

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
March 27, 2007  
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Broadview Advisors, LLC

Serial No. 78366359

Nicholas A. Kees and Roxana Wizorek of Godfrey & Kahn, S.C.  
for Broadview Advisors, LLC.

Barney L. Charlon, Trademark Examining Attorney, Law Office  
104 (Chris Doninger, Managing Attorney).

Before Bucher, Grendel and Bergsman, Administrative  
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Broadview Advisors, LLC seeks registration on the  
Principal Register of the mark **BROADVIEW ADVISORS** (*in  
standard character format*) for services recited in the  
application, as amended, as follows:

"financial investment in the field of  
securities; financial advisory services" in  
International Class 36.<sup>1</sup>

This case is now before the Board on appeal from the  
final refusal of the Trademark Examining Attorney to

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<sup>1</sup> Application Serial No. 78366359 was filed on February 11,  
2004 based upon applicant's allegation of a *bona fide* intention  
to use the mark in commerce. No claim is made to the word  
"Advisors" apart from the mark as shown.

register applicant's mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the recited services, so resembles the mark **BROADVIEW** (*in standard character format*) registered for services recited as "acquisition and merger consultation relating to the information technology, communications and media industries" in International Class 35, as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney submitted briefs. We affirm the refusal to register.

In arguing for registrability, applicant contends that the marks are different in appearance and sound, that the services in the cited registration are very different from applicant's services, that the respective customers are all highly educated and sophisticated, and that there are third-party registrants claiming rights in the word **BROADVIEW** for similar goods and services.

By contrast, the Trademark Examining Attorney contends that the dominant feature of applicant's mark, "Broadview," is identical to registrant's mark, that the respective services are related in that they both concern financial and investment services, and are the types of services

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which frequently emanate from a common source, and that inasmuch as applicant recites its services broadly without limitation, we must presume that these services move in all normal trade channels and are available to all potential customers, including those in the information technology, communications and media industries. The Trademark Examining Attorney also argues that even sophisticated customers are susceptible to confusion when marks are substantially the same, and that the alleged third-party registrations do not demonstrate any weakness in the cited mark.

### **Likelihood of Confusion**

We turn to the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also In re Majestic Distilling Co., Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key, although not exclusive, considerations are the similarities between the marks and the relationship between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d

1098, 192 USPQ 24 (CCPA 1976). See also In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

## **Marks**

We turn first to the du Pont factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005).

Applicant contends that its mark should not be dissected into its component parts before being compared with corresponding parts of a registrant's mark to determine likelihood of confusion, as the Trademark Examining Attorney has done. Applicant argues that when applicant's mark, as a whole, is compared to the cited mark, the differences in appearance and sound are readily apparent. However, the Trademark Examining Attorney has taken the position that within applicant's proposed mark, "the term **BROADVIEW** is the dominant feature of applicant's mark, which otherwise consists of the disclaimed word **ADVISORS**." (Trademark Examining Attorney's brief, unnumbered p. 3).

The Trademark Examining Attorney is correct in that "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant has essentially appropriated registrant's mark **BROADVIEW** in its entirety, and added the disclaimed word **ADVISORS** to it. Hence, we consider the word "Broadview" to be the dominant element of applicant's mark, and the portion deserving of greater weight in the likelihood of confusion analysis. Under these circumstances, the addition of the word "Advisors" to applicant's mark is insufficient to distinguish the marks.

While we acknowledge this difference exists in appearance and sound between these respective marks, when considered in their entirety, as to connotations and commercial impressions, applicant's mark is substantially similar to the cited mark. If consumers should note this difference in these marks, they are likely to consider that the marks are simply variations of each other - this one being specifically used for financial advisory services -

rather than to believe that the marks indicate different sources of the services.

Accordingly, this du Pont factor favors the position of the Trademark Examining Attorney - namely, that the marks are confusingly similar.

### **Third-party registrations**

In applicant's response of March 3, 2005, it listed three other federal trademark registrations allegedly containing the word **BROADVIEW**. These were highlighted again in applicant's brief in support of its contention that registrant's mark is a weak mark. However, a mere listing of registrations is not sufficient to make them of record.<sup>2</sup> Furthermore, while he did not treat them as of record, the Trademark Examining Attorney argues that the registrations highlighted by applicant in its brief are themselves registered in connection with goods or services completely unrelated to the field of financial services.

