

**THIS OPINION IS NOT A  
PRECEDENT OF  
THE T.T.A.B.**

Mailed: August 13, 2012

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re RealCore Realty LLC

Serial No. 85028127

Daniel J. Noblitt of The Noblitt Group PLLC for RealCore Realty LLC.

Brian Pino, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Zervas, Cataldo and Mermelstein,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, RealCore Realty LLC, filed an application to register in standard characters on the Principal Register the mark HOUSING ANGELS (HOUSING disclaimed) for the following services, as amended:

Real estate acquisition services; Real estate investment services; Real estate investment services in the nature of purchasing and selling of real estate for others; Real estate procurement for others; Real estate services to stop foreclosure, namely, mortgage debt management

in International Class 36.<sup>1</sup>

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, as used in connection with its services, so resembles the mark PROPERTY ANGELS (PROPERTY disclaimed) previously registered in standard characters on the Principal Register for "real estate agent" in International Class 36,<sup>2</sup> as to be likely to cause confusion.

In addition, the examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that applicant's mark merely describes the recited services.

When the refusals were made final, applicant appealed. Applicant and the examining attorney filed briefs on the issue under appeal, including applicant's reply brief.

#### **Mere Descriptiveness**

We first consider the refusal to register under Section 2(e)(1) based upon the examining attorney's assertion that applicant's mark, HOUSING ANGELS, merely describes a function, feature or characteristic of the

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<sup>1</sup> Application Serial No. 85028127 was filed on May 5, 2010, based upon applicant's assertion of March 2010 as a date of first use and first use of the mark in commerce.

<sup>2</sup> Registration No. 3391823 issued on March 4, 2008.

services recited in the involved application.

In support of the refusal to register, the examining attorney made of record dictionary definitions of HOUSING and ANGEL. According to these definitions, HOUSING is defined as "accommodation: houses and other buildings where people live, considered collectively;" and ANGEL may be defined as "heavenly being: in some religions, a divine being who acts as a messenger of God;" "kind person: somebody who is kind or beautiful;" or "financial backer: somebody who provides financial support for an enterprise, e.g., a theatrical venture (*informal*)."<sup>3</sup>

The examining attorney further made of record advertisements and articles retrieved from Internet webpages displaying the term ANGEL used in connection with investors, including real estate investors. The following examples are illustrative:

Housing Angels  
Investor Program  
Click here if you are an Investor and want to be  
an Angel.  
Click here to view available properties that need  
an Angel Investor. ...  
Year 1  
Angel buys home for \$120,000 and offers it as a  
leaseback through the housing Angels program.

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<sup>3</sup> Encarta® World English Dictionary [North American Edition]  
2009.

Former owner will put \$3,000 into a broker trust account with a lease agreement with option to purchase.

Former owner will pay \$1,320 in rent per month. If the former owner wants to repurchase in the first year they will pay the Angel \$132,000. ... (housingangels.com);<sup>4</sup>

#### Angel Real Estate Investor Syndicates

If you are a commercial real estate developer seeking the participation of angel real estate investor syndicates in your project, then you should at least consider the syndication options and benefits the Rainmaker Marketing Corporation approach can provide. Most angel real estate investors and syndicates focus on the post-construction fractional ownership opportunities and thereby limit investor returns to generally less than a pathetic 10% per annum, but Rainmaker Marketing Corporation's proprietary commercial real estate due diligence documentation requirements allow developers to attract financing in the pre-construction phase of the real estate development program. ... (multifamilypropertyloans.com);

#### Real Estate Angel Investor

Are you interested in finding an angel investor for real estate?  
Finding an angel investor is critical to the development of your real estate company. ... (gobignetwork.com); and

#### Angel Investors aka Housing Angels

There have been recent talks about Angel Investors buying properties and allowing the previous owners to lease back from the investor. It's funny that this is now "new" since it was in the paper last week, but the fact is that it has been around for years.  
So what is an Angel Investor. Housing angels come in to buy homes from distressed home owners

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<sup>4</sup> Applicant's website.

and allow the sellers to stay in the house at market rent. They purchase the properties through the short sale process. ... (arizonarealestatehome.com).

