

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MAGNADYNE CORPORATION)	Opposition No. 91175280
Opposer,)	
)	Serial No. 76/655. 958
vs.)	Mark: MOVIEVISION
)	
MOVIEVISION INC.,)	
Applicant.)	
)	
_____)	

APPLICANT'S MOTION FOR RECONSIDERATION



07-31-2009

Applicant MOVIEVISION, INC., (“Applicant”) submits its Motion to Reconsider this Board’s Order dated April 9, 2009, denying Applicant’s intent-to-use application for the mark MOVIEVISION and Design, and sustaining the Opposition filed by Magnadyne Corporation, Inc. (“Opposer”).

Applicant’s Motion is based on the ground that this Board erred in finding that Applicant’s intended mark “Movievision” including its intended use by Applicant are similar to Opposer’s registered mark “Movievision MV”, and that its similarity will likely lead to confusion.

I

HISTORICAL BACKGROUND

On or about March 2, 2006, Applicant filed an intent-to-use application for the mark “Movievision”, for pay-per-view transmission services featuring recently released movies in English, Spanish, Cantonese and Russia via cable,” in International Class 38 (“Application”).

Opposer filed an Opposition to Applicant’s Application stating among other things that Applicant’s mark “MOVIEVISION” is identical to the mark covered by Opposer’s registration, and that the goods/services that are being intended to be offered by Applicant is related to the services that it is currently offering to the public, namely for “video entertainment systems for vehicles, namely, electronic audio, video and video game components in the nature of video cassette players, digital video disk players, video game players and television receivers with video display devices.”

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On April 9, 2009, this Board denied Applicant's Application stating because of the similarity of marks, the similarity of goods and services, and the similarity of the purchasers, Applicant's mark MOVIEVISION and Design is likely to cause confusion with Opposer's MOVIE VISION marks.

II

ARGUMENT

- A. The Board Erred In Finding That Because of The Similarity Of Marks, the Similarity of Goods And Services, and The Similarity of The Purchasers, Applicant's Mark MOVIEVISION and Design Will Likely To Cause Confusion With Opposer's MOVIE VISION Mark.

In the case of *McGraw-Edison v. Walt Disney Productions*, 787 F.2d 1163, 1167-68 (7th Cir. 1986), the Seventh Circuit has considered several factors to be important:

"The degree of similarity between the marks in appearance and suggestion; the similarity of the products for which the name is used; the area and manner of concurrent use; the degree of care likely to be exercised by consumers; the strength of the complainant's mark; actual confusion; and an intent on the part of the alleged infringer to palm off his products as those of another."

Applying these factors to the case at hand, Applicant's mark "MOVIEVISION" is highly dissimilar to Opposer's mark "MOVIEVISION MV" in appearance and suggestion. Although these marks uses the same words "movievision", their logo, design or emblem appear differently. While Opposer's mark consist of two words "Movie" and

“Vision”, Applicant mark only consist of one word, the connecting word of “Movievision”. While Opposer’s mark is enclosed by black rectangle with a circle containing two zig-zag lines and the words “Movie” and “Vision” on two lines, on the other hand Applicant’s mark is printed in one line and in upward arc shape which is common in cinema to indicate that the word is going around. This is similar to the mark of “Universal Studios”. Furthermore, Opposer’s mark uses a symbol “MV” which is located on the left hand side of the two-line words “Movie” and “Vision”, on the other hand, Applicant’s mark does not use any symbol or emblem or logo.

Applicant contends that the words “Movie” and “Vision” or “Movievision” is a generic mark. This word is likened to the term “Computer”, which is a generic term for computer equipment. It has been established that generic marks are not entitled to any protection under the trademark law. Thus, a manufacturer selling “Computer” brand computers (or “Apple” brand apples, etc) would have no exclusive right to use that term with respect to that product. It has been found that generic terms are not protected by trademark law because they are simply too useful for identifying particular product. Giving Opposer control over the use of the term “movie vision” would give Opposer too great a competitive advantage. When considering the similarity of the marks, the courts stated . . . “an inquiry into the degree of similarity between two marks does not end with a comparison of the marks themselves . . . ‘the setting in which a designation is used affects its appearance and colors the impression conveyed by it’

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B. The Board Erred In Finding That the Purchasers of Opposer's Video Entertainment Systems and Purchasers of Applicant's Pay-Per-View Services Would Overlap And Said Purchasers Would be Likely To Ascribe A Common Origin or Sponsorship to The Goods and Services.

