THIS ORDER IS NOT A PRECEDENT OF THE TTAB

Mailed: September 9, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Janet E. Macor

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Serial No. 77826338
Filed: September 15, 2009

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Brenda L. Speer, of Brenda L. Speer, LLC for Janet E. Macor.

Susan Kastriner Lawrence, Trademark Examining Attorney, Law Office 116, Michael W. Baird, Managing Attorney.

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ERRATUM

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Before Zervas, Mermelstein, and Ritchie, Administrative Trademark Judges.

Opinion by Mermelstein, Administrative Trademark Judge:

The Board's decision dated September 7, 2011, is corrected by substituting on page 2, "We reverse." for the sentence "We affirm." The decision, as corrected, is attached hereto.

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Before Zervas, Mermelstein, and Ritchie, Administrative Trademark Judges.

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration of the mark

for "writing of texts" in International Class 41.[1]

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[1] Based on the allegation of first use at least as early as January 1, 2005, and use in commerce at least as early as September 2, 2009. Applicant has disclaimed the exclusive right to use "BEREAN" or COMMUNICATION" apart from the mark as shown. "The mark consists of the wording "BEREAN COMMUNICATION" in gold on a white background with the "T" in "COMMUNICATION" as a stylized red cross within a white star which is within a black rectangle." "The color(s) red, gold, black and white is/are claimed as a feature of the mark."

The examining attorney has refused registration, having determined that registration of applicant's mark would lead to a likelihood of confusion in view of the International Class 41 services recited in the following registrations[2] pursuant to Trademark Act § 2(d); 15 U.S.C. § 1052(d):

Reg. No.	Mark	Services	Disclaimer	Reg. Date
3118732	BEREAN CHURCH OF GOD INTERNATIONAL	Providing newsletters via a global computer network in the fields of Christianity, religion, theology, spirituality, and ethics. International Class 41 Evangelistic and ministerial services; establishment of the religious life of churches; providing information via a global computer network in the fields of Christianity, religion, theology, spirituality, and ethics. Class 45	CHURCH OF GOD INTERNATIONAL	07/25/2006
3118733				

We reverse.

I. Preliminary Issues

Applicant attached approximately 50 pages of new submissions to her appeal brief, including TESS evidence and papers from the files of the cited registrations and third-party applications. This evidence had been referred to or listed[3] in applicant's submissions during examination,

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[2] The cited registrations are owned by the same entity, and have the same recitation of services, disclaimer, and registration date.

[3] During examination, applicant submitted sixteen pages of search result lists from the TESS database with its response to the first Office action. While the *lists* are considered part of the record, they are of no value because they do not set out the goods and services or other vital information for the listed registrations, and we do not consider the listed registrations themselves to be of record. *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) ("while ... we have considered the listing, it is of no probative value").

but was not actually submitted. The examining attorney did not inform applicant that such materials were not properly submitted for consideration.

As applicant apparently recognizes, App. Br. at 17, n.1, "[t]he 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." Trademark Rule 2.142(d). Nonetheless, the examining attorney did not object to the additional evidence in her brief, and in fact has discussed it. Accordingly, we deem the examining attorney to have stipulated this evidence into the record, and we will consider it.[4]

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 the 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*

[4] Among this evidence, applicant submitted Application No. 77776052 (THE BEREAN APPROACH) (abandoned Nov. 22, 2010), and documents from the prosecution history of the file of that application. However, this evidence has little or no probative value; a pending application proves little more than the fact of its filing, and an *abandoned* application is certainly no more probative.

Imp., Inc. v. Veuve Clicquot Ponsardin Maison 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); *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); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

III. Discussion

A. Similarity of the Services, Buyers, and Channels of Trade

Applicant identifies her services as "writing of texts," while the cited registrant's relevant services are identified as "providing newsletters via a global computer network in the fields of Christianity, religion, theology, spirituality, and ethics." The examining attorney contends that the respective services are closely related; applicant disagrees.[5]

[5] In support of her position, the examining attorney made of record a number of registrations (and two applications) to show that "the services in question are of a kind that may emanate from the same source." Ex. Att. Br. at 4 (citing *In re Infinity*

As noted, both of the cited registrations include certain ministerial services in International Class 45, although the examining attorney has explicitly indicated that the refusal to register is not based on these services. Nonetheless, applicant contends that we should construe the registrant's Class 41 services in conjunction with (or as limited by) the Class 45 services in the registrations, or in light of the arguments the registrant made in prosecuting the applications which matured into the cited registrations. App. Br. at 14-15; Reply Br. at 3. We disagree with both arguments.

