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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78463336
Applicant	Concerto Networks, Inc.
Applied for Mark	SIMPLE OFFICE
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Application of:)	
)	
Concerto Networks, Inc.)	MARK: SIMPLE OFFICE
)	
Serial No. 78/463,336)	Class: 9, 38, 42
)	
Filed: August 6, 2004)	
)	

APPLICANT'S BRIEF ON APPEAL

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commisioner:

Applicant Concerto Networks, Inc. ("APPLICANT") submits its Brief On Appeal from the refusal by the Trademark Examining Attorney ("EXAMINING ATTORNEY") to allow APPLICANT's application for registration of its mark, SIMPLE OFFICE. The EXAMINING ATTORNEY alleges that APPLICANT's mark, SIMPLE OFFICE, is confusingly similar to the Registered marks for SIMPLE, Reg. Nos. 2013119 and 2013118. APPLICANT disagrees with the EXAMINING ATTORNEY because of the differences in the respective marks, the differences in the goods and services, and the different commercial impressions, as more fully set for the below.

FACTS

1. APPLICANT filed its application for SIMPLE OFFICE for: Technology products, namely, computer hardware and software and routers, in the field of office automation and computer network security, and instructional manuals sold as a unit therewith in, **Class 9**; and for Providing information and technology services, namely computer consulting and network security, namely restricting access to and by computer networks to and of undesired websites, media and individuals and facilities; consulting services in the field of office automation, in **Class 42**.
2. The EXAMINING ATTORNEY, in the first Office Action, rejected Applicant's SIMPLE OFFICE application alleging a likelihood of confusion with two Registrations for SIMPLE

and three other pending registrations. The Examining Attorney also requested amendments to the description of the Class 9 goods and the Class 42 services. The details of the cited Registrations are as follows:

Registration No. 2013119:

Class 9 - computer hardware, namely memory upgrades for computers, printers, and work stations, namely expansion boards; hard drive PC cards, memory cards for expanding memory for computer operating systems and applications, namely flash cards and SRAM cards; data and fax modems with cellular capabilities, cellphone cables, hard drives, ethernet adapters, SCSI adapters, internal desktop PC card drive, and computer software for operating the above mentioned computer hardware items in computer systems;

Class 16 - computer user instructional manuals and printed brochures on the subject of computer hardware and computer software; and

Registration No.: 2013118:

Class 9 - computer hardware, namely memory upgrades for computers, printers, and work stations, namely expansion boards; hard drive PC cards, memory cards for expanding memory for computer operating systems and applications, namely flash cards and SRAM cards; data and fax modems with cellular capabilities, cellphone cables, hard drives, ethernet adapters, SCSI adapters, internal desktop PC card drive, and computer software for operating the above mentioned computer hardware items in computer systems;

Class 16 - computer user instructional manuals and printed brochures on the subject of computer hardware and computer software and three pending applications.

3. APPLICANT responded to the rejection by presenting an argument against a likelihood of confusion and additionally amended the Class 9 and Class 42 goods and services descriptions and added Class 38, pursuant to the Examining Attorney's request.

4. The EXAMINING ATTORNEY issued a final rejection based upon the SIMPLE Registrations. The rejections relating to the pending applications were withdrawn.

5. APPLICANT filed a Request for Reconsideration and a Notice of Appeal, referencing and enhancing the arguments made in response to the first Office Action. Applicant additionally offered to narrow its Class 9 goods.

ISSUE TO BE DECIDED

The issue to be decided is whether Applicant's SIMPLE OFFICE application creates a likelihood of confusion in view of the SIMPLE Registrations.

ARGUMENT AND OFFER OF AMENDMENT
New Amendment Offered

Although Applicant does not agree with the Examining Attorney that a likelihood of confusion with respect to Applicant's Class 9 goods is correct, Applicant offers herein to amend its application to delete the Class 9 goods. Applicant's argument below relates to the Class 38 and Class 42 services only.

Argument

Applicant's services under Class 42 and Class 38 are in brief: computer consulting in the field of office automation and network security and transmission of data and documents via electronic networks, communication services and services relating to the implementation of multiple user dial-up and dedicated access to the Internet. In contrast, the cited SIMPLE Registrations cover (in brief) computer hardware and accessories and software relating to these goods.

Applicant's mark, SIMPLE OFFICE, although it shares the term "SIMPLE" with the cited Registrations, does not cover any goods offered under these Registrations. Applicant has now offered to delete the Class 9 goods from its application entirely.

In addition to the differences in goods/services, SIMPLE OFFICE does not convey the same commercial impression as SIMPLE.

Applicant's mark is two words rather than one word. The word "OFFICE" in Applicant's mark is not descriptive, only suggestive of the type of services offered by Applicant. Therefore, the addition of this word to SIMPLE creates a different and distinct mark. In any case, in a two word mark even a descriptive term added to the common word can serve to distinguish the marks.

Registrant's one word SIMPLE is suggestive of Registrant's goods: Easy to use computer hardware and easy to understand instructions. Applicant's SIMPLE OFFICE is suggestive of the computer services that are to be used by or offered to businesses. These meanings and impressions created are distinct. In Applicant's mark, both "SIMPLE" and "OFFICE" have nearly equal dominance when used together for Applicant's services.

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Thus Applicant's mark conveys a distinct commercial impression and is not likely to be confused with the Registered SIMPLE marks.

For the foregoing reasons, APPLICANT respectfully requests that its Appeal be granted and that its application for SIMPLE OFFICE be allowed to proceed to registration.

Respectfully submitted,

Dated: September 21, 2006

By: 

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