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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re National Real Estate Solutions, LLC.

Serial Nos. 77722235 and 77722256¹

Daniel J. Noblitt and David W. Schnell of The Noblitt Group, PLLC for National Real Estate Solutions, LLC.

Cory Boone, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Bucher, Zervas and Bergsman, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

National Real Estate Solutions, LLC ("applicant")

filed the following two applications:

1. Application Serial No. 77722235 ("the '235 application") for the mark



¹ In its order mailed October 22, 2010, the Board consolidated these two applications for purposes of briefing and decision.

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2. Application Serial No. 77722256 ("the '256 application") for the standard character form mark NATIONAL QUICK SALE.

Both applications seek registration pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), and recite the following International Class 36 services:

Mortgage foreclosure mitigation and loan default mitigation services, namely, providing a web-based database for purchasing and selling real estate for others; On-line real estate investment services in the nature of purchasing and selling real estate for others; Facilitating and arranging for real estate procurement for others.

There are numerous refusals we must address in this opinion. Registration of applicant's combination word and design mark is refused under Sections 6(a) and 2(e)(1) of the Trademark Act, 15 U.S.C. Sections 1052(e)(1) and 1056(a), because applicant has not disclaimed the wording in the mark. Registration of applicant's standard character mark is refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. Section 1052(e)(1), on the ground that applicant's proposed mark merely describes a feature of applicant's services. Also, registration of both marks is refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's marks so resemble the following three previously registered marks so as to be likely to cause confusion:

- Registration No. 2397454 ("the '454 registration") on the Principal Register (renewed) for the mark

QuickSale

for "mortgage banking, namely, an alternative to warehouse financing for lenders" in International Class 36;

- Registration No. 3438458 ("the '458 registration") on the Supplemental Register for the mark A QUICK SALE (in standard character form, SALE is disclaimed) for "financial valuation of real property; arranging or facilitating the leasing or rental of real property; real estate agencies; real estate property brokerage" in International Class 36; and
- Registration No. 3497625 ("the '625 registration") on the Principal Register for the mark



(A QUICK SALE is disclaimed) for "financial valuation of real property; arranging or facilitating the leasing or rental of real property; real estate agencies; real estate property brokerage" in International Class 36.

The marks of the '458 and '625 registrations are referred to collectively as "the A QUICK SALE marks"; and the same entity owns the '458 and '625 registrations while a different entity owns the '454 registration.

Applicant has appealed the final refusals. Both applicant and the examining attorney have filed briefs.

Mere Descriptiveness

We consider first the merits of the examining attorney's Section 2(e)(1) refusal in the '256 application and the disclaimer requirement in the '235 application.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). See also *In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). To be merely descriptive, a term need only describe a single significant quality or property of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Also, "[t]he perception of the relevant purchasing public sets the standard for determining descriptiveness. Thus, a mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service. On the other hand, if a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services, then the mark is suggestive." *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (citations and internal quotation marks omitted).

The examining attorney's arguments and evidence

According to the examining attorney, NATIONAL is a common, merely descriptive term used to describe services that are nationwide in scope; applicant services are provided across the United States; QUICK "is a common term describing services done speedily, easily, or without delay"; and SALE "is a common term that means the transfer of ownership of something." Brief at unnumbered p. 13. In addition, QUICK SALE is a "common phrase with a specific, recognized meaning in the fields of real estate and mortgage foreclosure ... [which is] also known as a short sale, [and] means a sale of real estate, usually processed at a fast pace, that occurs because the seller faces foreclosure or is otherwise in need of liquidity"; and that:

As with a short sale, a "quick sale" is made at a price below the balance remaining on the mortgage, and often below the current or expected future market price. While not ideal, selling quickly at whatever price can be had may help a seller avoid problems of foreclosure by a creditor because of a loan default. Or a seller may simply need to free up assets (cash) rendered illiquid as merely equity in the real estate. Similarly, a mortgage lender may prefer that a mortgagee sell when nearing or in default so costly foreclosure proceedings are avoided and so another, solvent owner may continue to pay off the loan. As noted in the evidence, "the primary function of a quick sale is to allow all parties involved with a particular piece of real estate the ability to lessen or mitigate their current

or anticipated losses." ... The term "QUICK SALE" ... thus describes the nature and purpose of the applicant's services, which concern mortgage foreclosure mitigation and loan default mitigation through activities concerning the purchase or sale of real estate.