The services set out in the prior registrations must

Broad. Corp. of Dallas, 60 USPQ2d 1214, 1217-18 (TTAB 2001)). While she is correct on the law, the registrations which were submitted (we do not count applications for this purpose) generally do not reflect the fairly specific subject matter that the cited registrant has identified as the subject of its newsletters. By our count, only two of the registrations (3067131 and 3407725) *might* qualify because they identify newsletters not limited to any specific subject, and therefore can be read to encompass the subject matter of the cited registrant's electronic newsletters.

In contrast, registrations identifying, on one hand, the writing of texts and, on the other hand, newsletters on <u>different</u> specific topics than those listed in the cited registrations do not support the examining attorney's case. While we recognize that the vagaries of language used in different registrations require some flexibility, we have typically required that third-party goods or services being compared for these purposes hew closely to those in the subject application and the cited registration. We will not engage in extensive secondary comparison of goods or services under *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1469 (TTAB 1988), and its progeny. *See In re 1st USA Realty Prof'ls Inc.*, 84 USPQ2d 1581, 1583 (TTAB 2007). Thus, while we have considered Registration Nos. 3067131 and 3407725, we have given them relatively little weight in our

be given their ordinary construction, without limitation by the prosecution history of the applications resulting in those registrations. *Anthony's Pizza & Pasta Int'l Inc. v. Anthony's Pizza Holding Co.*, 95 USPQ2d 1271, 1281 (TTAB 2009) ("The doctrine of 'file wrapper estoppel' does not apply in trademark cases." (citing *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955, 963 (TTAB 1986))). Moreover, we must give full effect to the meaning of each of the distinct goods or services identified in a registration, without importing extraneous limitations or restrictions based on other goods or classes in the same registration. *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1637-38 (TTAB 2009); *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764-65 (TTAB 1986)("[T]he question of likelihood of confusion must be determined by an analysis of the marks as applied to the goods identified in the application vis-a-vis the goods recited in the registration, rather than what extrinsic evidence shows those goods to be.").

In this case, the cited registrant's services <u>are</u> explicitly limited to "providing newsletters [1] via a global computer network [2] in the fields of Christianity, religion, theology, spirituality, and ethics." The registrant's newsletter services are thus limited as to

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decision.

both [1] medium and [2] subject matter.

But unlike the cited registration, the subject application does not contain any limitation as to the subject matter, channels of trade, or classes of purchasers for the identified services, and must therefore be broadly construed. We therefore construe applicant's "writing of texts" to include the writing of all sorts of texts, including the writing text for online newsletters in the fields of Christianity, religion, theology, spirituality, and ethics, *i.e.* writing texts essentially identical to the subject matter of registrant's newsletters.[6]

Although there is little relevant evidence in the record (beyond the application itself), it is necessary in

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[6] While we do not know any more about applicant's actual activities than what is in the application file, applicant's specimens do not rule out writing text for newsletters similar to those provided by the registrant. But to be perfectly clear, for these purposes, whether applicant actually performs such services is not particularly relevant – we are concerned here with what is already registered and what applicant seeks to register, rather than the actual activities of applicant and the registrant in the marketplace. *Octocom Sys. Inc. v. Houston Computers Svcs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Applicant's recitation of services ("writing of texts") is acceptable, albeit broad. But the consequence of a broad recitation of services is that it may bring the application within the ambit of a prior registration, even if the similarity or overlap in goods or services does not reflect the actual activities of the applicant or the cited registrant. A refusal to register in such a case is entirely proper; applicant's remedy is either an amendment to her own goods or services or a proceeding against the prior registration to narrow or cancel it, as appropriate. But applicant has taken neither course, so we must construe her services and those in the cited registration as broadly as they are written.

this case to touch on the nature of the consumers and channels of trade for applicant's and the cited registrant's services. *du Pont*, 177 USPQ at 567 (third factor). In determining the relevant consumers and channels of trade, we again look to the services identified in the application and the cited registration. *Octocom Sys.*, 16 USPQ2d at 1787; *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981) (citing *Kalart Co., Inc. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958)).