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<sup>2</sup> In any case, third-party registrations, even when properly made of record, are entitled to little weight on the question of likelihood of confusion. In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991); and In re Hub Distributing, Inc., 218 USPQ 284 (TTAB 1983). Such registrations are not evidence of what happens in the marketplace or that the public is familiar with the use of the marks. In re Comexa Ltda, 60 USPQ2d 1118 (TTAB 2001); and National Aeronautics and Space Admin. v. Record Chem. Co., 185 USPQ 563 (TTAB 1975).

Thus, the registered mark is not a weak mark, and as a result, the scope of protection accorded to the registration is not limited by third-party registrations.

## **Services**

Applicant argues that these services are not related:

"The services offered by the Applicant and by the owner of the Cited Mark are vastly different. In fact the only relationship between the two is that, in the broadest sense, they both in some way relate to the capitalization and ownership of companies... Applicant offers investment advice to people, on the basis of which advice, the individuals will make investments to grow their wealth. In contrast, the owner of the Cited Mark provides consulting services on acquisitions and mergers relating to certain industries, namely, the information technology, communications and media industries. Therefore, the services offered by Applicant and by the owner of the Cited Mark are very distinct, and this factor weighs heavily against a finding of likelihood of confusion."

(Applicant's brief, p. 4).

However, the Trademark Examining Attorney argues that these respective financial advisory services are related, pointing to a dozen third-party registrations where the recitations of services include both applicant's and registrant's services:



for "financial services; namely, providing capital funding and financial advisory services; investment brokerage services; investment management services; investment banking services; and providing merger, acquisition, and divestiture advice" in International Class 36;<sup>3</sup>

**NEEDHAM CAPITAL PARTNERS**

for, *inter alia*, "business acquisitions and merger consultations; mergers and acquisition services..." in International Class 35; "financial services, namely, investment management, investment advice, mutual fund investment, financial advisory services..." in Int. Class 36;<sup>4</sup>

**LAZARD FRÈRES**

for, *inter alia*, "business consultation in the field of mergers, acquisitions, restructuring and other corporate finance activities ..." in International Class 35; "financial advisory services; ... financial analysis and consultation in the fields of merger, acquisition, restructuring and other corporate finance activities ..." in Int. Class 36;<sup>5</sup>

<sup>3</sup> Registration No. 2482224 issued on August 28, 2001 based on an application filed on August 2, 2000. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged. No claim is made to the words "Growth Capital Partners" apart from the mark as shown.

<sup>4</sup> Registration No. 2608561 issued on August 20, 2002 based on an application filed on February 16, 2000. No claim is made to the words "Capital Partners" apart from the mark as shown.

<sup>5</sup> Registration No. 2638223 issued on October 22, 2002 based on an application filed on July 19, 2000. The English translation of the word "Frères" in the mark is "Brothers."

**MOLECULAR SECURITIES**

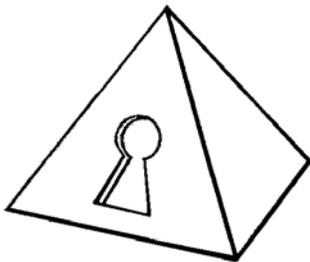
for "mergers and acquisition financial advisory services" in International Class 36;<sup>6</sup>



for "business acquisition and merger consultation" in International Class 35;  
" ... financial analysis and consultation; financial research; investment advisory and consulting services ..." in International Class 36;<sup>7</sup>

**EDGEVIEW**

for "business advisory services in the field of mergers and acquisitions" in International Class 35;  
" ... financial advisory services, namely, acquisition financing advisory services and merger and acquisition advisory services" in International Class 36;<sup>8</sup>



for " ... business consulting in the nature of providing merger and acquisition support services in the field of business; business acquisition and merger consultation services" in International Class 35;  
" ... financial consulting in the nature of providing merger and acquisition support services in the field of finance" in International Class 36;<sup>9</sup>

<sup>6</sup> Registration No. 2670465 issued on December 31, 2002 based on an application filed on October 23, 2001. No claim is made to the word "Securities" apart from the mark as shown.

<sup>7</sup> Registration No. 2697336 issued on March 18, 2003 based on an application filed on November 13, 2001. The English translation of the German word ERSTE in the mark is "First." No claim is made to the words "Erste Bank" apart from the mark as shown.

