

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Magnadyne Corporation  
v.  
Movievision, Inc.

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Opposition No. 91175280  
to application Serial No. 76655958  
filed on March 2, 2006

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REQUEST FOR RECONSIDERATION

Hope V. Shovein of Brooks Kushman P.C. for Magnadyne Corporation.

Movievision, Inc. *pro se*.

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Before Grendel, Mermelstein and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

On July 31, 2009, Movievision, Inc. ("applicant") filed a request for reconsideration from the April 9, 2009 decision sustaining the opposition and refusing registration. Applicant had filed an intent-to-use application for the mark MOVIEVISION and Design, shown below, for services ultimately identified as "pay-per-view television transmission services featuring recently released

movies in English, Spanish, Cantonese, and Russian via cable," in Class 38.

# MovieVision

Magnadyne Corporation ("opposer") filed a notice of opposition against the registration of applicant's mark on the ground of priority of use and likelihood of confusion pursuant to Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d). Specifically, opposer alleged that it has used and that it is the owner of two federally-registered marks for MOVIE VISION, in standard character form,<sup>1</sup> and in a logo format, shown below,<sup>2</sup> both 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," in Class 9, and that applicant's mark is likely to cause confusion with opposer's marks.



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<sup>1</sup> Registration No. 2518066, issued December 11, 2001; Section 8 and 15 affidavits accepted and acknowledged. Applicant disclaimed the exclusive right to use the word "movie."

<sup>2</sup> Registration No. 2520719, issued December 18, 2001; Section 8 and 15 affidavits accepted and acknowledged. Applicant disclaimed the exclusive right to use the word "movie."

In its request for reconsideration, applicant essentially reargued its case addressing the Board's analysis and findings of facts. In essence, the request for reconsideration was akin to a brief in opposition to the decision. However, the premise of a request for reconsideration is that, based on evidence of record and the prevailing authorities, the Board erred in reaching its decision. In other words, the request for reconsideration should be limited to a demonstration that based on the evidence of record and the applicable law, the Board's ruling is in error and must be changed. See TBMP §§543 and 1219.01 (2<sup>nd</sup> ed. rev. 2004). Other than disagreeing with the decision and rearguing its case with some additional arguments, applicant did not specifically point out erroneous findings of fact or any misapplication of the law.

With respect to the similarity of the marks, applicant utilized a side-by-side analysis of the marks despite the admonition that a side-by-side comparison is not the appropriate test. In addition, applicant asserted, without any evidence, that the term "Movie Vision" or "Movievision" "is a generic mark" presumably for electronic equipment; however, applicant did not identify the specific class of products or services to which it was referring (e.g., pay-per-vision television or video entertainment services). In any event, applicant's generic argument constitutes a

collateral attack on the validity of opposer's standard character registration which we cannot consider absent a counterclaim to cancel. Trademark Rule 2.106(2), 37 CFR §2.106(2).

With respect to the similarity or dissimilarity of the goods and services, applicant improperly contends that "Opposer's clientele are specific industry professional and resellers as opposed to the general public." However, opposer's description of goods is unrestricted and it is common knowledge that "video entertainment systems" may be purchased by ordinary, average consumers some of whom may be pay-per-view movie subscribers. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987) (the Board must determine likelihood of confusion based on the goods set forth in the application and the opposer's registration, rather than on what any evidence may show those goods to be); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because registrant's goods are broadly described, without any limitations, we must presume that they would travel in the same channels of trade normal for those goods and to all classes of consumers for those goods).

After careful review of the evidence of record, the April 9, 2009 decision and applicant's request for reconsideration, we find that the decision was correct and

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that we did not make any erroneous findings of fact or incorrectly apply the appropriate authorities.

Decision: Applicant's request for reconsideration is denied.