Id. at 13 - 14. In other words, "quick sale" generally refers to the fast sale of real estate for any one of a number of reasons, including a short sale, or a sale for reasons of divorce, personal circumstances, job transfer or probate; and a short sale is one reason for a quick sale.

The examining attorney relies on the following evidence of record to establish the mere descriptiveness of the wording in the mark for the claimed services:

- dictionary definitions of the three terms in the marks, demonstrating ordinary meanings of each term;
- webpages showing use of "quick sale," e.g.:

- *nextwave.org*

Quick Sale - The Step Before Foreclosure

In the pre-foreclosure period, home owners have the option to pursue what's called a "quick sale." In many circumstances, a successful quick sale can save the homeowner's credit rating, and net the real estate investor a bargain. ... In a quick sale, the owner offers their [sic] property for sale at a price lower than market value, in the hopes of obtaining an interested investor who can complete the sale quickly and circumvent the foreclosure process.

- *investopedia.com*

Staging Your Home for a Quick Sale.

When real estate agents talk about staging your home, they're referring to a method of decorating

that is designed to showcase the home's best assets, impress buyers and sell your home quickly for the highest possible price.

- *ehow.com*

Definition of a Quick Sale

In real estate law, a quick sale (or short sale) is a type of transaction in which property is sold for a price that falls below what is due and owing on a mortgage loan. ... The quick sale has been employed with greater frequency in the past five years.

* * *

The primary function of a quick sale is to allow all parties involved with a particular piece of real estate the ability to lessen or mitigate their current or anticipated losses. In most instances the owner of the real estate will be unable to meet his or her mortgage obligation, and foreclosure is on the horizon. The mortgage lender determines that it actually will lose less money by accepting a quick sale than it will lose through the mortgage foreclosure process.

- *wikipedia.org*

Hard money lenders structure loans based on a percentage of the quick sale value of the subject property.

- *shortsale show.com*

But what exactly IS a "quick sale"? And how does it differ from a "short sale"?²

- *a-quick-sale.co.uk*

Want a quick sale of your home?

- *trulia.com*, Internet postings from persons identified as brokers or agents, stating:

² The webpages of record do not provide an answer to this question. Because of the other evidence of record which suggests that a "short sale" is a type of "quick sale," we do not find this website particularly persuasive of any argument that there a meaningful distinction between a "quick sale" and a "short sale."

- Lawrence wrote: 'Quick sale is a situation where a seller is forced to sell his property as quick as possible just before the final proceedings of bank to take over the property As Don pointed out, there are many other reasons someone might need a "quick sale" besides th[e] lender taking over.

Not always. As Don pointed out, there are many other reasons someone might need a "quick sale" besides th[e] lender taking over. Divorce, job transfer, probate, court order and personal circumstances come immediately to mind.

- There isn't a standard definition of a "quick sale" ... it doesn't have to be, as Lawrence describes it, a sale to avert a foreclosure, but it certainly can be. ... A job transfer requires a quick sale.
 - Quick sale is a situation where a seller is forced to ... sell his property as quick as possible just before the final proceedings of [a] bank to take over the property.
 - "Quick Sale" is usually something a distressed seller is looking for. Usually, this means they have already discounted the property to hopefully attract a wholesale-type Buyer or investor. A typical advertisement would look like, "Motivated Seller. Priced for Quick Sale."
- numerous Supplemental Register or Principal Register registrations for marks containing one or more of the words in applicant's marks, some with a disclaimer of such word(s), e.g.:
 - QUICK CLAIMS CREW for "insurance underwriting services in the fields of property and casualty insurance, namely the processing of insurance claims," with QUICK CLAIMS disclaimed;
 - NATIONAL DEBT RELIEF INITIATIVE for services including "mortgage foreclosure mitigation and loan default mitigation services, namely, acquisition and lease-back of real estate; real estate services to stop foreclosure, namely,