<sup>8</sup> Registration No. 2738279 issued on July 15, 2003 based on an application filed on August 27, 2001.

<sup>9</sup> Registration No. 2762266 issued on September 9, 2003 based on an application filed on November 3, 2000.

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**BRINGING VALUE INTO VIEW**

for "business valuation, acquisition and merger consulting" in International Class 35; "Financial advisory services provided primarily to businesses and business owners in a wide variety of industries" in International Class 36;<sup>10</sup>



for "business consultation; business acquisition and merger consultation..." in International Class 35; "financial management and planning; portfolio management and research; insurance brokerage; insurance consultation; financial analysis, consultation and forecasting; financial investment in the field of real estate, securities, and insurance" in International Class 36;<sup>11</sup>

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**BARKER CAPITAL**

for "business acquisition, merger and restructuring consultation" in International Class 35; "investment banking services; venture capital services, namely, providing acquisition and growth financing to companies; financial investment in the field of debt and equity securities" in International Class 36;<sup>12</sup>



for "business acquisition and merger consultation ..." in International Class 35; " ... financial analysis and consultation; financial investment for others in the field of securities. cash management.

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<sup>10</sup> Registration No. 2773327 issued on October 14, 2003 based on an application filed on September 23, 2002.

<sup>11</sup> Registration No. 2824907 issued on March 23, 2004 based on an application filed on August 15, 2001. No claim is made to the words "Financial Group" apart from the mark as shown.

<sup>12</sup> Registration No. 2953969 issued on May 17, 2005 based on an application filed on April 27, 2004. No claim is made to the word "Capital" apart from the mark as shown.

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	commodities, and real estate; financing services; <sup>13</sup> and
<b>PUNK ZIEGEL &amp; COMPANY</b>	for "business acquisitions and merger consultations ..." in International Class 35; "financial services, namely, investment management, investment advice, mutual fund investment, financial advisory services ..." in International Class 36. <sup>14</sup>

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These third-party registrations, all of which are based on use in commerce, provide support for the Trademark Examining Attorney's position that financial advisory services are related to acquisition and merger consultation services inasmuch as they have been registered by the same source under the same mark. See In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) [Although third-party registrations "are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may have some probative value to the extent that they may serve to suggest that such goods or services are the type which may emanate from a single source"]. See also In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993).

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<sup>13</sup> Registration No. 3021244 issued on November 29, 2005 based on an application filed on June 21, 1999.

<sup>14</sup> Registration No. 3039132 issued on January 10, 2006 based on an application filed on April 5, 2004. No claim is made to the term "& Company" apart from the mark as shown.

Additionally, the excerpt of registrant's website that applicant submitted March 3, 2005 explains that registrant provides "advice on merger and acquisition transactions, restructuring and equity private placements" and is a leading global "corporate finance advisor."

Accordingly, we find that the respective services are related, and this du Pont factor also supports a finding of likelihood of confusion herein.

### **Trade Channels and Buyers to Whom Sales are Made**

As to two related du Pont factors, the Trademark Examining Attorney argues correctly that inasmuch as there are no limitations in applicant's recitation of services as to their nature, type, channels of trade or classes of purchasers, it is presumed that the application encompasses all services of the type described, that they move in all normal channels of trade, and that they are available to all potential customers. See In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991). Contrary to applicant's arguments, applicant's recitation of services does not limit the scope of its financial services to those utilized by individual investors. Accordingly, we must presume that applicant's services move in all normal trade channels and are available to all potential customers, including, as

with registrant's services, corporate financial managers in the fields of information technology, communications and the media.

As to the sophistication of the purchasers, even if we were to assume that both registrant's and applicant's customers are somewhat sophisticated in the field of finance, this does not necessarily mean that they are immune from source confusion when very similar marks are used on related services. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988).

### **Conclusion**

We find that applicant's mark is confusingly similar to registrant's mark; that the registered mark's scope of protection is unrestricted; that financial advisory services are related to acquisition and merger consultation services; and that applicant's services move in all normal trade channels and will be made available to all potential customers, including those enumerated in registrant's recitation of services.

*Decision:* We affirm the refusal to register herein based upon Section 2(d) of the Lanham Act.