

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

Mailed: June 7, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sharecare Inc.

Serial No. 77666496

Edward M. Prince of Alston & Bird LLP for Sharecare Inc.

Andrew Rhim, Trademark Examining Attorney, Law Office 101
(Ronald R. Sussman, Managing Attorney).

Before Walters, Cataldo and Lykos,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

On February 9, 2009 applicant, Sharecare, Inc.,
applied to register the standard character mark SHARE CARE
on the Principal Register, based upon its assertion of 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 ultimately identified as "providing a wide range
of information in traditional fields of health, healthcare,
medical treatments, and medicine via a global computer
network" in International Class 44.

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 in connection with its identified services, so resembles the registered typed form mark SHARECARE for "courses of instruction in craniosacral therapy offered to individuals who have little or no prior knowledge of anatomy or physiology," in International Class 41, as to be likely to cause confusion, mistake or deception.¹

Applicant has appealed the final refusal and the appeal is fully briefed.

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 analysis, 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 (CCPA 1976).

¹ Registration No. 2109001 issued On October 28, 1997; Section 8 affidavit accepted; Renewed.

Turning first to the marks, we note that the only difference between SHARE CARE and SHARECARE is the presence in applicant's mark of a space between otherwise identical terms. Simply put, SHARE CARE is the equivalent of SHARECARE. See *In re L.C. Licensing Inc.*, 49 USPQ2d 1379, 1381 (TTAB 1998) (LIZ SPORT and LIZSPORT engender the same commercial impression); and *In re Strathmore Products, Inc.*, 136 USPQ 81, 82 (TTAB 1962) (the contraction of a term does not alter the essential identity of the character and meaning between the full word and its contraction). As a result, we find that the marks are nearly identical "in their entireties as to appearance, sound, connotation and commercial impression."² *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73

² With regard to the strength of the cited mark, we note that applicant made of record with its request for reconsideration copies of two pending applications, one of which was abandoned at the time it was submitted by applicant, for the mark CARESHARE for various medical information services. However, it is settled that pending and abandoned applications are of no probative value. See *Action Temporary Services Inc. v. Labor Force Inc.*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989). Similarly, applicant submitted a list of third-party registrations earlier in prosecution and did not supplement the list with copies of the marks after being advised by the examining attorney that such a list was insufficient to make them of record. Accordingly, this list of third-party registrations is not of record. See TBMP § 1208.02 (3d ed. 2011), and the authorities cited therein. Even if we had considered the list, it would not change our decision because third-party registrations without any evidence of the extent to which the marks identified therein are in use in commerce, are entitled to very limited probative value.

USPQ2d 1689, 1691 (Fed. Cir. 2005), quoting *du Pont*, 177 USPQ at 567.

Thus, we turn to consider the possible relatedness of the services. In so doing we are required to make our determination based upon the services as identified in the cited registration and the application. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). Our analysis is not based upon whether the services will be confused with each other, but rather whether the potential consumers will be confused as to their source. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 186 USPQ 476, 480 (CCPA 1975). It is sufficient that the services of the applicant and the registrant are so related and the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source. See, e.g., *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000).

In this case, applicant provides an Internet website with information on the subject of traditional health and

medicine, specifically, "providing a wide range of information in traditional fields of health, healthcare, medical treatments, and medicine via a global computer network." Registrant provides "courses of instruction in craniosacral therapy offered to individuals who have little or no prior knowledge of anatomy or physiology." The examining attorney made of record the following definition of craniosacral (or cranialsacral) therapy:

A system of manipulation by light touch whose purpose is to facilitate the body's self-healing capacity by finding and correcting cerebrospinal fluid blockages and imbalances within the craniosacral system (the dura matter of the central nervous system and the cerebrospinal fluid within it) that are supposed to cause sensory, motor, or intellectual dysfunction.³

This definition, as well as an Internet encyclopedia entry and additional information made of record by applicant providing corroboration therefor, supports a finding that craniosacral therapy is an alternative medicine therapy. We further note that applicant and the examining attorney agree on this point. Thus, we look to the record to determine whether there is sufficient evidentiary support for a finding that consumers are likely to confuse the source of these services.

³ mercksource.com citing Dorland's Medical Dictionary (2007).

