

This Opinion is Not a
Precedent of the TTAB

Mailed: August 26, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Ramesh Rao

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Serial No. 85766217

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Matthew H. Swyers of The Trademark Company,
for Ramesh Rao

Cynthia Rinaldi, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Bucher, Ritchie and Greenbaum,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Ramesh Rao (“Applicant”) seeks registration on the Principal Register of the
mark SCIENZMINDS (in standard characters) for

Educational services, namely, conducting classes in the
field of science, technology, engineering, math and
robotics in International Class 41.¹

¹ Application Serial No. 85766217 was filed on October 29, 2012, based upon Applicant’s
allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the
Trademark Act.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with Applicant's services, so resembles the previously registered standard character mark SCI-MIND for

Educational services, namely, providing online instruction in the field of science, distributing training materials in connection therewith; educational services, namely, providing non-downloadable webinars and video tutorials in the field of science in International Class 41

as to be likely to cause confusion, mistake, or deception of prospective consumers.²

After the Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. Applicable Law

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 (CCPA 1973). See also *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905 (Fed. Cir. 2012); and *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *Federated Foods, Inc. v. Fort Howard Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the

² Registration No. 4411619, issued October 1, 2013.

marks.”). We consider each of the factors as to which Applicant or the Examining Attorney presented arguments or evidence. The others, we consider to be neutral.

A. The Services and Channels of Trade

We begin with the *du Pont* factors of the relatedness of the services and channels of trade. We base our evaluation on the services as they are identified in the application and registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 76 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002).

In this case, the “educational services, namely, conducting classes in the field of science” described in the application encompass, and therefore must be considered to be legally identical to, the “online instruction,” “non-downloadable webinars and video tutorials in the field of science” described in the registration. *See In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006), *citing In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981) (unrestricted and broad identifications are presumed to encompass all services of the type described). It is settled that likelihood of confusion must be found if there is likely confusion with respect to any items that comes within the identification of services in the application. *See Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Concerning the channels of trade and classes of purchasers, because the services are legally identical and there are no limitations as to channels of trade or classes of

purchasers in either the application or cited registration, we must presume that Applicant's and Registrant's educational services in the field of science will be sold in the same channels of trade, such as educational institutions and foundations, and will be bought by the same classes of purchasers, including members of the general public who are interested in science. *Viterra*, 101 USPQ2d at 1908 (absent restrictions in an application and/or registration, the identified services are "presumed to travel in the same channels of trade to the same class of purchasers.") quoting *Hewlett-Packard*, 62 USPQ2d at 1001. See also *Stone Lion*, 110 USPQ2d at 1161; *In re Linkvest*, 24 USPQ2d 1716, 1716 (TTAB 1992).

Applicant submitted his affidavit (with attached exhibits) stating that he offers an enrichment program for children that is geographically limited to the Washington DC metro area, while Registrant offers online courses for those in scientific or related professional fields, and that the services are different, move in different channels of trade, are marketed differently,³ and are targeted to different purchasers, with Applicant's target market consisting of "parents of students aged three to fourteen years, who are seeking enrichment programs for their children in the fields of science, technology, math, literacy, and robotics education." Rao Aff. ¶¶ 2-8. We cannot consider these purported limitations on the scope of Applicant's or Registrant's services because no such limitations are reflected in the application or registration. In considering the scope of the application and registration, we are bound by the identifications in the application and registration themselves and not

³ The record reflects that both Applicant and Registrant use social media and promote their services through their respective websites.

to extrinsic evidence about Applicant's or Registrant's services. *See Hewlett-Packard*, 62 USPQ2d at 1004; *Octocom*, 16 USPQ2d at 1787; *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 (TTAB 2008).⁴ In addition, Applicant's argument as to any geographic difference between the services is not pertinent as Applicant seeks a nationwide registration and the cited registration is not geographically limited.

These *du Pont* factors of the similarity of the marks and channels of trade weigh strongly in favor of finding a likelihood of confusion.

B. The Marks and the Number and Nature of Similar Marks in Use in Connection With Similar Services

We next turn to the first *du Pont* factor focusing on the similarity between the marks. We must compare the marks in their entirety as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), *quoting du Pont*, 177 USPQ at 567. "The proper test is not a side-by-side comparison of the marks, but instead 'whether the marks are sufficiently similar in terms of their commercial impression' such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Winnebago Industries, Inc. v. Oliver &*

⁴ Moreover, we note that the two target markets, as set forth in Applicant's affidavit, are not mutually exclusive, as parents of students aged three to fourteen who seek enrichment programs for their children in the above noted fields could also be science professionals.

Winston, Inc., 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

In comparing the marks, we are mindful that where, as here, the services are legally identical, the degree of similarity between the marks necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Prods. Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

Applicant's mark SCIENZMINDS and Registrant's mark SCI-MIND are similar in appearance and sound in that both consist of two terms and share the identical first three letters and the same last word, albeit one in singular and one in plural form. There is no material difference between singular and plural forms of the same term. *See, e.g., In re Belgrade Shoe*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969); *Weider Publ'ns, LLC v. D&D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014); *In re Strategic Partners Inc.*, 102 USPQ2d 1397, 1399 (TTAB 2012) ("the difference between the singular form ANYWEAR depicted in the applied-for mark and the plural form ANYWEARS in applicant's existing registration is not meaningful."). Likewise, the presence or absence of a hyphen or a space does not distinguish Applicant's marks from Registrant's mark in any meaningful way. *See, e.g., Nahshin v. Prod. Source Int'l LLC*, 107 USPQ2d 1257, 1258 n.2 (TTAB 2013) ("the presence or absence of a hyphen is insignificant to our ultimate decision.");

Mag Instrument Inc. v. Brinkmann Corp., 96 USPQ2d 1701, 1712 (TTAB 2010) (hyphen did not distinguish MAGNUM from MAG-NUM).

