

Hearing:  
June 28, 2012

**This Opinion is NOT a  
Precedent of the TTAB**

Mailed:  
August 29, 2012

**United States Patent and Trademark Office**  
Trademark Trial and Appeal Board

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In re Genworth Financial, Inc.

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Serial No. 77782734

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Stephen P. Demm and Janet W. Cho of Hunton & Williams LLP for Genworth  
Financial, Inc.

Katherine C. Weigle, Trademark Examining Attorney, Law Office 101 (Ronald  
R. Sussman, Managing Attorney).

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Before Bucher, Wolfson and Shaw, Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Genworth Financial, Inc. (“applicant”) seeks registration on the Principal Register of the mark COLONY (in standard characters) for “life insurance underwriting,” in International Class 36.<sup>1</sup>

The trademark examining attorney has refused registration of applicant’s mark under Trademark Act § 2(d), 15 U.S.C. § 1052(d), having determined that registration would lead to a likelihood of confusion in view of Reg. No. 3546430, for the mark shown below, registered for “insurance services,

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<sup>1</sup> Application Serial No. 77782734 was filed on July 16, 2009, based on applicant’s bona fide intent to use the mark in commerce. An amendment to allege use of the mark in commerce was filed on May 14, 2011, claiming first use in commerce as of November, 2009.

namely, writing commercial excess and surplus insurance” in International Class 36:<sup>2</sup>



After the examining attorney made the refusal final, applicant appealed to this Board. Trademark Examining Attorney Susan Billheimer represented the Office in a hearing held before this panel of the Board. We affirm.

### **I. Evidentiary Issue**

Before proceeding to the merits of the refusal, we address an evidentiary matter. Applicant attached Exhibits A-E to its appeal brief. The examining attorney objects to the introduction of Exhibit D, comprising copies of Internet website printouts. Exhibit D was submitted for the first time as an attachment to applicant’s appeal brief.

Trademark Rule 2.142(d) provides, in pertinent part:

(d) The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed.

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<sup>2</sup> Reg. No. 3546430, issued on December 16, 2008. The registration includes the following disclaimer: No claim is made to the exclusive right to use “GROUP” apart from the mark as shown. Color is not claimed as a feature of the mark.

Because it is untimely, we have not considered Exhibit D to applicant's appeal brief. However, we have considered Exhibits A-C and Exhibit E. Exhibits A and B are copies of pages from the file history of the cited mark. While not automatically of record, no objection has been made thereto. *See In re Pencils Inc.*, 9 USPQ2d 1410, 1411 (TTAB 1988) (Board considered exhibits submitted for first time with applicant's appeal brief where examining attorney made no objection). Exhibits C and E are copies from *dictionary.reference.com* of the definitions of "argo" and "life insurance." The Board may take judicial notice of dictionary evidence. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *see also*, TBMP §712.01 (3d ed. rev. 2012).

## **II. Applicable Law**

Our determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *see also Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondée 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 and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *see also In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

### **III. Discussion**

#### **A. Similarity or Dissimilarity of the Marks in Their Entireties**

In a likelihood of confusion analysis, we compare the marks for similarities and dissimilarities in appearance, sound, connotation and commercial impression. *Palm Bay*, 73 USPQ2d at 1692. 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 those goods or services offered under the respective marks is likely to result. *Coach Services Inc. v. Triumph Learning LLC*, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). The decision must be based on the entire mark, not just part of the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). On the other hand, different features may be analyzed to determine whether the marks are similar. *Price Candy Company v. Gold Medal Candy Corporation*, 220 F.2d

759, 105 USPQ 266, 268 (CCPA 1955); *In re National Data Corp.*, 224 USPQ at 751 (“[T]here 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 a consideration of the marks in their entireties.”).