Finally, the examining attorney made of record copies of two third-party registrations used in connection with services similar to those recited in the involved application in which the terms ANGELS or ANGEL INVESTORS are disclaimed in marks on the Principal Register. These registrations are:

Registration No. 3780127 on the Principal Register for the mark SEEDSTEP ANGELS with ANGELS disclaimed for

managing angel capital groups, namely, management of angel capital investments; financial services, namely, providing capital investment consultation and managing angel, seed or venture capital funds and financing for others; providing access to capital directly or by referrals, namely, providing financing opportunities to emerging and start-up companies; providing best practices financial and investment management advice to angel investors;

and

Registration No. 3943520 on the Principal Register for the mark ANGEL INVESTORS ANONYMOUS with ANGEL INVESTORS disclaimed for, *inter alia*,

Capital funding and investment services, namely, equity capital investment and early stage financing to companies by accredited investors.

Applicant, for its part, argues that the examining attorney has failed to make a *prima facie* case that HOUSING

ANGELS merely describes its services, mainly because the "word 'angel' is so well recognized by the public and associated with helping others, that the appellant's HOUSING ANGELS mark is a classic example of a double entendre."<sup>5</sup> In support of its position, applicant has made of record advertisements and articles from Internet webpages from the following organizations:

House Angels

House Angels is a Christian charity - our mission is to help make a difference to less fortunate neighbors in need by repairing their homes. Typically, these are homeowners who are elderly or are single parents, although, we will assist any no- or low-income folks.  
(houseangles.org);

Shelter Angel Network (SAN)

The Shelter Angel Network (SAN) connects private donors ("shelter angels") with people in need of safe housing through customized blogs on our website. Our software allows people in need to create self-managed WordPress blogs to share their personal housing stories using text and photos, and to solicit private donations using PayPal or ChipIn! Donation buttons.  
(reshelter.org);

Donate Your Car For Charity

Helping you give Car Donations is Our Specialty!  
Become a Car Angel, Donate a Car, Boat, Plane, House or RV!  
Receive a Tax Deduction while Avoiding Hassles that come from a Private Sale!  
(carangel.com); and

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<sup>5</sup> Applicant's brief, p. 8-9.

Donate Your Boat

Boat Angel

Please give us your boat even if it is not in running condition. We make all the arrangements to pick-up your boat, yacht or vessel at no cost to you.

You can receive the full fair market value as a lawful IRS tax deduction for your boat - Donate a boat today.

(boatangel.org).

Applicant argues that this evidence

demonstrates that the HouseAngels website is directed towards helping improve and repair homes for people. Similarly, Shelter Angels is directed towards connecting people in need of safe housing with private donors. Likewise, CarAngel and BoatAngel are associated with donor organizations. Therefore, it cannot be said with the level of certainty suggested by the office action that the term 'angels' has a primary significance that is descriptive in relation to the appellant's services.<sup>6</sup>

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, feature or characteristic thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. See Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. See also *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the

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<sup>6</sup> Id. at 9.

properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

In the instant case, the evidence made of record by the examining attorney supports a finding that, as applied to applicant's services, the term HOUSING ANGELS would immediately describe, without conjecture or speculation, a significant characteristic or feature of such services, namely, that they facilitate purchase and acquisition of HOUSING from distressed owners by ANGEL investors who purchase such housing for investment purposes and allow their distressed owners to avoid foreclosure. As noted above, applicant's services include real estate acquisition, investment, procurement and services to avoid foreclosure by means of mortgage debt management. Thus, as defined, HOUSING ANGELS merely describes a central

function, feature or characteristic of the recited services.

In addition, the Internet articles and advertisements submitted by the examining attorney establish that various entities use the term ANGEL or ANGELS to describe individuals or groups that invest in underfunded ventures including, *inter alia*, real estate or HOUSING to provide funding in return for a profit. As such, this evidence supports a finding that consumers are accustomed to encountering the term HOUSING ANGELS as used to describe the recited services. Material obtained from the Internet is acceptable in *ex parte* proceedings as evidence of potential public exposure to a term. *See In re Fitch IBCA, Inc.*, 64 USPQ2d 1058 (TTAB 2002).

Finally, the third-party registrations submitted by the examining attorney demonstrate that the terms ANGELS and ANGEL INVESTORS are subject to a disclaimer requirement in the context of two marks applied to various investment services. It is settled that each case must be decided on its own set of facts, and we are not privy to the facts involved with these registrations. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). *See also In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001). Nonetheless, these third-party registrations tend

to provide further support for the examining attorney's position that HOUSING ANGELS is merely descriptive in the context of applicant's services. In particular, we note that Registration No. 3780127 uses the terms "angel capital groups" and "angel investors" in its recitation of services to describe the services provided under the mark SEEDSTEP ANGELS. Use of the term "angel" in this recitation of investment-related services suggests that the term is merely descriptive thereof.