The examining attorney has made of record third-party registrations as well as the results of a search of the Google® Internet database in support of his contention that applicant's services are related to those of registrant. Applicant asserts that "there is no reference to craniosacral therapy in any of the evidence submitted by the examining attorney."⁴ Applicant somewhat overstates its position inasmuch as certain of the examining attorney's evidence does refer to craniosacral therapy.⁵ We find, however, that none of the evidence of record supports a finding that there is a relationship between applicant's traditional health and medical information and registrant's craniosacral therapy instruction.

Of the use-based, third-party registrations of record, the following are considered most relevant to the extent that they show use of a single mark to identify both instruction and/or information services in the fields of various alternative health care modalities on the one hand and health and medical services without limitation as to type on the other:

Registration No. 3537665 for, inter alia, workshops and seminars in the fields of psychotherapy, extra-sensory perception, self-

⁴ Applicant's reply brief, p. 4.

⁵ See, for example, the examining attorney's June 29, 2010 denial of applicant's request for reconsideration, p. 3.

awareness, self-help, holistic and traditional medicine, massage, psychotherapy, psychology, psychophysics and biophysics; medical services, health care;

Registration No. 3375371 for, inter alia, training services in the field of alternative medicine, naturopathy and self-care therapy, medical services, namely, physical examination; providing medical information; and

Registration No. 3285479 for, inter alia, educational services, namely, conducting programs in the field of alternative health care treatments, health assessment and diagnostic testing services, namely, medical testing, health care services, namely providing information, advice, coaching, counseling and consultation in the field of health care.

The examining attorney argues that "both instruction services and information services dealing with the subject matter of health, healthcare and medicine emanate from a single source." Br. p. 11. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993) (third-party registrations probative to the extent they show that the services listed therein are of a kind that may emanate from a single source). Upon our review of the evidence excerpted above, we do not find the third-party registrations to be probative primarily because they do not include both applicant's and registrant's services, but rather include general references to health care and alternative health care services.

The examining attorney also submitted printouts of

third-party websites and Google® search results summaries in support of his position that applicant's and registrant's services are related. First, the results summaries are truncated to such an extent that they contain insufficient information upon which we may ascertain the nature of the activities identified therein. Truncated results from search engines are entitled to little weight. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007):

Bayer asserts that the list of GOOGLE search result summaries is of lesser probative value than evidence that provides the context within which a term is used. We agree. Search engine results—which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link—may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations.

Similarly, in this case the proffered Google® search summaries do not provide sufficient context for us to discern the extent to which alternative medical training and traditional medical information of the kind identified in the involved application and cited registration may be related.

With regard to the website printouts, the examining attorney argues that "the real-world evidence ... demonstrates that a single source or entity does provide

both online information in the traditional fields of health, healthcare, medical treatments and medicine and course of instruction programs and program information in alternative medicine therapy or alternative healthcare.”⁶ Of these printouts, the following have some probative value to the extent that they suggest a single source for traditional and alternative health care:

health information, medical services, and medical educational and research services in the fields of traditional and alternative treatments for a variety of complex illnesses (mayoclinic.com);

traditional health and medical information and introductory “mind-body-spirit” workshops in the field of alternative medical therapies including Tai Chi (wellspan.org); and

traditional health and medical information, traditional medical care and classes in “complementary medicine” (pinnaclehealth.com).

However, while these printouts show that certain entities provide traditional and alternative healthcare education and information, they fail to show a relationship between applicant’s information services in the field of traditional health and medicine and registrant’s craniosacral therapy instruction services. To the extent craniosacral therapy is an alternative medicine, the

⁶ Examining attorney’s brief, p. 12.

evidence of record, taken as a whole, may support a finding of a de minimus possibility of likelihood of confusion with applicant's services. However, that is not the standard by which we make our determination. There must be a likelihood of confusion, not a mere theoretical possibility. We understand the examining attorney's concern due to the nearly identical nature of the marks; however, we do not believe a case has been made on this record to support a finding that the services are sufficiently related to conclude that a likelihood of confusion exists.

In conclusion, we find that because there is insufficient evidence that the services are related, confusion is not likely between applicant's mark for its identified services and the mark in the cited registration.

Decision: The refusal to register under Section 2(d) of the Trademark Act is reversed. Accordingly, the involved application will be forwarded for registration in due course.