- mortgage debt management," with NATIONAL DEBT RELIEF disclaimed;
- NATIONAL VALUATION SERVICES on the Supplemental Register for "appraisal of real estate," with VALUATION SERVICES disclaimed; and
 - NATIONAL HOME LENDERS and Design for "mortgage banking, mortgage lending and mortgage brokerage," with NATIONAL HOME LENDERS disclaimed.

Applicant's arguments and evidence

Applicant maintains that its marks are suggestive, arguing that QUICK SALE "is subject to an unlimited number of interpretations" because it does not indicate "what item is being sold in connection with the term QUICK SALE" Brief at 22. "[T]hought, imagination, perception, and pause are required to reach a conclusion that the nature of the services are [sic] real estate sales and short sales." *Id.* Applicant also argues that if QUICK SALE "refers to 'the practice of selling a home for less than the appraised or market value of the property,' then it would require thought, imagination, perception, and pause to think that a 'web-based database for purchasing and selling real estate for others' and 'on-line real estate investment services in the nature of purchasing and selling of real estate for others' is the subject of the applicant's services." *Id.* at 23.

Applicant introduced into the record a small number of registrations for marks having one or more of the terms appearing in applicant's marks. Such terms have not been disclaimed in these registrations and the marks are registered on the Principal Register. See, e.g.:

NATIONAL PUNCTUATION DAY for goods including jewelry (no disclaimer of NATIONAL);

QUICK SELL PRO for "Assessment and management of real estate, operating marketplaces for sellers of goods and/or services in connection with real estate, real estate agencies, real estate brokerage, real estate consultation, real estate listing, real estate management consultation, real estate valuation services" (no disclaimer);

QUICK ASSIST for "mortgage prequalification services provided to prospective real estate purchasers" (no disclaimer); and

MONEY SALE for "banking services" (disclaimer of MONEY only).³

We find these registrations are not probative of any issue before us because they either recite goods or services that are unrelated to those of the involved applications or are too few in number.

³ Applicant submitted additional registrations which are unpersuasive for the reasons set forth below:

- the QUICKTRADE and QUICKPOST marks may have been considered to be unitary by the Office;
- the registration for NATIONAL SENIOR CAMPUSES, INC. is a Supplemental Register registration; and
- the lack of a disclaimer of NATIONAL in the NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS SINCE 1876 and design mark may be due to the integration of NATIONAL into the baseball-themed design element of the mark.

Upon consideration of the examining attorney's and applicant's arguments and evidence, we find that NATIONAL QUICK SALE merely describes a feature of applicant's services, namely, that its services are offered nationwide and that they are directed to the "quick" or "fast" sale of real estate.

We find that NATIONAL in applicant's marks has the meaning of "... relating to ... a nation as an organized whole,"⁴ and hence identifies the scope of applicant's services, i.e., that they are available throughout the United States. See *In re Nat'l Rent A Fence, Inc.*, 220 USPQ 479 (TTAB 1983) (NATIONAL RENT A FENCE merely descriptive of nationwide fence rental services). Additionally, the numerous third-party registrations on the Supplemental Register or on the Principal Register with NATIONAL disclaimed lend further support that NATIONAL is a merely descriptive term. See *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006) ("the term 'SOLUTIONS' has been regarded as merely descriptive in a number of third-party marks, the registrations of which include disclaimers of the term 'SOLUTIONS.'"); see also *Sweats Fashions, Inc.*

⁴ See the definition of "national" in the record from education.yahoo.com.

v. Pannill Knitting Co., 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987).