The marks at issue in this case are similar in appearance, sound, connotation and commercial impression. Applicant’s mark is COLONY. The registered mark is COLONY MEMBER ARGO GROUP and Design. Likelihood of confusion has frequently been found where one mark incorporates the entirety of another mark. *Coca-Cola Bottling Co. of Memphis, Tennessee, Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (BENGAL for gin and BENGAL LANCER for nonalcoholic club soda, quinine water and ginger ale); *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (applicant’s mark ML is similar to registrant’s mark ML MARK LEES); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (CAREER IMAGE for women's clothing stores and women's clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women’s clothing); *In re South Bend Toy Manufacturing Company, Inc.*, 218 USPQ 479, 480 (TTAB 1983) (LIL’ LADY BUG for toy doll carriages and LITTLE LADY for doll clothing); and *Johnson Publishing Co. v. International Development Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY for cosmetics and EBONY DRUM for hairdressing and conditioner).

Applicant has appropriated the dominant portion of registrant's mark as its own without adding any other distinguishing elements. COLONY forms the dominant portion of the mark inasmuch as it is the first word in the mark and appears in block letters that are larger and in black typeface, while the remaining words, *Member Argo Group*, are italicized, smaller and in lighter grey. As the first and more prominent term in the cited mark, COLONY is the portion most likely to be impressed upon a prospective consumer. *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered"). *See also, Palm Bay*, 73 USPQ2d at 1692. The remaining wording in the mark, "*Member Argo Group*," is merely explanatory of the corporate identity of the registrant, i.e., that the provider of services under the mark belongs to the "Argo Group."

As "group" is disclaimed in the registration, it is the portion least likely to be remembered. *See In re Dixie Rests.*, 41 USPQ2d at 1533-34 (disclaimed word "café" is less significant when comparing marks). As for the additional design element, despite the registrant's characterization of it in the registration file as "a stylized sail design," there is no evidence in the record that suggests that the relevant purchasing public would recognize the design as such. The design may be viewed as merely a pattern of triangles, or as an abstract rendition of some other item. Accordingly, the fact that the design is apparently that of a "sail" may be lost on a potential consumer of registrant's ser-

vices. To the extent, as applicant argues, that the design “reinforces the ARGO GROUP house mark, since ‘ARGO’ is a well-known reference to the ship in which Jason sailed in quest of the Golden Fleece in Classical Mythology,”<sup>3</sup> the design has not thereby imbued the italicized wording “*Member Argo Group*” (or *Argo* alone) with more prominence than the larger block letters in which is written the term COLONY. Further, the design and italicized wording visually surround and provide a background to the word COLONY. Thus, COLONY is more likely to be remembered as the first, most prominent word in the mark, and the sail design is less likely to be remembered than any of the words. *See In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (When 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.”). For the reasons stated above, the term COLONY, which forms applicant’s entire mark, is considered the dominant feature of registrant’s mark.

Applicant argues that COLONY is weak and should be accorded only a limited scope of protection. To this end, applicant submitted a list of 96 registrations downloaded from the USPTO’s Trademark Electronic Search System (TESS).<sup>4</sup> While no objection was made to the list, its probative value is negligible. *See In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012) (“[T]he

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<sup>3</sup> *Applicant’s Brief*, p. 11.

<sup>4</sup> *Applicant’s Response*, April 22, 2010; Exhibit A.

examining attorney's failure to advise applicant of the insufficiency of the list of registrations when it was proffered during examination constituted a waiver of any objection to consideration of that list. Accordingly, we will consider the ... list of registrations ... 'for whatever limited probative value such evidence may have'"), citing *In re Broyhill Furniture Indus. Inc.*, 60 USPQ2d 1511, 1513 n.3 (TTAB 2001). Here, only nine registrations out of the 96 records provided appear to be for the mark COLONY alone, without any additional words (whether the listed marks include design elements is not indicated). With respect to these nine, no information regarding the involved goods or services or whether the marks are in use has been provided. As the Board does not take judicial notice of registrations residing in the Office, we cannot supply the information from the file histories of these registrations. *In re Jonathan Drew, Inc. d/b/a Drew Estate*, 97 USPQ2d 1640, 1644 fn. 11 (TTAB 2011); see also, *Edom Laboratories, Inc. v. Glenn Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012). Thus, the listing is of record, but the listing is essentially immaterial to the question of whether COLONY in the cited mark is weak.