We are not persuaded by applicant's argument that because the term ANGELS in applicant's mark has other meanings unrelated or less directly related to its services, HOUSING ANGELS is not merely descriptive of its services. As noted above, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. In this case, the examining attorney has introduced evidence that while the term ANGELS may have multiple meanings, it has a particular meaning in relation to applicant's services, namely, an individual or group that invests in underfunded HOUSING and other ventures for profit. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, supra.*

Moreover, even if we were to find that HOUSING ANGELS has not previously been used in connection with applicant's real estate services, consumers are likely to view the designation as merely describing such services. The above evidence demonstrates that the combination of the descriptive terms HOUSING and ANGELS merely describes applicant's services, and that consumers have been exposed to descriptive use of the individual terms comprising applicant's mark in connection with related services. Thus, even if applicant is the first and/or at present the only user of the term HOUSING ANGELS in connection with such services, it is well settled that such use does not entitle applicant to the registration thereof where, as here, the term has been shown to immediately convey only a merely descriptive significance in the context of such services. See, e.g., *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983); and *In re Mark A. Gould, M.D.*, 173 USPQ 243, 245 (TTAB 1972).

Accordingly, we find that applicant's mark is merely descriptive as contemplated by Section 2(e)(1) of the Act.

#### **Likelihood of Confusion**

We next consider the examining attorney's refusal to register under Section 2(d). Our determination of the issue of likelihood of confusion is based on an analysis of

all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 27 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997).

The Marks

We first consider the similarity of applicant's HOUSING ANGELS mark and registrant's PROPERTY ANGELS mark. In determining the similarity or dissimilarity of marks, we must consider the marks in their entireties in terms of sound, appearance, meaning and commercial impression. See *du Pont, supra*. See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). 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 their entireties that confusion as to the source of the

goods and services offered under the respective marks is likely to result.

In this case, applicant's HOUSING ANGELS mark and registrant's PROPERTY ANGELS mark are similar in sight and sound to the extent that they share the word ANGELS as the second word of a two-word mark.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. V. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 23, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion"). 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 fact, 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 a consideration of the marks

in their entirety. *In re National Data Corp.*, 224 USPQ at 751.

We turn now to the meaning of the marks. As discussed above, we have found the combination of terms comprising applicant's mark, *i.e.*, HOUSING ANGELS, to be merely descriptive of real estate investment, procurement, acquisition, and related services to avoid foreclosure through debt management. In addition, the examining attorney made of record a definition of PROPERTY. According to that definition, PROPERTY is defined as "owned land or real estate: a piece of land or real estate that is owned by somebody."<sup>7</sup> Thus, the descriptive and disclaimed term PROPERTY merely describes a feature or characteristic of registrant's services. As a result, both marks consist of the term ANGELS preceded by the related terms HOUSING and PROPERTY, which merely describe the recited real estate services. Therefore, we find that the marks are more similar than dissimilar in appearance and sound.

We observe that, based upon our finding above that HOUSING ANGELS merely describes applicant's services, the PROPERTY ANGELS mark in the cited registration would appear

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<sup>7</sup> Encarta® World English Dictionary [North American Edition] 2009.

to be relatively weak as used in connection with registrant's "real estate agent" services. Nonetheless, Section 7(b) of the Trademark Act provides that a certificate of registration on the Principal Register shall be *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark and of the registrant's exclusive right to use the mark in connection with the goods or services identified in the certificate. Thus, the validity of the cited registration is not subject to collateral attack in this *ex parte* proceeding. *In re Dixie Restaurants*, 41 USPQ2d at 1534; and *In re Peebles Inc.*, 23 USPQ2d 1795, 1797 n.5 (TTAB 1992).

Moreover, even suggestive or weak marks are entitled to protection from the use of a very similar mark for legally identical services. *See In re Chica Inc.*, 84 USPQ2d 1845, 1850 (TTAB 2007), quoting *In re Colonial Stores*, 216 USPQ 793, 795 (TTAB 1982):

if the word CORAZON, and its English translation, was considered to be highly suggestive of jewelry, it nonetheless is entitled to protection from the use of a very similar mark on jewelry products. "[E]ven weak marks are entitled to protection against registration of similar marks, especially identical ones, for related goods and services."