Further, based on the ordinary definitions of "quick" and "sale" in the record, as well as the excerpts from the websites in the record, we find that "quick sale" has a particular meaning in the real estate field, namely, the fast sale of property; and that this may occur for any one of a number of reasons, including to avert foreclosure, or due to divorce, job transfer, probate, court order or other personal circumstance. Applicant's mortgage foreclosure mitigation and loan default mitigation services, as well as its real estate investment services and its "facilitating and arranging for real estate procurement for others" services, certainly consider how to achieve the "quick sale" of properties, whether through a drastic reduction in price or negotiations with a mortgage lender to accept less than the outstanding amount of the mortgage. On the first page of its specimen of use (a brochure) filed with its original application, applicant states that it provides "A Comprehensive and Accelerated Short Sale Solution."⁵ It promotes its services as providing "the quickest, most

⁵ According to the brochure, a short sale is when "[p]roperties are listed with a real estate agent at, or slightly below, the property's 'as-is' current market value. The Mortgage Servicer and Investor agree to a reduced payoff for the outstanding loan amount."

efficient way to get a short sale offer processed." Speed, or a "quick sale," is a feature of its services.

Applicant's arguments that the mark is suggestive because the mark does not convey the subject of the quick sale and that "quick" may have multiple meanings when combined with "sale" are not persuasive; whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). "Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). In other words, the question is not whether someone presented only with the mark could guess the services listed in the application. Rather, the question is whether someone who knows what the services are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of*

Greenville, 18 USPQ2d 1313 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

Further, applicant's arguments that it did not intend to adopt a merely descriptive mark; that if it intended to adopt a merely descriptive mark, it would have adopted marks such as NATIONAL ON-LINE SHORT SALE, WEB SHORT SALES, SHORT HOME SALES; and that QUICK SALE is not merely descriptive because QUICK BUY has been registered (for telephone payment services); are irrelevant. Intent is not a requirement under Section 2(e)(1), and the issue here is the asserted mere descriptiveness of applicant's applied-for marks, not other marks.

Additionally, we find that the combination of "national," "quick" and "sale" or "national" and "quick sale," does not evoke a unique commercial impression. It is not incongruous or bizarre as applied to the services. See *In re Shutts*, 217 USPQ 363 (TTAB 1983). It does, however, describe an aspect of applicant's services, i.e., the fast (or quick) sale of properties, nationwide in scope. Further, it does so without imagination, thought or perception on the part of the consumer. We therefore find that the examining attorney has established prima facie that NATIONAL QUICK SALE is merely descriptive of a feature

of applicant's services and that applicant has not rebutted the prima facie case. Accordingly, we conclude:

- NATIONAL QUICK SALE is merely descriptive of an aspect of applicant's services;
- the mark of the '256 application is merely descriptive and unregistrable under Section 2(e)(1); and
- the mark of the '235 application may not proceed to registration without a disclaimer under Section 6(a) of NATIONAL QUICK SALE.

Likelihood of Confusion

Our finding that NATIONAL QUICK SALE is merely descriptive is sufficient to bar registration of applicant's word mark, and its combination word and design mark, without the required disclaimer. However, in order to render a complete opinion on all of the refusals at issue in this appeal, we will consider the likelihood of confusion ground as well in connection with both applications. In discussing these refusals, we will treat NATIONAL QUICK SALE as being highly suggestive.

