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T3000433-200 - EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

APPLICATION SERIAL NO. 77820681

MARK: CATCHFIRE MEDIA



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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

TTAB INFORMATION:

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

APPLICANT: Rock Communications Ltd.

CORRESPONDENT'S REFERENCE/DOCKET NO:

T3000433-200

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EXAMINING ATTORNEY'S APPEAL BRIEF

STATEMENT OF THE CASE

Applicant has appealed the Trademark Examining Attorney's final refusal to register the trademark "CATCHFIRE MEDIA" for "Business consulting and information services, namely, comprehensive social media strategy consultation, monitoring, analysis and support" in International Class 35 on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), with the U.S. Registration No. 3446064, "CATCHFIRE", for "advertising agency services; creating corporate and brand identities for others; creating advertising and promotional materials for others, namely, advertisements, brochures, annual reports, printed publications, direct mailings, and internet website content" in International Class 35. It is respectfully requested that the refusal be affirmed.

STATEMENT OF FACTS

Applicant filed this application on September 4, 2009, applying to register on the Principal Register the mark "CATCHFIRE MEDIA" for "Business consulting and information services" in International Class 35. In the first office action dated December 10, 2009, registration was refused under Section 2(d) on the ground that the mark, when used on or in connection with the identified services, so resembles the mark in U.S. Registration No. 3446064 as to be likely to cause confusion. The applicant was also required to submit a disclaimer of the word "MEDIA".

On March 2, 2010, the applicant argued against the refusal to register the mark under Section 2(d) likelihood of confusion with regard to U.S. Registration No. 3446064, amended the identification of services, and submitted a disclaimer of the word “MEDIA”.

On April 18, 2010, the refusal to register the mark under Section 2(d) with regard to U.S. Registration No. 3446064 was maintained and made final. The disclaimer and the amendment to the identification of services were accepted.

On October 13, 2010, applicant filed a request for reconsideration with arguments and evidence to be made part of the final record.

On November 23, 2010, the request for reconsideration was denied.

On January 31, 2011, the applicant filed its Appeal Brief and the file was forwarded to the examining attorney for statement on February 1, 2011.

ISSUE

The issue on appeal is whether the mark, when used in connection with the identified services, so resembles the mark in U.S. Registration No. 3446064 as to be likely to cause confusion under Trademark Act Section 2(d).

APPLICABLE LEGAL PRINCIPLES

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the services, and similarity of trade channels of the services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

The overriding concern is not only to prevent buyer confusion as to the source of the services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-*

Packard Co. v. Packard Press, Inc., 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

ARGUMENT

BECAUSE THE MARKS WILL BE APPLIED TO CLOSELY RELATED SERVICES, REGISTRATION OF THE APPLICANT’S MARK “CATCHFIRE MEDIA”, WHICH CREATES A HIGHLY SIMILAR COMMERCIAL IMPRESSION TO THE REGISTRANT’S MARK “CATCHFIRE”, IS LIKELY TO CREATE CONSUMER CONFUSION AS TO SOURCE.

A. COMPARISON OF THE MARKS

THE MARKS CREATE HIGHLY SIMILAR COMMERCIAL IMPRESSIONS

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods and/or services they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

The marks are compared in their entireties under a Trademark Act Section 2(d) analysis. *See* TMEP §1207.01(b). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *see* TMEP §1207.01(b)(viii), (c)(ii).

Furthermore, although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

The applicant argues that the marks “look different, sound different, and are spelled differently”, and even if the dominant portions of the marks are identical, the marks are not necessarily confusingly similar.

Here, the marks are “CATCHFIRE MEDIA” versus “CATCHFIRE”, both in standard character format. The “CATCHFIRE” portions of the marks comprise the dominant feature of the marks and are identical. The only difference between the marks is the additional term “MEDIA” in the applicant’s mark. The term “MEDIA” should be given less weight in the comparison of the marks because it is descriptive and has been disclaimed. Additionally, a further indication that the word "MEDIA" is descriptive and should be given less weight is its presence in the applicant's identification of services.

The use of a term in the identification of services is an indicator of its descriptive or generic nature, and decreases the likelihood that consumers would recognize the term as a source identifier. Therefore, the word "CATCHFIRE" is the dominant portion of the applicant's mark.

