

**THIS OPINION IS NOT A  
PRECEDENT OF  
THE TTAB**

Hearing:  
March 11, 2010

Mailed: April 27, 2010

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Pantech Co., Ltd.

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Serial No. 77501046

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Hae-Chan Park and Wayne M. Hedge of H.C. Park & Associates,  
PLC for Pantech Co., Ltd.

Courtney McCormick, Trademark Examining Attorney, Law  
Office 108 (Andrew Lawrence, Managing Attorney).

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Before Hairston, Zervas and Mermelstein, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Pantech Co., Ltd. filed an application to register the  
mark PANTECH BREEZE for goods ultimately identified as  
"wireless telephone transmitters and receivers for use  
other than broadband wireless access" in International  
Class 9.<sup>1</sup>

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<sup>1</sup> Application Serial No. 77501046, filed on June 17, 2008,  
alleging first use anywhere and in commerce on May 27, 2008.

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The trademark examining attorney refused to register applicant's mark 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, so resembles the previously registered mark BREEZEACCESS for "equipment and accessories for broadband wireless access, namely, computer hardware, computer software for broadband wireless access, cables, modems, telephones, telecommunications switches, antennas, transmitters, receivers, boards for broadband wireless access, wireless adapters, and wireless network bridges,"<sup>2</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Both applicant and the examining attorney filed briefs, and appeared at the oral hearing.

Our likelihood of confusion determination under Trademark Act Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73

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<sup>2</sup> Registration No. 2671432, issued on January 7, 2003; Section 8 affidavit accepted, Section 15 affidavit filed.

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USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We first turn to a consideration of the goods. It is well settled that it is not necessary that the goods at issue be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient instead that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods 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 originate from the same producer. See *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

In order to show a relationship between the respective goods, the examining attorney has made of record a large

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number of use-based third-party registrations which indicate that entities have registered their marks for goods of the type listed in applicant's application and for goods of the type listed in the cited registration.

Although third-party registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, they nevertheless are probative evidence to the extent that they suggest that the goods or services identified therein are of a type which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988). In addition, the examining attorney submitted printouts of the web pages of several entities which offer wireless telephone transmitters and receivers for use other than for broadband wireless access, on the one hand, and equipment and accessories of the type listed in the cited registration for broadband wireless access, on the other hand, under a single mark. Based on this evidence, we find that the respective goods are related.

As regards the trade channels and classes of purchasers, we note that there are no trade channel restrictions or limitations in either applicant's identification of goods or registrant's identification of

goods. We therefore must presume that the respective goods are marketed in all normal channels of trade for such goods and to all the usual classes of purchasers for such goods. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Indeed, the webpage printouts submitted by the examining attorney show that applicant's and registrant's types of goods are offered by cell phone providers to ordinary consumers. Thus, at the very least, the channels of trade and purchasers are overlapping.

Turning then to the marks, there has been extended discussion in the briefs and in the oral argument concerning what portion of each mark may be considered the dominant element, with the examining attorney asserting that the word BREEZE is the dominant portion of each mark. Furthermore, the examining attorney maintains that the addition of a house mark to a registered mark does not avoid confusion, and that in this case, applicant's addition of its house mark, PANTECH, to the registered mark does not avoid confusion.

The dominant element of a mark means the portion that is likely to be noted as signifying the source of the goods. We agree with the examining attorney that the word BREEZE in the cited registration should be given more weight in our likelihood of confusion analysis. ACCESS is

a descriptive term for registrant's goods which are used in connection with broadband wireless access, and therefore consumers are not likely to regard it as having much source-identifying value. We do not agree, however, that the word BREEZE, as used in applicant's mark, should be given more weight. Rather, the term PANTECH dominates in applicant's mark because it is often the first portion of a mark that is more likely to make an impression on potential purchasers. See *Presto Products Inc. v. Nice-Pac Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). Moreover, PANTECH appears to be a distinctive, coined term, with no meaning (other than as a trademark), while BREEZE is an arbitrary term, suggestive of the notion that applicant's goods are easy to use.<sup>3</sup> Applicant does not dispute that PANTECH is its house mark, and the examining attorney is correct that the addition of a house mark to a registered mark may not avoid confusion with the registered mark. In this case, however, applicant has not simply added its house mark to the registered mark. In other words, applicant's mark is not PANTECH BREEZEACCESS.

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<sup>3</sup> In this regard, we take judicial notice that the word "breeze" is defined as, inter alia: "Informal. an easy task; something done or carried on without difficulty." *Random House Online Dictionary* (2010). The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 595 (TTAB 1992), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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When we compare the marks in their entireties, and give appropriate weight to the dominant portion of each mark, we find that they are different in appearance, sound, meaning and commercial impression. Obviously, the word PANTECH in applicant's mark and the word ACCESS in the cited mark, give the marks a different appearance and sound. As for the meanings of the marks, we have already discussed the descriptiveness of ACCESS, and when this word is coupled with BREEZE in connection with registrant's goods, applicant's mark suggests equipment and accessories that provide "easy access" to the internet. Applicant's mark, PANTECH BREEZE, on the other hand, does not have this specific connotation, especially since applicant's goods are for use other than broadband wireless access. Thus, PANTECH BREEZE and BREEZE ACCESS also convey different connotations and commercial impressions.

Having considered the evidence of record as it pertains to the relevant likelihood of confusion factors, we find that confusion is unlikely to result from the contemporaneous use of applicant's mark PANTECH BREEZE and registrant's mark BREEZE ACCESS, even though the marks are used on related goods that move in the same channels of trade to the same classes of consumers. We find that the dissimilarity of the marks simply outweighs the other

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factors. See *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

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