Our determination under Trademark Act § 2(d) is based on an analysis of all of the probative 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 Imp., Inc. v. Veuve Clicquot Ponsardin Maison*

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Fondee En 1772, 396 F.3d 1369, 73 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 Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

A. The Similarity Or Dissimilarity of The Services, Consumers and Established, Likely-to-Continue Trade Channels.

Reg. Nos. 3438458 and 3497625 for the A QUICK SALE marks

Applicant's "on-line real estate investment services in the nature of purchasing and selling real estate for others" and "facilitating and arranging for real estate procurement for others" are encompassed within registrant's "real estate agencies" and "real estate property brokerage."⁶ Thus, the services are in part identical. We

⁶ See merriam-webster.com definition of "broker":
1: one who acts as an intermediary: as a : an agent who arranges marriages b : an agent who negotiates contracts of purchase and sale (as of real estate, commodities, or securities).

need not also make determinations regarding the similarity or dissimilarity of any of the other services in the applications. Similarity between any of the services in the applications and cited registrations will dictate a refusal as to all of the services in the class, should the ultimate conclusion in the case be that a likelihood of confusion exists. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

In addition, these registrations do not have any limitation to particular channels of trade or classes of consumers. When identical goods or services are recited in an application and registration with no limitations as to their channels of trade or classes of consumers, such channels of trade and classes of consumers must be considered to be legally identical. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, 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 purchasers through the same channels of trade."); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be

sold to the same class of purchasers."). Accordingly, we consider applicant's and registrant's services to be offered in the same channels of trade to the same potential purchasers.

Registration No. 2397454 for QUICK\$ALE

The services of the applications and the '454 registration differ; however, "[i]n order to find that there is a likelihood of confusion, it is not necessary that the goods or services on or in connection with which the marks are used be identical or even competitive. It is enough if there is a relationship between them such that persons encountering them under their respective marks are likely to assume that they originate at the same source or that there is some association between their sources."

McDonald's Corp. v. McKinley, 13 USPQ2d 1895, 1898 (TTAB 1989). See also *In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366 (TTAB 2009).

The '454 registrant's services are "mortgage banking, namely, an alternative to warehouse financing for lenders."

The *Dictionary of Finance and Investment Terms* (8th ed. 2010), defines "mortgage banker" as follows:

company, or individual, that originates mortgage loans, sells them to other investors, services the monthly payments, keeps related records, and acts as escrow agent to disperse funds for taxes and insurance. A mortgage banker's income

derives from origination and serving fees, profits on the resale of loans, and the spread between mortgage yields and the interest paid on borrowings which a particular mortgage is held before resale.⁷

Potential purchasers of registrant's services include real estate purchasers.⁸ Once the loan is made, registrant, as a mortgage bank(er), may service the loan itself or, of course, sell the loan to another mortgage bank for loan servicing. Additionally, potential purchasers include other mortgage bankers. Registrant's webpages at gatewayfsb.com, made of record in the final Office action, state:

The QuickSale[®] product provides a mechanism for mortgage bankers to warehouse loans prior to their purchase by secondary market investors. Unlike conventional mortgage warehouse facilities, QuickSale[®] is a "purchase and sale" facility. The bank purchases the loan at the time of origination and subsequently delivers the committed loan to the secondary market investor as arranged by you, the mortgage banker.

Applicant's services are:

Mortgage foreclosure mitigation and loan default mitigation services, namely, providing a web-

⁷ The Board may take judicial notice of dictionary definitions, and we take judicial notice of this definition of "mortgage banker." See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002). See also *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁸ Applicant's statement that registrant's services are "clearly directed towards high end, commercial, sophisticated business entities who engage in the movement of substantial amounts of capital money," brief at. 13 - 14, is unpersuasive; there are no such limitations in the identification of services.

based database for purchasing and selling real estate for others; On-line real estate investment services in the nature of purchasing and selling real estate for others; Facilitating and arranging for real estate procurement for others.

Applicant's recitation of services is broad, and a wide array of purchasers may use applicant's services as identified. Applicant's specimen identifies its customers as follows; "if you are a Seller, Realtor, Buyer, Mortgage Servicer, or MI Company, National Quick Sale ... provides an invaluable service in facilitating short sale solutions." As part of its facilitating and arranging for real estate procurement services, applicant's specimen states that it offers its services to, among others, mortgage servicers, and explains:

When market conditions continue to drive property values down, and borrowers experience financial hardships, refinancing a home becomes difficult, if not impossible.