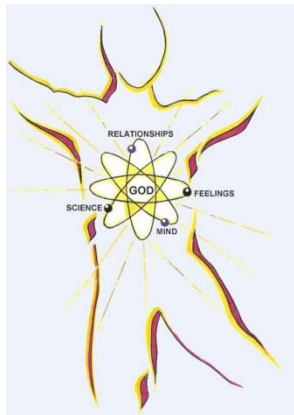
The primary difference in the marks is the inclusion of ENZ in Applicant's mark. However, we find that this element is insufficient to distinguish the marks because as used in Applicant's mark, it results in a term, SCIENZ, that is the phonetic equivalent of, and has the same meaning as, the word "science." Similarly, the SCI portion of Registrant's mark is a common abbreviation for the word "science."⁵ For example, the popular term "sci-fi" refers to "science fiction."⁶ Thus, while the terms SCIENZ and SCI, as they appear in Applicant's and Registrant's mark, are not identical, they share the common meaning of the word "science." As a result, the marks SCIENZMINDS and SCI-MIND, when applied to the science classes identified in the application and registration, have the same meanings and create the same commercial impressions.

Applicant argues that there are several similar marks registered for similar services that serve to dilute Registrant's mark SCI-MINDS. Applicant has only submitted seven third-party registrations. In addition to being limited in number, the registrations are of limited probative value because they do not establish that the registered marks identified therein are in actual use in the marketplace or that

⁵ The Examining Attorney attached to the December 30, 2013 Office Action a printout from acronymfinder.com listing "Science" as the first result to the query "What does SCI stand for?"

⁶ Random House Dictionary (2014) posted at Dictionary.com Unabridged defines "sci-fi" as "science fiction." The Board may take judicial notice of dictionary definitions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). *See also University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

consumers are accustomed to seeing them. See *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010). Moreover, none of these registrations is as close in sound, appearance, meaning and commercial impression to the cited registered mark SCI-MIND as is Applicant's mark SCIENZMINDS, and several are for goods or services that are different from the services identified in the application and cited registration. For example, EMPOWERING MINDS THROUGH SCIENCE is a



totally different mark and is registered for classes, lectures, seminars and workshops in the field of health; Spiritual Engineering's design mark at left is registered for lectures, seminars and workshops in the field of spirituality; World

Scientific's mark at right is registered



for publications in various fields, including science, but not for educational services;



the Scientific Minds mark at left⁷ includes a

significant design element, and the services are noticeably different from the services identified in the cited registered mark.⁸

⁷ This special form service mark is registered for "providing a web site featuring temporary use of online non-downloadable software for viewing instructional videos in a K-12 education curriculum which also enables educators and parents to assess, track and report a student's progress in the areas of science, math, English, social studies, reading, agriculture and vocational and technology education; all of the foregoing offered only to school districts for implementation in schools within their respective districts."

Accordingly, this *du Pont* factor weighs in favor of a finding of likelihood of confusion.

C. Consumer Sophistication

With regard to the conditions of sale, Mr. Rao states in his affidavit that the purchasers are sophisticated and the services are offered at different price points. Rao Aff. ¶ 9. Again, because we are bound by the description of services in the application and registration and because the descriptions of services are not restricted as to price or channels of trade, the services at issue must include inexpensive as well as more expensive science classes and all channels of trade and classes of consumers, including science professionals and the general public. The standard of care for our analysis is that of the least sophisticated purchaser. *Stone Lion*, 110 USPQ2d at 1163. Moreover, even if purchasers are sophisticated or knowledgeable in a particular field, that does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion, especially in cases like this one, involving similar marks and legally identical services. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000). *See also In re Cook Medical Technologies LLC*, 105 USPQ2d 1377, 1383 (TTAB 2012). This factor therefore is neutral.

⁸ The other three registrations are for ONE SCIENCE, MANY MINDS, SCIENTIFIC AMERICAN MIND, and the special form drawing shown at right.



D. Lack of Actual Confusion

In addition to the foregoing factors, Applicant raised the *du Pont* factor relating to a lack of actual confusion, noting in his affidavit that he is unaware of any instances of confusion with the cited mark despite coexistence since September 18, 2012.⁹ Rao Aff. ¶ 11. This uncorroborated statement of no known instances of actual confusion is of little evidentiary value. See *Majestic Drilling*, 65 USPQ2d at 1205 (“uncorroborated statements of no known actual confusion are of little evidentiary value.”); *In re Bissett-Berman Corp.*, 476 F.2d 640, 642, 177 USPQ 528, 529 (CCPA 1973) (self-serving testimony of applicant's corporate president that he was unaware of instances of actual confusion was not conclusive that actual confusion did not exist or that there was no likelihood of confusion). Moreover, the lack of actual confusion carries little weight, *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 144 USPQ 435, 438 (CCPA 1965), especially in an *ex parte* context, and indeed where Applicant has, in fact, noted that the parties are currently targeting different demographics, which would indicate little opportunity for actual confusion to occur. See *Cunningham*, 55 USPQ2d at 1847. Therefore, this factor also is neutral.

II. Conclusion

Having considered the arguments and evidence of record and all relevant *du Pont* factors, we find that Applicant's mark, used in connection with Applicant's services, so closely resembles the cited registered mark, used in connection with

⁹ As noted *infra*, the application is filed under Section 1(b), and despite the dates of use listed in Applicant's affidavit, there are no dates of use in the record.

Registrant's services, as to be likely to cause confusion, mistake or deception as to the source of Applicant's services.

Decision: The refusal to register is affirmed.