Contrary to the Board's findings, the product that Applicant intends to sell will not likely lead to confuse the general public with the product or services Opposer is currently selling. As cited in the Opposer's website, it states that its business consist of "automotive electronics and wireless industry . . . vehicle security systems, wireless products, mobile video and high performance car audio product..." This type of service was acknowledged and admitted by Barry Lawrence Caren, Opposer's president and CEO testified that they have continuously been using the mark MOVIE VISION in connection with products listed in its federal registration (i.e., video entertainment systems for vehicles, namely electronic audio, video and game components in the nature of video cassette players, digital video disk players, video game players and television receivers with video display devices. This clearly suggests that Opposer is in the business of providing hardware. Therefore, Opposer's clientele are specific industry professional and resellers as opposed to the general public. Unlike Opposer, Applicant does not sell the actual box or video entertainment systems, video and game components, video game players, or television receivers in order to watch pay-per-view movies. Instead, Applicant's main business is to provide video streams much like CNN or HBO on a similar platform or pay-per-view movies so that individuals, who are cable television subscribers, can watch movies through their cable television providers at their home.

Unlike, Opposer's product or service, Applicant's product or service is not, and cannot be made available in the individual's vehicle. In the same token, an individual or individuals cannot also watch pay-per-view movies in their vehicles even if such individual is equipped with Opposer's product because based on Applicant's information and belief, cable television providers are not allowed to transmit pay-per-view movies on vehicles. Said individual may be able to watch "rental" movies, which they physically rent from either Blockbuster or other rental company, using Opposer's product. However, these individuals cannot and would not be able to watch pay-per-view movies even if they have Opposer's product installed in their vehicles. Therefore, the prospective purchasers of Applicant's product or service is not available to all classes, and is confined only to a specific class, that is, it is only available to the subscribers of a cable television network.

Therefore, this is no similarity of the products for which Applicant intends to use its service and the service or product that Opposer is actually using its service. Also, there is no likelihood of confusion in this case because Applicant's product or service and the Opposer's actual product or service does not overlap to a certain degree. There is no actual overlap in the parties' products and services because Applicant's product or services is only confined or relates to pay-per-view movies while Opposer's product and services relate to video entertain systems, electronic audio and video and video games components in the nature of video cassette players, digital video disk players, video game players and television receivers. Also, Applicant and Opposer cater their services to a different class of individuals. Applicant caters its service to cable television subscribers.

Opposer asserts that its systems are capable of receiving broadcast movies and other programming through an antenna, however, while Opposer describes its consumers as "anyone who would like to watch a movie", this is not contained or listed in their trademark registration. Furthermore, this argument is absurd since it tends to suggest that any person who goes to movies has "cable" and are able to subscribe to pay per view channels. As discussed above, even if an individual has an antenna installed in their vehicles, he or she still cannot view or watch pay-per-view movies.

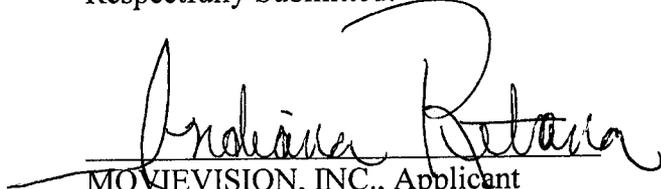
III

CONCLUSION

Based on the foregoing reasons, Applicant requests that this Board reconsiders its previous order denying Applicant's Application.

DATED: June 29, 2009

Respectfully Submitted:


MOVIEVISION, INC., Applicant

CERTIFICATE OF SERVICE

I certify that I served:

Applicant's Motion for Reconsideration

on July 29, 2009 by:

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_____ mailing (via First Class mail)

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Dated: July 29, 2009


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