When this situation exists, and the Mortgage Services and homeowner collectively believe that a foreclosure is inevitable, a short sale is often the only viable alternative.

Properties are listed with a real estate agent at, or slightly below, the property's "as-is" current market value. The Mortgage Servicer and Investor agree to a reduced payoff for the outstanding loan amount.

Simultaneously, as an offer is submitted on a property, a comprehensive package is electronically delivered to the Mortgage Servicer. Our offer management system details the full financial aspect of the offer along with

all of the required documentation for the Mortgage Servicer to accept, decline, or counter the short sale offer.

The mortgage servicer, or the mortgage banker, hence is also a customer of applicant.

Because the same purchasers, namely, other mortgage bankers and purchasers of real estate in general, may use both applicant's and registrant's services, and both applicant's and registrant's services involve the financing of real estate (albeit, one involves the purchase of real estate and the other involves the sale of real estate), and possibly the same real estate, we find that persons encountering the services under their respective marks are likely to assume that they originate at the same source or that there is some association between their sources.

Thus, we find applicant's and the '454 registrant's services similar and the purchasers are identical in part. Further, we find that there is insufficient information in the record regarding applicant's and registrant's trade channels. Therefore, as to this *du Pont* factor regarding the '454 registration, the factor is neutral.

B. The Similarity Or Dissimilarity of the Marks in Their Entireties as to Appearance, Sound, Connotation and Commercial Impression; Strength/Weakness of the Marks.

In a likelihood of confusion analysis, we compare the marks for similarities and dissimilarities in appearance,

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sound, connotation and commercial impression. *Palm Bay*, 73 USPQ2d at 1692. "[T]he test 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 so that confusion as to the source of the goods [or services] offered under the respective marks is likely to result." *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715, 1727 (TTAB 2008). "[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Reg. Nos. 3438458 and 3497625 for the A QUICK SALE marks

As noted above, applicant's services are identical in part to those services of the A QUICK SALE registrations. "When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real*

Estate Corp. v. Century Life of Am., 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

In our analysis, when considering each of applicant's marks, we focus on the '458 registration, in standard characters. If confusion is likely as between applicant's marks and the marks of the '458 registration, consideration of registrant's '625 (A QUICK SALE and design) registration is irrelevant. And if confusion is not likely with regard to registrant's standard character mark, it would be even less so with regard to the '625 registration.

We therefore turn to applicant's and registrant's standard character marks, and applicant's argument that registrant's mark is weak. Applicant points out that registrant's mark is registered on the Supplemental Register; that marks registered on the Supplemental Register are presumed to be merely descriptive and hence deserve a lesser scope of protection than arbitrary or suggestive marks registered on the Principal Register. Brief at 8. First, we note that while the mark indeed is registered on the Supplemental Register, other than the cited QUICK\$ALE mark, the record contains no evidence of other marks combining QUICK and SALE.⁹ Second, even if a

⁹ Applicant has placed Registration No. 3340883 into the record for QUICK SELL PRO for, inter alia, real estate brokerage," but

mark is "weak" or "descriptive," it does not mean that it is not entitled to any significant protection:

The description of marks as "weak" or "strong," and references to the "breadth of protection" to be given a mark, have served as a convenient type of shorthand in the literature of opinions concerned with likelihood of confusion. ... Such expressions, however, should not obfuscate the basic issue. Confusion is confusion. The likelihood thereof is to be avoided, as much between "weak" marks as between "strong" marks, or as between a "weak" and a "strong" mark.

King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974). Thus, even if a prior mark is descriptive, it does not settle the issue. As applicant itself has acknowledged, marks on the Supplemental Register - which are typically descriptive and have not acquired secondary meaning - may be cited as a bar to registration of a mark under Trademark Act § 2(d).

