, providing a website featuring non-downloadable general circulation newspapers and on-line journals featuring information on current events" are related to certain of registrant's services, including

"providing on-line chat rooms and electronic bulletin boards for transmission of messages among computer users concerning health, books, careers, computers, diet and fitness, food, financial matters, parenting, pets, relationships and travel," "providing information of interest to women, children and families" on a variety of topics, and "dissemination of advertising for others via a global computer network."

Registrant's identifications, as confirmed by excerpts of registrant's website, cover a variety of topics that are likely to appear in newspapers, both in the printed and electronic versions. As indicated above, applicant's goods and services are broadly identified, with no restriction as to topics and issues covered, so we must presume that applicant's website covers topics of interest to women, children and families, such as parenting, fitness, diet and careers. The fact that applicant's goods and services may feature information of particular importance to the Hartford, Connecticut metropolitan area is irrelevant because no such limitation is indicated in applicant's identifications.

In establishing that the goods and services are related, the managing attorney introduced numerous documents. The excerpts of applicant's website confirm

that the electronic version of the newspaper offers standard features found in all newspapers, including advertising of others and horoscopes. Likewise, the excerpts of registrant's website reveal that it covers much of the same types of information as the websites of newspapers such as applicant's. Further, the third-party websites show that neither applicant nor registrant is unique in offering both a printed newspaper (or newsletter) and a website to provide a wide variety of information and advertising via electronic means (e.g., *Washington Post*, *Cleveland Plain Dealer* and *Boston Globe*).

The examining attorney also introduced several use-based third-party registrations, many owned by media and publishing entities, of a single mark for the general types of goods and services involved herein. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. *In re Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988).

Given the relatedness of the goods and services, the offerings of both applicant and registrant would be expected to move in the same trade channels (newsstands,

book stores, and the Internet), and would be purchased by the same classes of purchasers. These purchasers would include ordinary consumers, who would use nothing more than ordinary care in making their purchases. Further, given the nature of the goods and services, and their relatively inexpensive cost, we expect that many purchases may be made on impulse.

The factors regarding the similarity in the goods and services, the trade channels and purchasers, as well as the conditions of sale, weigh in favor of a finding of likelihood of confusion.

We next turn to compare the marks, ITOWNS and IVILLAGE. We must consider the marks in their entireties as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the

average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

At the outset, we consider registrant's IVILLAGE.COM mark. With respect to this mark, the top-level domain (TDL) ".com" is generic and has no source-indicating significance. In view thereof, coupled with the fact that IVILLAGE is the first part of the mark and the portion most likely to be remembered by purchasers, this mark is clearly dominated by the IVILLAGE portion. See, e.g., *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682 (Fed. Cir. 2009); and *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009). Thus, the comparison between applicant's mark ITOWNS and registrant's mark IVILLAGE.COM does not differ in any appreciable way from the comparison between ITOWNS and IVILLAGE.

There is no question that the words "TOWNS and "VILLAGE" neither sound alike nor look alike. The managing attorney contends, however, that their similarity or identity in meaning outweighs the differences to the extent that the marks as a whole, ITOWNS and IVILLAGE (and IVILLAGE.COM), are similar in commercial impression.

The record includes no less than four entries from a thesaurus. They are as follows:

Small town: Synonyms:  
township...town...village.  
([www.encarta.msn.com/thesaurus](http://www.encarta.msn.com/thesaurus))

Village and small town  
([www.synonyms.net](http://www.synonyms.net))

Village and town.  
([www.freethesaurus.net](http://www.freethesaurus.net))

Village and town  
(Roget's International Thesaurus (4<sup>th</sup>  
ed. 1977)).

Wikipedia indicates that

[a] town is type of settlement ranging from a few hundred to several thousand (occasionally hundreds of thousands) inhabitants, although it may be applied loosely even to huge metropolitan areas. Usually, a "town" is thought of as larger than a village but smaller than a city, though there are exceptions to this rule...In modern American English, a town is usually a municipal corporation that is smaller than a city but larger than a village. In some cases, "town" is an alternate name for "city" or "village" (especially a larger village).