The potential customers for the registrant's Class 41 services appear to be those who wish to receive online "newsletters ... in the fields of Christianity, religion, theology, spirituality, and ethics," *i.e.*, members of the general public interested in such topics. On the other hand, according to her application, applicant does not "provide[] newsletters," or any other form of information to the public, as does the cited registrant. Her services are identified as "writing of texts." And because services must be rendered for the benefit of another, *In re Can. Pac. Ltd.*, 754 F.2d 992, 224 USPQ 971, 974 (Fed. Cir. 1985), we assume that applicant writes texts for others.

It thus appears that the customers for applicant's services are those who may wish to have texts written for them (including publishers such as the cited registrant),

rather than the general reading public. Therefore, although the reading public is presumably the ultimate consumer of applicant's services (we assume that applicant's "texts" are read by the public even if they are written for and published by others), it appears that applicant's services are advertised and directly rendered to publishers (such as the prior registrant). Importantly, while confusion among the ultimate purchasers or users of a good or service is certainly relevant, *In re Artic Elecs. Co., Ltd.* 220 USPQ 836, 838 (TTAB 1983) ("[I]n addition to source confusion among buyers, source confusion among ultimate users of the goods ... is ... encompassed within the confusion proscriptions of Section 2(d)."), there is no evidence in this record that would suggest that those ultimate consumers would be exposed to applicant's mark.[7] Where ultimate consumers would not be exposed to applicant's mark, there is no reason to consider whether they would be confused.

We conclude that while applicant's identified services

[7] We are aware, of course, of the practice in some parts of the publishing industry of, for instance, identifying the writer of a newspaper story by name, and we acknowledge that the writer's name might under some circumstances function as a trademark, as in the case of a syndicated newspaper column. But applicant's mark is not her name, and her services are not identified as syndicated columns (or similar services), nor is there any evidence in the record which would suggest that applicant's mark or marks like it are ever used in published works to identify the

are related to those of the cited registrant (a factor which supports the examining attorney's refusal), the channels of trade for and consumers of applicant's services differ significantly from those of the registrant, and that the general public is unlikely to be exposed to applicant's mark. The latter considerations support a finding of no likelihood of confusion.

B. The 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. "[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 offered under the respective marks is likely to result." *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715, 1727 (TTAB 2008).

While we must consider the marks in their entireties, it is nonetheless appropriate to accord greater importance to the more distinctive elements in the marks. "[I]n articulating reasons for reaching a conclusion on the issue

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applicant as the source of independent textual material.

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).

In analyzing the marks at issue, we focus primarily on a comparison of applicant's mark with the mark in the registrant's '732 Registration (BEREAN CHURCH OF GOD INTERNATIONAL (in standard characters)). If confusion is likely as between these marks, applicant's registration will be refused and consideration of registrant's '733 (words and design) registration would be unnecessary. And if confusion is not likely as to the prior registrant's word mark, it would be even less so with regard to the registrant's word and design mark.

As noted above, applicant's mark is BEREAN COMMUNICATION (and design):

In response to a requirement by the examining attorney, applicant disclaimed the exclusive right to use "BEREAN or COMMUNICATION" apart from the mark as shown.[8]

Applicant strenuously argues that the registrant's mark is "descriptive and weak," and thus only "entitled to a narrow scope of protection." App. Reply Br. at 2; App. Br. At 4-11. The examining attorney demurs, noting that "there is no dispute as to the descriptiveness of the term BEREAN; the dispute is as to whether registrant's marks should be a bar to the registration of applicant's mark under Section 2(d)." Ex. Att. Br. at 10.

It appears from the evidence of record that the term "BEREAN" is a reference to the inhabitants of the ancient city of Berea,[9] referred to in the New Testament, discussing the preaching of the Apostles:

> And the brethren immediately sent away Paul and Silas by night unto Beroe'a: who coming thither went into the synagogue of the Jews. These were more noble than those in Thessaloni'ca, in that they received the word with all readiness of mind, and searched the Scriptures daily, whether those things were so. Therefore many of them believed; also of honorable

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[8] The examining attorney's requirement was actually for a disclaimer of "BEREAN COMMUNICATION," not "BEREAN or COMMUNICATION." *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1213.08(b) (7th ed. 2010). Nonetheless, the proffered disclaimer was accepted and the acceptability of its form is not before us.

[9] English spellings vary, including Beroe'a. The ancient town is now known as Veria, a city in the Macedonean region of northern Greece.

women which were Greeks, and of men, not a few. *Acts* 17:10-12 (King James).[10] The biblical Bereans were thus seen as exemplary of those who carefully studied and willingly accepted the New Testament.