E.g., In re Clorox Co., 578 F.2d 305, 198 USPQ 337 (CCPA 1978). Thus, while the scope of protection we accord to A QUICK SALE is limited, it is not so limited as to allow any similar mark onto the Principal Register.

Next, we consider the meaning of the marks. We find that the meaning of each mark only slightly differs from one another. In the context of the services, both marks

the mark in this registration is sufficiently different than registrant's mark. Also a single registration is not persuasive of any issue in this appeal.

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inform purchasers that the services are directed to a "quick" or "fast" sale of real estate - applicant's mark merely adds that the services are national in scope. The additional information offered by applicant's mark would not necessarily be recalled by consumers. In comparing the marks, the test 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 so that confusion as to the source of the goods and services offered under the respective marks is likely to result.

San Fernando Electric Mfg. Co. v. JFD Electronics

Components Corp., 565 F.2d 683, 196 USPQ 1 (CCPA 1977);

Spoons Restaurants Inc. v. Morrison Inc., 23 USPQ2d 1735

(TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). In addition, due to the shared phrase QUICK

SALE, the marks are similar in sound and appearance. As for the commercial impressions of the marks, we find them to be similar due to the shared reference to the fast or "quick" sale (of real estate), with NATIONAL in applicant's mark merely indicating the geographic scope of the services.

In support of registration of its mark, applicant points out that NATIONAL is the first term in its mark; and

that “[c]onsumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark.” Brief at 9. While NATIONAL is the first term in applicant's mark, it also serves to inform purchasers that the services provided by applicant are national in scope.¹⁰ Applicant has not explained why consumers would be more inclined to focus on this term under these circumstances.¹¹ Thus, we are not persuaded by applicant's arguments that NATIONAL in its mark sufficiently distances its mark from that of registrant.

In this situation where the services are identical in part, and the degree of similarity necessary to support a conclusion of likely confusion declines, we find that applicant's and registrant's standard character marks are similar.

We now turn to applicant's word and design mark and registrant's standard character mark on the Supplemental Register, i.e., the marks of the '235 application and the '458 registration. Even though registrant's mark contains the identical phrase QUICK SALE, we find applicant's design combined with the additional wording NATIONAL sufficiently

¹⁰ If consumers indeed focus on the first term in any mark, “A” would be the term consumers would focus on when considering registrant's mark.

¹¹ In the cases cited by applicant to support its proposition, the first term in the marks in question were not descriptive terms.

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remarkable and significant to distinguish applicant's mark from registrant's merely descriptive mark on the Supplemental Register. The marks hence are dissimilar in appearance and commercial impression. These differences outweigh any similarity in meaning or sound due to the shared terms QUICK SALE. We therefore find the marks of the '458 registration and of the '235 application when considered in their entirety, to be dissimilar.

Because we found registrant's standard character mark to be similar to applicant's standard character mark, we resolve the *du Pont* factor regarding the similarity or dissimilarity of the marks against applicant in the '256 application. As regards applicant's combination word and design mark of the '235 application, we resolve the *du Pont* factor in applicant's favor.

Registration No. 2397454 for QUICK\$ALE

We first consider applicant's standard character mark. In considering the marks, we keep in mind that (i) QUICK\$ALE is registered on the Principal Register and must be accorded all of the presumptions of validity due a registered mark, including the presumption that the mark is distinctive; and (ii) the record does not contain any

evidence of third party marks containing QUICK and SALE in the United States.¹²

QUICK\$ALE is comprised of a combination of QUICK and SALE, with a dollar sign used as the "S" in "sale." Applicant offered a number of alternatives for pronouncing this mark, stating:

[I]t is unclear how the dollar sign in the mark QUICK\$ALE could be spoken. For example, the dollar sign could be ignored by pronouncing the mark as "quicksale," presuming the dollar sign is to be spoken as the letter "s." In contrast, the dollar sign could be emphasized as "quick chaching sale" or another way of indicating the presence of the dollar sign.