The managing attorney also submitted numerous excerpts of articles in printed publications retrieved from the NEXIS database to show that the terms "village" and "town" are often used interchangeably, even within the same article. Representative examples include the following:

By September 1926, the village trustees had prepared the first zoning plan for the entire town.  
(*Chicago Tribune*, Feb. 27, 1985)

In "Evil Hour," about a Columbian village suddenly haunted by anonymous posters spreading rumors about the town's most respected citizens...  
(*The New York Times*, Oct. 22, 1982)

Why do we need multiple layers of government, beyond city/borough/village/town - basically synonyms - county and state?  
(*Intelligencer Journal*, Feb. 24, 2009)

The Swiss Alps tour begins with a motorcoach ride from Genoa about 100 miles to Zermatt. Because the picturesque village bans autos, the last leg into the mountain town is via horse-drawn carriage.  
(*The Boston Herald*, Apr. 21, 2005)

Like many northern villages, the town is a monument to abandoned Soviet dreams.  
(*The New York Times*, Aug. 21, 1994).

As we indicated earlier, the marks have differences in appearance and sound. The meaning of the words "village" and "towns" forms the crux of the managing attorney's case. As to meaning, we acknowledge that there may be a distinction between the technical meanings of the two words "village" and "towns." However, we are primarily concerned with the meaning of the marks to the prospective purchasing public (in this case, ordinary consumers), and not to geographers, experts on municipality designations, or linguists. Accordingly, as shown by the thesaurus entries, and confirmed by the interchangeability of the words in

actual language, we believe that the popular or ordinary meanings of the words "village" and "towns" are virtually identical, although there are technical distinctions between the two words. The ordinary meaning and usage of the two words are so close as to render the marks similar in the minds of ordinary consumers, who are not likely to be experts in the definitions of municipalities. See *Hancock v. The American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332-33 (CCPA 1953) (TORNADO and CYCLONE are distinct in technical meanings; however, in view of their substantially identical meaning, the marks are confusingly similar inasmuch as the court is primarily concerned with the meaning of marks to members of the public at large who are prospective purchasers of the goods, and not to meteorological experts). See also *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35, 37-38 (CCPA 1974) (SPICE TREE and SPICE ISLANDS convey "the same idea, same mental reaction, and same meaning"); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368, 369 (CCPA 1974) (FROSTY AIR and FROSTEMP convey "the same idea, same mental reaction, and same meaning"); *Beacon-Morris Corp. v. International Tel. & Tel. Corp.*, 463 F.2d 1097, 175 USPQ 16, 17 (CCPA 1972) (DUO-FLO and TWIN FLOW are "essentially identical in

meaning"); and *Procter & Gamble Co. v. Conway*, 419 F.2d 1332, 164 USPQ 301, 304 (CCPA 1970) (MISTER STAIN and MISTER CLEAN are similar in meaning; "[a] designation may well be likely to cause purchaser confusion as to the origin of goods because it conveys, as used, the same idea, or stimulates the same mental reaction, or in the ultimate has the same meaning").

We find that the substantially similar meaning between "village" and "towns" outweighs any differences in sound and appearance. The marks ITOWNS and IVILLAGE (and IVILLAGE.COM) are similarly constructed; both begin with the letter "I." In point of fact, as shown in applicant's drawing and on its website, as well as on registrant's website, both applicant and registrant employ a lower case "i" in their marks as actually used. There is no dispute that the letter "I" indicates "Internet." The initial letter "I" is followed by words that, if not direct synonyms, are very similar in meaning and often used interchangeably. In sum, the marks engender overall commercial impressions that are similar.

The similarity between the marks weighs in favor of a finding of likelihood of confusion.

We conclude that consumers familiar with registrant's newsletters sold under the mark IVILLAGE, and registrant's

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entertainment and education services offered under the marks IVILLAGE and IVILLAGE.COM, would be likely to believe, upon encountering applicant's mark ITOWNS for printed newspapers, and education and entertainment services, namely, providing a website featuring non-downloadable general circulation newspapers and on-line journals featuring information on current events, that the goods and/or services originated from or are associated with or sponsored by the same entity.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision:** The refusal to register is affirmed.