In this case, because of the relationship between the real estate-related services, we find that the scope of protection of the cited PROPERTY ANGELS mark extends to applicant's highly similar HOUSING ANGELS mark.

In addition, the mark HOUSING ANGELS merely describes an angel investor who purchases houses or accommodations from distressed owners for profit while PROPERTY ANGELS very similarly suggests that registrant provides opportunities for angel investors in connection with its real estate agency services. As a result, we find that the marks are highly similar in meaning or connotation and, when viewed in their entireties, the similarities between HOUSING ANGELS and PROPERTY ANGELS outweigh the dissimilarities. It is settled that under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255 (TTAB 1980). Accordingly, this *du Pont* factor favors a finding of likelihood of confusion.

The Services and Their Channels of Trade

Turning next to our consideration of the recited services, we must determine whether consumers are likely to mistakenly believe that they emanate from a common source.

It is not necessary that the services at issue be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient instead that the respective services are related in some manner, and/or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. See *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

As identified, applicant's services are real estate acquisition, real estate procurement, real estate investment, and mortgage debt management. Registrant's services are real estate agent services. Thus, on the face of their respective recitations, applicant's services would appear to be related to those of registrant to the extent that both involve, *inter alia*, the purchase and sale of real estate. In other words, real estate agents facilitate applicant's broadly identified real estate acquisition and procurement.

The examining attorney further has submitted evidence from educational and commercial internet websites offering

real estate agency and real estate acquisition and procurement services.<sup>8</sup> In addition, the examining attorney has submitted evidence from educational and commercial internet websites offering both real estate agency and real estate investment services.<sup>9</sup> The foregoing evidence suggests that at least the real estate acquisition, procurement, and investment services offered by applicant are related to the real estate agent services offered by registrant, and that these services are offered by the same entities such that consumers would expect a single entity to provide both services.<sup>10</sup>

In view of the foregoing, and applying the applicable law to the evidence of record, we find that applicant's real estate procurement, acquisition and investment services are related to registrant's real estate agent services, and this *du Pont* factor also favors a finding of likelihood of confusion.

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<sup>8</sup> Examples include: straightarrowrealty.com; tampa4u.com; clarkhawaii.com; agentpreview.com; and floridamoves.com.

<sup>9</sup> Examples include: RealEstateAgencies.net; and bls.gov.

<sup>10</sup> We are aware that applicant's identification also includes mortgage debt management services directed toward avoiding foreclosure. However, it is not necessary for the examining attorney to prove likelihood of confusion with respect to each of the services identified in applicant's single-class application; if there is likelihood of confusion with respect to any of applicant's identified services, the refusal of registration must be affirmed. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Furthermore, because there are no restrictions in either applicant's or registrant's identification services as to the channels of trade in which the services may be encountered, or type or class of customer to which the services are marketed, both applicant's and registrant's services must be presumed to move in all normal channels of trade and be available to all classes of potential consumers, including those of each other's services. See *In re Elbaum, supra*. Furthermore, the record in this case suggests that the services of both applicant and registrant are directed toward the general adult population that purchases real estate. In consequence thereof, this *du Pont* factor further favors a finding of likelihood of confusion.

Care of Relevant Purchasers

Applicant contends that because the services involved "relate to extremely expensive purchases,"<sup>11</sup> purchasers of the involved services are careful and thus less likely to experience confusion. Even assuming *arguendo* that purchases of applicant's and registrant's services would involve a careful and deliberate decision, this does not mean that the purchasers are immune from confusion as to

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<sup>11</sup> Applicant's brief, p. 19.

the origin of the respective services, especially when, as we view the present case, the similarity of the marks and the similarity between the services outweigh any sophisticated purchasing decision. See *HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) [similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods]. See also *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 *du Pont* factor is, at best, neutral or somewhat favors a finding of likelihood of confusion.

#### Summary

We have considered all of the arguments and evidence submitted by applicant and the examining attorney in coming to our determination herein, including any arguments and evidence not specifically addressed in this decision. In light of the foregoing, we find that a likelihood of confusion exists between the applied-for mark and the mark in the cited registration.

**Decision**

The refusals of registration under Section 2(e)(1) and Section 2(d) of the Trademark Act are affirmed.