Brief at 10. There is no correct pronunciation of a mark which is not a common English word because it is impossible to predict how the public will pronounce a particular mark. *Edwards Lifesciences Corp. v. Vigilanz Corp.*, 94 USPQ2d 1399 (TTAB 2010). Thus, it is quite plausible, and we believe likely, that a majority would pronounce registrant's mark in the manner proposed by the examining attorney and acknowledged by applicant, namely, as "quick sale," without verbalizing the dollar sign. The marks hence are similar in sound because both marks include "quick sale." With respect to appearance, even though

¹² The webpages from the A QUICK SALE registrant in the record reflect a United Kingdom web address.

applicant's mark does not have a space between QUICK and SALE and has the additional term NATIONAL, and registrant's mark has a dollar sign instead of the letter "S," we find the appearance of the marks more similar than dissimilar due to the presence of "quick" and "sale" juxtaposed to one another. The meaning of the marks is similar too because the substitution of the dollar sign for the letter "S" in "sale" does not change the meaning of "quick sale" and the dollar sign is not likely to be articulated. At best, the substitution suggests "cash" which a customer seeks from the "quick sale" of his or her real estate, which also is suggested by the term "quick sale." The addition of NATIONAL does not affect the meaning of "quick sale." Further, because the meaning of the marks does not considerably change due to the differences between the marks, and because the dollar sign would not make any significant impression on purchasers, the marks are similar in commercial impression. See *In re Home Federal Savings and Loan Association*, 213 USPQ 68, 69 (TTAB 1982) ("That applicant's mark 'TRAN\$FUND' has a dollar sign where registrant's mark has a letter 'S' is inconsequential in a comparison of the sound, appearance, and meaning of the two marks.").

In view of the similarities between applicant's standard character mark and registrant's mark in sound, meaning, appearance and commercial impression, the *du Pont* factor regarding the similarity of the marks is resolved against applicant with regard to the '454 registration.

We also resolve this *du Pont* factor against applicant in our consideration of applicant's combination word and design mark. Applicant's mark and the QUICK\$ALE mark are similar in sound and meaning for the same reasons discussed above in connection with the sound, meaning and commercial impression of applicant's standard character mark. Any difference in appearance is outweighed by the similarities in sound, meaning and commercial impression.

C. Balancing the Factors

After careful consideration of the record evidence and arguments, and balancing the relevant *du Pont* factors, we conclude as follows on the question of likelihood of confusion:

- Because the services, trade channels and consumers are identical, and the marks are similar, we find that applicant's standard character mark for its recited services is likely to be confused with registrant's A QUICK SALE (standard characters) mark for its recited services.
- In view of the differences between the marks, we find that applicant's combination word and design mark is not likely to be confused with

registrant's standard character A QUICK SALE mark.

- Because the marks and services are similar, and the purchasers overlap in part, we find that both of applicant's marks are likely to be confused with registrant's QUICK\$ALE mark for its recited services.

Decision: The refusal to register applicant's standard character mark which is the subject of the '256 application under Trademark Act §2(e)(1) is affirmed.

The requirement for a disclaimer of the wording in applicant's combination word and design mark which is the subject of the '235 application under Trademark Act §§ 2(e)(1) and 6(a) is affirmed.

The refusal to register applicant's standard character mark which is the subject of the '256 application under §2(d) of the Trademark Act in view of the A QUICK SALE mark (in standard character form) is affirmed.

The refusal to register applicant's combination word and design mark which is the subject of the '235 application under §2(d) of the Trademark Act in view of the A QUICK SALE registration (in standard character form) is reversed.

The refusals to register (i) applicant's standard character mark which is the subject of the '256 application, and (ii) applicant's combination word and

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design mark which is the subject of the '235 application,
both under §2(d) of the Trademark Act, in view of the
QUICK\$ALE registration, are affirmed.