Applicant further submitted copies of registration certificates for five third-party marks in International Class 36 that include the word COLONY as part of the mark.<sup>5</sup> These third-party registrations also have limited probative value. Of the five submitted, two are for banking services (UNION

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<sup>5</sup> *Id.*; Exhibit B.



COLONY BANK<sup>6</sup> and FIRST COLONY BANK and Design<sup>7</sup>); while three are for real estate-related services (THE COLONY AT HALF MOON,<sup>8</sup> SEA COLONY,<sup>9</sup> and KEY COLONY<sup>10</sup>). None of the registrations covers insurance services. Further, “[t]he existence of [third-party] registrations is not evidence of what happens in the market place or that consumers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive.” *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); *see also, In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010). The evidence does not show that COLONY is weak in association with insurance services.

Finally, applicant’s mark and the cited registration create similar overall commercial impressions. Potential consumers who are familiar with registrant’s “COLONY MEMBER ARGO GROUP and Design” may mistakenly believe that applicant’s mark is simply a shortened form of registrant’s mark. For the above reasons, this *du Pont* factor favors a finding of likelihood of confusion.

## **B. Similarity or Dissimilarity of the Parties’ Services**

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<sup>6</sup> Reg. No. 3449345; registered June 17, 2008.

<sup>7</sup> Reg. No. 3477739; registrant July 29, 2008.

<sup>8</sup> Reg. No. 3508035; registered September 30, 2008.

<sup>9</sup> Reg. No. 1104024; registered October 10, 1978; renewed.

<sup>10</sup> Reg. No. 1170528; renewed.

With respect to the relatedness of the services, it is well settled that the question of likelihood of confusion must be determined based on an analysis of the goods or services identified in applicant's application vis-à-vis the goods or services identified in the cited registration. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992). As we stated in *In re Association of the United States Army*,

“[T]he 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. It is sufficient that the goods and/or services be related in some manner, or that the circumstances surrounding their use be such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods and/or services.”

*In re Association of the United States Army*, 85 USPQ2d 1264, 1270 (TTAB 2007). *See also, In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Applicant seeks registration of the mark COLONY for “life insurance underwriting.” The cited registration covers “insurance services, namely, writing commercial excess and surplus insurance.” To show that these services are related, the examining attorney submitted copies of two third-party registrations, based on use, for marks covering both life and excess/surplus

insurance, and Internet evidence showing seven companies that offer both life insurance and excess and surplus insurance online.<sup>11</sup>

Copies of use-based, third-party registrations may serve to suggest that the goods are of a type which may emanate from a single source. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993). The mark NAUTILUS INSURANCE COMPANY and Design is registered for, *inter alia*, “insurance underwriting in the fields of life insurance and annuities, property and casualty, reinsurance, commercial, excess and surplus line.”<sup>12</sup> The mark THE BEST AT NEXT is registered for, *inter alia*, “insurance services, namely insurance underwriting, reinsurance underwriting, variable life insurance underwriting, ... life insurance underwriting, ... provider excess insurance....”<sup>13</sup> These registrations tend to show that a single company may underwrite both types of insurance under a single mark.

The marketplace evidence corroborates this showing. Seven companies advertise that they provide both types of insurance, as follows:<sup>14</sup>

EMC Insurance Companies advertises at [www.emcins.com](http://www.emcins.com) that it “provides insurance products and services across the country in partnership with over 3,200 independent insurance agencies.” Among the types of insurance offered are “excess and surplus lines” and “life insurance products.”

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<sup>11</sup> Although the examining attorney submitted copies of web pages for eight companies, only seven show both commercial excess or surplus insurance and life insurance being advertised at the same website.

<sup>12</sup> Reg. No. 2777954, registered October 28, 2003; Sections 8 and 15 combined declaration has been accepted and acknowledged.

<sup>13</sup> Reg. No. 3139839, registered September 5, 2006.

<sup>14</sup> From the examining attorney’s first and Final *Office Actions*.

MTG Inc. advertises both “life insurance” and “commercial excess liability” insurance at [www.mtginsurance.com](http://www.mtginsurance.com).