The record is somewhat less clear on the significance of the term as used by modern groups or individuals. It does not appear that BEREAN is currently used to denote a single discrete religion or sect (in the way that the terms "Mormon," "Catholic," or "Hindu" are generally understood) – in fact, it appears that there are or have been a number of Christian groups who have used or are using the term. The various modern adopters of the term – both individuals and groups – appear to use it to suggest an identification with the biblical Bereans in their approach to belief through the study of scripture:

> For some, the term "Berean," may be strange upon the tongue, and for others it may be a cliché. Amongst Bible believing Christians, this term is commonly chucked around. ... A simple Google search under the heading of "Berean" will yield copious amounts of commentary ... on this topic. It is a term that has been used for inspiration, and a term yielded to desecration (as is so often the case with powerful biblical terminology). Some hyper-sectarian groups have adopted the name in the past in such a fashion that it directly and ironically contradicts the very nature of what being a Berean means.

[10] Although not in the record, we take judicial notice of the quoted passage from the New Testament, to provide background. We do not, of course, endorse this or any other religious text as authoritative. U.S. CONST. amend. I.

The New Bereans, www.newbereans.com/2009/07/09/what-is-a-berean-part-one (Dec. 2, 2009) (attached to first Office action).[11]

But whatever "BEREAN" may mean in general, in the current posture of this case, there is no dispute that the term is descriptive as it is used in applicant's mark. The examining attorney found it to be descriptive and required a disclaimer; applicant explicitly agrees that it is descriptive and has complied with the examining attorney's requirement. We hasten to add, however, that "[t]he technicality of a disclaimer ... has no legal effect on the issue of likelihood of confusion. The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO." *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) (footnotes omitted); *Seiler's, Inc. v. Hickory Valley Farm, Inc.*, 139 USPQ 460, 462 (TTAB 1963).

Applicant argues that the term BEREAN as used in the registrant's marks, and indeed that "the entirety[] of Registrant's marks is descriptive." *E.g.*, Reply Br. at 1. We disagree. The cited registrations are on the Principal Register (without disclaimers of BEREAN), and we must apply

[11] Applicant did not take issue with this evidence.

the presumption that they are valid and thus not descriptive. *See* Trademark Act § 7(b). Despite applicant's argument that the cited registrant's marks are descriptive, we do not – and *cannot* – reach that question in this appeal. An attack on the validity of a cited registration will not be heard in an *ex parte* proceeding to which the registrant is not a party. *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) (citing *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997)). As applicant was advised by the examining attorney, the validity of the cited registrations can only be considered in an *inter partes* proceeding to cancel or restrict them.

Nonetheless, in consideration of all of the evidence of record, we conclude that the term BEREAN is suggestive of the subject matter of the cited registrant's "newsletters in the fields of Christianity, religion, theology, spirituality, and ethics." The identified newsletter services are clearly broad enough to include newsletters relating in some way to the theology, practices, or spirituality ascribed to the biblical Bereans and those who call themselves Bereans today. So although we do not consider BEREAN – as used in the cited

registrant's mark – to be descriptive, we recognize that it is suggestive of the registrant's services.

As for the remaining terms in the marks at issue, we recognize that they are descriptive. The prior registrant has disclaimed "CHURCH OF GOD INTERNATIONAL" in both its registrations, and applicant has disclaimed "COMMUNICATION" (as well as "BEREAN") in its mark, and their descriptiveness is not disputed.

Applicant and the examining attorney disagree about the scope of protection to be given to the registrant's mark in this case. While it is generally true that the protection afforded a mark bears some relation to how distinctive it is, the inherent meaning of a term is only one element of distinctiveness, and other factors may be just as relevant. Ultimately, the bottom line is not determined by the labels we assign to the mark or its constituent terms, but whether, after considering all relevant evidence, there is a likelihood of confusion:

> 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).

When we compare the literal elements of applicant's mark to the cited registrant's standard character mark, we note that the applicant's BEREAN COMMUNICATION bears some resemblance to the prior registrant's BEREAN CHURCH OF GOD INTERNATIONAL in that they both share the term BEREAN. In both marks, the first term is identical and, as we have often noted, the first part of the mark "is most likely to be impressed upon the mind of a purchaser and remembered." *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988); *see also Palm Bay*, 73 USPQ2d at 1692.