Furthermore, it should be noted that the applicant actually uses the word "CATCHFIRE", without the word "MEDIA", in connection with its services. In particular, the website printout from www.catchfiremedia.com submitted by the applicant in its March 2, 2010 response (TICRS Incoming 3/2/10, page 2) states "*Catchfire* employs analysts that are committed to data mining, analysis, reporting, and solution delivery for your organization online, so that you don't have to." Such use further indicates that the term "MEDIA" is the less significant portion of the mark. The applicant's willingness to use the mark "CATCHFIRE" without the term "MEDIA" illustrates that the marks here are highly similar and that consumer confusion is likely, especially when the applicant is using the mark in a format identical to the mark of the registrant.

To summarize, the marks here are so similar that consumer confusion is likely. The dominant portions of the marks, namely "CATCHFIRE", are identical and the term "MEDIA" in the applicant's mark should be given little weight due to the presence of a disclaimer, the descriptive use in the applicant's identification of services, and the applicant's willingness to use the term "CATCHFIRE" alone, without the word "MEDIA". The identical dominant portions of the marks, "CATCHFIRE", create identical commercial impressions in the mind of the consumer. Therefore, the average purchaser who leaves with a general impression of the marks and does not evaluate them in a side-by-side comparison would likely be confused when the marks of the applicant and registrant are used on similar services as they are here.

B. SIMILARITY OF THE GOODS AND SERVICES

THE APPLICANT'S SERVICES, AS IDENTIFIED, ARE HIGHLY SIMILAR TO THE REGISTRANT'S SERVICES

The services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

As provided above, the applicant's identified services are "Business consulting and information services, namely, comprehensive social media strategy consultation, monitoring, analysis and support" in International Class 35.

The registrant's services are "advertising agency services; creating corporate and brand identities for others; creating advertising and promotional materials for others, namely,

advertisements, brochures, annual reports, printed publications, direct mailings, and internet website content" in International Class 35.

In a likelihood of confusion analysis, the comparison of the parties' services is based on the services as they are identified in the application and registration, without limitations or restrictions that are not reflected therein. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999); *see* TMEP §1207.01(a)(iii).

The applicant argues that the services of the applicant are not closely related to the services of the registrant and that the evidence submitted by the Examining Attorney does not indicate that services such as those of the applicant are also offered by companies offering services such as those of the registrant. Further, the applicant argues that the services of the applicant and registrant do not run in the same channels of trade. These arguments should not be persuasive here since the evidence of record does, in fact, show that services such as those of the applicant are offered through companies that also feature services such as those of the registrant. Since the services of the applicant and registrant commonly emanate from a single source, they logically also run in the same channels of trade.

The Examining Attorney has provided extensive evidence showing that the social media services offered by the applicant are commonly offered by companies that offer the various advertising services of the registrant. The following are excerpts from Internet

printouts, which were attached to the denial of the request for reconsideration dated November 23, 2010. These printouts show that various social media services such as those of the applicant are commonly offered by entities that also offer services related to the creation of advertising and promotional materials and creating brand identities such as those of the registrant.

The printout from www.bluecompass.com (TICRS Outgoing 11/23/10, page 2): This website shows how a single company offers social media consultation and social media monitoring ("track") such as that of the applicant as well as creating advertising and promotional materials for online use such as that of the registrant.

“Social Media Consultation: ... Our services: Develop a personalized social media plan for your business to correspond with and supplement your current web presence; ***Track*** key words and trends associated with your brand to monitor online conversation of your business and your competitors; Implement and personalize your social media plan - ***including designs & marketing that correspond with your website or other promotional materials***; Assist in the development of a social media policy for your company and your employees to insure consistent, beneficial use; Help create social media promotions, contests, and specials; Incorporate social media into your events, shows, and conferences to increase awareness, word of mouth marketing, and participation.”

The printout from 38media.net (TICRS Outgoing 11/23/10, page 5) indicates that its services include “promotional materials” and “social media consultation”.

The printout from pronouncedgrafiks.com (TICRS Outgoing 11/23/10, pages 6-8):

“Various print design for *promotional materials, mailings*, curriculum aides, etc....your destination for not only print and web design but also *social media consultation.*”

The printout from rgb247.com (TICRS Outgoing 11/23/10, page 9) shows that numerous services of the registrant such as “creating corporate and brand identities for others” and “creating advertising and promotional materials for others” are offered through sources that also offer social media consultation services such as those of the registrant:

“development of *advertising strategies and promotional materials*...website and blog design and implementation...*social media consultation* and setup...full spectrum *print design (logos, branding, advertising, collateral).*”

The printout from www.openfieldcreative.com (TICRS Outgoing 11/23/10, pages 10-13):

“We translate our clients’ stories through a blend of design strategy and technological expertise applied to five core capability groups: *brand identity*; web design & development; *digital marketing & social media*; motion & video design...Digital Marketing and Social Media: Services: Online marketing materials audits; Digital marketing planning & support; *Social media Design & Development Support*...Coordinated Collateral Systems: Services: *Sales Support Materials*”

The following excerpts from the Internet website evidence attached to the final refusal dated April 18, 2010, also exhibit how services such as those of the applicant and registrant are commonly offered through a single source.