M&T Bank Corporation advertises several life insurance products, including “whole life insurance” and “excess and surplus lines” at [www.mtb.com](http://www.mtb.com). M&T Bank appears to offer its life insurance products through M&T Securities, Inc., a licensed insurance agent that “acts as agent for insurers” and is a related company to M&T Bank (both appear to be subsidiaries of M&T Investment Group).<sup>15</sup> In a similar vein, M&T Bank offers its commercial insurance through M&T Insurance Agency, a “licensed excess and surplus lines brokerage” that “places insurance on behalf of our clients.”

Wells Fargo Bank advertises excess and surplus insurance, as well as life insurance, at [www.wellsfargo.com](http://www.wellsfargo.com). The commercial insurance is sold through American E&S, a “premier full-service excess and surplus lines broker.” To learn more about the commercial product, a visitor to the website would click the link “contact us.” In the tab relating to life insurance, the website explains that “Wells Fargo Insurance, Inc. (Minneapolis, MN) is a licensed agency representing and compensated by the insurer based on the amount of insurance sold.” For information on life insurance policies, there is a “contact us” link as well as a telephone number provided.

Bright Insurance advertises personal as well as business insurance at [www.brightinsurance.com](http://www.brightinsurance.com). Its telephone number is prominently displayed on both the web page for personal and the web page for business insurance. Linking to “business insurance,” a visitor can read about “Massachusetts Commercial Umbrella Insurance,” which it defines as excess liability insurance. The company touts its services: “At Bright Insurance, we will shop the top carriers to provide competitive rates and to find the commercial umbrella coverage that you’re looking for.” Similarly, by linking to its personal insurance page, a visitor can read about “Massachusetts Life and Annuity Insurance.” The web page also touts its

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<sup>15</sup> The website indicates that “M&T Investment Group is a service mark of M&T Bank Corporation and consists of M&T Securities, Inc., the investment-related areas of M&T Bank and investment advisory firms MTB Investment Advisors, Inc., and Zirkin-Cutler Investments, Inc.

life insurance services: “Let one [sic, of] our life insurance professionals put together the right Massachusetts life insurance quote for you.”

J. Craig Riddle Company DBA Riddle Insurance advertises the availability of “Business-Commercial” (including “umbrella-excess liability”) insurance, and “Life & Health” (including “whole and universal life”) insurance, at [www.riddleins.com](http://www.riddleins.com). The website advises: “When placing coverage for our insured, we have several domestic and foreign markets from which to choose.”

The Reisen Agency advertises “complete insurance programs” at [www.reisinagency.com](http://www.reisinagency.com). Under the heading “Business coverage,” the agency offers both “Commercial Excess Liability” and “Universal Life Insurance.”

Applicant argues in its reply brief that “the mere fact that some third parties may offer products or services like those of both [applicant and registrant] does not suffice to overcome the significant differences in the actual services that [applicant and registrant] offer. This is akin to arguing that chewing gum and razor blades are similar or related products simply because grocery stores may offer both products.”<sup>16</sup> We disagree. A prospective consumer visiting the above websites will be exposed to a single source for the services. The fact that the services may be offered, as applicant argues, “to different consumer groups (individuals vs. businesses), in different sections of their websites (personal lines vs. insurance lines),”<sup>17</sup> does not compel us to conclude otherwise. It is not uncommon for users to navigate a website by using links or tabs, which suggests that prospective consumers would be famil-

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<sup>16</sup> *Reply Brief*, p. 5.

<sup>17</sup> *Ibid.*

iar with this arrangement and not consider any of the single websites necessarily akin to a grocery store. Moreover, as the excerpt from The Reisen Agency's website shows, it is not universally true that individual and business policies are always offered in different sections. Moreover, although the banks that offer insurance policies (M&T and Wells Fargo) do offer these services through technically different companies, the companies appear related, and each uses the dominant element ("house mark") in its name.

For these reasons, we find the third-party registrations and web pages probative of the relatedness of the services. This *du Pont* factor favors a finding of likelihood of confusion.