Nonetheless, there are also significant differences between the marks. Although "COMMUNICATION" (in applicant's mark) and "CHURCH OF GOD INTERNATIONAL" (in the registrant's mark) are both descriptive and therefore unlikely to be perceived as strong indicators of source, we must consider the marks in their entireties, without ignoring any part of them. These terms undeniably affect the meaning of the marks as a whole, and provide some distinction between them in both appearance and sound.

Applicant's mark also features design elements. When considering the non-literal elements of applicant's mark, we note that the stylized words BEREAN COMMUNICATION appear

below a design consisting of a black rectangle over which a stylized red Latin cross (forming the letter "t" in "COMMUNICATION") and starburst pattern are imposed.

While the wording in applicant's mark is depicted in gold lower-case letters (with the red cross forming the "t"), we must consider the stylization of the text to be visually identical to the text in the cited registration, because the registered standard-character mark could be depicted in any stylization, including stylization identical to that used by applicant. *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1258-59 (Fed. Cir. 2011) ("If the registrant … obtains a standard character mark without claim to any particular font style, size or color, the registrant is entitled to depictions of the standard character mark regardless of font style, size, or color…." (internal quotation marks omitted)). The remaining visual elements of applicant's mark – a red Latin cross, white starburst, and the black rectangle against which the cross and starburst are displayed – visually distinguish applicant's mark somewhat from the cited '732 Registration. Although is arguable that none of these elements is highly distinctive individually, their use in applicant's mark as

a whole is clearly a distinguishing feature.[12]

We have often said that when a mark comprises both words and a design, the words are usually considered to be dominant since they will be used to call for, or refer to the services. *E.g.*, *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983); *In re Dakin's Miniatures Inc.*, 59 UPSQ2d 1593, 1596 (TTAB 2001); *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). But this is not a *per se* rule, and when the words used in a mark are all descriptive or weak, other matter in the mark takes on greater significance, and may be sufficient to avoid a likelihood of confusion.

In *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986), the Court of Appeals for the Federal Circuit found that "[t]he descriptiveness of the phrase 'bed and breakfast' is not contested. ... We agree with the applicant that travellers acquainted with the term

[12] We recognize that the design of a Latin cross is included in the mark in the cited '733 Registration. Nonetheless, we hardly need cite authority to recognize the Latin cross as a central and ubiquitous symbol of Christianity – which applicant appears to acknowledge is the subject matter of her written texts, and which is explicitly the subject matter of the registrant's newsletters. The cross design is thus highly suggestive of Christian-themed services. Thus, while the cross provides minor visual distinction between applicant's mark and the registrant's standard-character '732 Registration, we do not view it as a significant point of similarity with the '733 Registration. It is hard to imagine that a prospective customer of such services would believe that they share a common source merely because of

'bed and breakfast' are more likely to rely on the noncommon portion of each mark, e.g., 'registry' vs. 'international,' to distinguish among similar services." *Id*. at 819. Similarly, we have found that BEREAN, the common term in the marks at issue, is descriptive as used in applicant's mark, and that it is suggestive as used in the registrant's mark. In such circumstances, the other elements of the marks take on greater significance to consumers in distinguishing the marks.

In this case, applicant's mark includes design elements not present in the registrant's mark (the cross, starburst, and black rectangle), and both marks include other, different wording. While that additional wording is clearly descriptive in both marks, we must consider the marks in their entireties, without ignoring any part of them. In some cases even descriptive wording may distinguish marks which share only weak or descriptive terms. *Bed and Breakfast Registry*, 229 USPQ at 819 (finding "BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL ... not confusingly similar in either sound or appearance.").

We find that applicant's mark shares some similarity with that of the prior registrant in that they both include

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the inclusion of a Latin cross in each mark.

the term BEREAN. Nonetheless, that common term is weak or descriptive, and the marks both include other matter which serves to distinguish them. We conclude that the marks are only weakly similar. This factor favors a finding of likelihood of confusion, but only slightly.

III. Conclusion

We have carefully considered the entire record and all of the arguments and evidence submitted by applicant and the examining attorney (including that which is not specifically discussed in this opinion).

To summarize, although the marks at issue both share the term BEREAN, that term is weak or descriptive to the extent relevant here, and the marks include additional, distinguishing matter. Moreover, while applicant's identified services are clearly related to those of the cited registrant, they do not appear to be services which would be marketed to the same consumers.

We conclude, in light of the evidence of record, that use of applicant's mark is not likely to cause confusion with the mark in the cited prior registration.

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