The printout from fuelingnewbusiness.com (TICRS Outgoing 4/18/10, pages 77-85)

indicates that social media is a component of advertising agency business:

“Prediction: ***Ad agencies*** that make ***social media*** central to their business model will be hiring...Social media is still relatively new, especially to ad agencies, but I want to make a prediction: The small-to-midsize ad agencies that make social media central to their business model will find success and thrive in spite of the recession.”

The printout from www.articlebase.com (TICRS Outgoing 4/18/10, pages 86-91)

illustrates how social media is becoming an important aspect of advertising agency business:

“Advertising Agencies Change Ways – Social Media Is Taking Over... In this day and age, a historic moment in time where the internet is taking over, ***advertising agencies are changing their ways and jumping aboard the social media bandwagon*** left and right.

Unconventional forms of marketing are becoming conventional, and top ad agencies recognize such... The Brainchild – About the Author: The Brainchild Group is a Los Angeles ***Advertising Agency that specializes in strategic, professional social media marketing*** and SEO for a variety of businesses around the world.”

The printout for www.overlandagency.com (TICRS Outgoing 4/18/10, pages 94-97) is an example of an advertising agency that also offers social media marketing services:

“Overland – All Things Digital – An interactive ***advertising agency***... Overland is a creative and technology partner for visionary companies investing in digital solutions to

improve their online brand and business performance. We love our work and have dedicated teams with deep capabilities in online brand positioning, user experience design (UX), creative content generation, online and *social media* marketing, web design and animation, video, mobile and web applications, ecommerce and website development.”

Thus, the evidence of record demonstrates that services such as those of the applicant are often offered through entities that also offer services such as those of the registrant.

In this case, the identification set forth in the cited registration uses broad wording to describe registrant’s services and does not contain any limitations as to nature, type, channels of trade or classes of purchasers. Therefore, it is presumed that the registration encompasses all services of the type described, including those in applicant’s more specific identification, that the services move in all normal channels of trade, and that they are available to all potential customers. *See In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638-39 (TTAB 2009); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); TMEP §1207.01(a)(iii).

Here, the registrant’s identification contains no limiting language that would exclude its services from being offered in the field of social media. For example, the registrant’s creation of advertising and promotional materials in the form of internet website content could include the creation of content for a social media site. Similarly, the registrant’s advertising agency services could include, like many other advertising agencies, services

directly related to social media such as the services of the applicant. Therefore, because there is no limiting language on the registrant's identification of services, we must presume that all of the services could also be offered in the field of social media. This, together with the fact that services such as those of the applicant and registrant are commonly offered through a single source, is an indication that the services here are so similar that a likelihood of confusion exists.

Additionally, the third party registrations provided by the Examining Attorney with the April 18, 2010 final refusal show that the services of the applicant and registrant are related. The evidence shows third-party registrations of marks used in connection with the same or similar services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the services listed therein, namely social media services such as those of the applicant and various advertising services such as those of the registrant, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp. of Dallas*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii). The following are representative excerpts from several of the registrations attached to the final refusal dated April 18, 2010:

U.S. Registration No. 3677473 (TICRS Outgoing 4/18/10, pages 6-8) "CONNECTING MARKETING TO RESULTS" for "**Advertising agency** specializing in the design and execution of word of mouth, viral, buzz and experiential marketing programs...**Social**

media strategy and marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions”

U.S. Registration No. 3768619 (TICRS Outgoing 4/18/10, pages 28-30) “REDBEAN SOCIETY” for “strategic planning and consultancy in the field of advertising and marketing; *social media planning* focusing on helping clients promote their brands across multiple media platforms, such as broadcast media, digital media, promotions, events and public relations; *advertising services*, namely, promoting and marketing the goods and services of others through public and commercial communication means; *design of advertising materials for others; production of advertising material and commercials*”

U.S. Registration No. 3706813 (TICRS Outgoing 4/18/10, pages 31-34) “BARBARA’S WAY” for “Advertising and marketing; Advertising and promotional services; Advertising and publicity services; Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; Advertising particularly services for the promotion of goods; ... Concept and *brand development* in the field of marketing to women; ... *Design of advertising materials for others; Design of Internet advertising; Developing promotional campaigns for business; ... Preparing promotional and merchandising material for others; ... Social media strategy and marketing consultancy* focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions”