### **C. Trade Channels; Classes of Purchasers**

Considering the channels of trade and classes of purchasers, applicant argues that the parties' services "are offered to completely different sets of consumers,"<sup>18</sup> namely "businesses versus individuals," and that the purchasers are sophisticated. Applicant argues that purchasers of life insurance products are sophisticated because these are "relatively complex and expensive, may involve the investment of funds over extended periods of time, and are generally sold only through agents with expertise in the field."<sup>19</sup> Applicant argues that commercial excess and surplus insurance services "are of

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<sup>18</sup> *Id.*, at 4.

<sup>19</sup> *Applicant's Appeal Brief*, p. 16.

course provided only to sophisticated commercial enterprises.”<sup>20</sup> We note however, that there are no restrictions in either applicant’s or registrant’s identification of services, so we must consider that each can market its insurance services through direct sales as well as through agents, and that these related services can be offered to the same consumers. *See 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 set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed”). Again, as the excerpt from The Reisen Agency’s website suggests, by including both life and liability insurance under the same heading, the class of consumer likely includes any individual seeking to simultaneously purchase both business and personal insurance. Finally, it is settled that even sophisticated purchasers are not immune from source confusion. *See In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), *citing Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) (“Human memories even of discriminating purchasers...are not infallible.”).

This factor favors a finding of likelihood of confusion.

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<sup>20</sup> *Ibid.*

#### **D. Actual Confusion**

Applicant argues that there is no evidence of actual confusion despite the parties' use of their respective marks for almost four years.<sup>21</sup> Even assuming the contemporaneous use of applicant's and registrant's marks for a period of almost four years without actual confusion, this fact is entitled to little weight. *See In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 1317, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003) ("uncorroborated statements of no known instances of actual confusion are of little evidentiary value. ... The lack of evidence of actual confusion carries little weight, ... especially in an *ex parte* context.") In any event, the record is devoid of probative evidence relating to the extent of use of applicant's and registrant's marks and of whether there have been meaningful opportunities for instances of actual confusion to have occurred in the marketplace. *United States Army*, 85 USPQ2d at 1273. *See also, Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000); and *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992).

Accordingly, the *du Pont* factor of the length of time during and conditions under which there has been contemporaneous use without evidence of actual confusion is considered neutral.

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<sup>21</sup> Applicant's Amendment to Allege Use alleges a first use date of November, 2009.



**E. Applicant's prior FIRST COLONY registration**

In 1959, applicant's predecessor registered the mark FIRST COLONY for "underwriting life insurance."<sup>22</sup> The FIRST COLONY registration remained in force until May 29, 2010, when applicant "allowed the registration to expire ... because [applicant] had decided to transition from FIRST COLONY to COLONY for its life insurance underwriting."<sup>23</sup> Applicant argues that applicant's ownership of the prior registration demonstrates that "neither [registrant] nor the Patent & Trademark Office believe that the cited mark is confusingly similar to a COLONY mark for life insurance underwriting."<sup>24</sup> Applicant overlooks the fact that FIRST COLONY is a different mark than COLONY. When we determine the likelihood of confusion between marks, we look to the marks in their entireties. We cannot ignore that the additional word FIRST in the prior registration changes its commercial impression from that engendered by the word COLONY alone.

Moreover, as has often been stated, the Board is not bound by prior decisions of examining attorneys, and must decide each case on its own merits and on the basis of its own record, in accordance with relevant statutory, regulatory and decisional authority. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). *See also, In re Thomas H. Wilson*, 57

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<sup>22</sup> Reg. No. 687384.

<sup>23</sup> *Applicant's Appeal Brief*, p. 6.

<sup>24</sup> *Id.*, p. 10.

USPQ2d 1863, 1871 (TTAB 2001); *In re Sunmarks Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994).

#### **IV. Conclusion**

We have carefully considered the entire record, including all arguments and the evidence submitted. We find that use of applicant's mark COLONY in association with "life insurance underwriting" is likely to cause confusion



with the registered mark  for "insurance services, namely, writing commercial excess and surplus insurance."

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