U.S. Registration 3742258 (TICRS Outgoing 4/18/10, pages 70-72) “VCOMP” for “*Advertising agency* specializing in the design and execution of word of mouth, viral, buzz and experiential marketing programs; Creative marketing design services; Direct marketing advertising for others; Direct marketing consulting services; Direct marketing services; Marketing services, namely, providing informational web pages designed to generate sales traffic via hyperlinks to other web sites; On-line advertising and marketing services; Online advertising via a computer communications network.; Promoting, advertising and marketing of the on-line web sites of others; Promotion, advertising and marketing of on-line websites; *Social media strategy and marketing consultancy* focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions”

As can be seen from the extensive evidence supplied by the Examining Attorney, the services of the applicant and registrant are highly related because they often emanate from a single source. Therefore, because the services are so highly related and the marks are so similar, a likelihood of confusion should be found because consumer confusion is likely.

THIRD PARTY USE IS NOT PERSUASIVE

The applicant argues that the registrant’s mark, “CATCHFIRE”, is weak and entitled to a limited scope of protection since other companies in purportedly related fields use the

word "CATCHFIRE" in connection with their services. In support of this argument, the applicant has submitted internet evidence showing use of the word "CATCHFIRE", by four different companies, in connection with services ranging from marketing to business development. While the services offered by these companies could be arguably related to the services in question here, this argument should be given little weight since these uses do not involve actual trademark registrations. In fact, the registrant's mark is the only "CATCHFIRE" mark registered on the United States trademark register for related services.

Moreover, the applicant's argument that the registrant's mark is weak is based on merely four instances found on the Internet. Finding four uses of the term "CATCHFIRE" on the Internet is hardly a showing that the registrant's mark is weak and entitled to less protection, especially when the online uses mentioned do not have trademark registrations and might not be entitled to any trademark protection.

In *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1565-1566 (TTAB 1996), the Board took into account third-party use in a likelihood of confusion analysis. In that case, the Board found that the evidence of third-party use of the term BROADWAY for similar services (restaurants), together with the differences between the marks and the geographic significance of the marks, was sufficient to show that no likelihood of confusion existed. The third-party evidence submitted included approximately 9 million company names in a Dun & Bradstreet database, 138 telephone white/yellow page listings and 575 entities from the American Business Directory all of which contained the

word BROADWAY for similar services. In its decision, the Board stated that “evidence of widespread third-party use, in a particular field, of marks containing a certain shared term is competent to suggest that purchasers have been conditioned to look to the other elements of the marks as a means of distinguishing the source of goods or services in the field.”

The case here is distinguishable from *In re Broadway Chicken Inc.* because the third-party evidence submitted consists of merely 4 online references to entities using the word CATCHFIRE in connection with services that appear to be different from the services in question. Such evidence should be given little weight in the likelihood of confusion analysis because it does not show widespread use of the term CATCHFIRE in connection with services such as those of the applicant. Furthermore, the applicant has not submitted any other evidence that the registrant's mark is otherwise weak and entitled to less protection.

Even if merely four Internet references to CATCHFIRE were deemed sufficient to make the registrant's mark "weak," the Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed “weak” or merely descriptive are still entitled to protection against the registration by a subsequent user of a similar mark for closely related goods and/or services. *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982); TMEP §1207.01(b)(ix); see *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974).

This protection extends to marks registered on the Supplemental Register. TMEP §1207.01(b)(ix); see, e.g., *In re Clorox Co.*, 578 F.2d 305, 307-08, 198 USPQ 337, 340 (C.C.P.A. 1978); *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975).

Here, a likelihood of confusion exists, regardless of the four outside online uses of the term “CATCHFIRE”, because the marks are extremely similar and the services are highly related. The registrant’s mark is not weak and should be entitled to protection against the registration by a subsequent user of a similar mark for closely related services.

CONCLUSION

The applicant’s mark consisting of a “CATCHFIRE MEDIA” is likely to be confused with the registrant’s mark for “CATCHFIRE” since the marks have nearly identical commercial impressions and are used on substantially related services. As such, it is highly likely that the applicant’s mark and the registrant’s mark will cause consumer confusion. For the foregoing reasons, it is respectfully submitted that the refusal of registration under Trademark Action Section 2(d), 15 U.S.C. Section 1052(d), be affirmed.

Respectfully submitted,

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