Mailed:
May 29, 2012
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Technical College System of Georgia

v.

Louisiana Economic Development

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Opposition No. 91191683
against Serial No. 77648122

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William H. Needle and Troy E. Larson of Ballard Spahr LLP for Technical College System of Georgia.

Marc C. Whitfield of Taylor Porter Brooks and Phillips LLP for Louisiana Economic Development.

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Before Bucher, Grendel and Ritchie, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Louisiana Economic Development, a Louisiana state agency [hereinafter "applicant" or "LED"], seeks registration on the Principal Register of the mark **Louisiana FastStart** *(in standard character format)* for services recited in the application, as amended, as follows:

> business training services, namely, training in the fields of headquarters operations, call center operations, operation of distribution centers, technical training related to product manufacturing and team

skills and leadership training in International Class 41.[1]

Technical College System of Georgia, a Georgia state agency [hereinafter "opposer" or "TCSG"], opposed registration of LED's mark, asserting as its ground for opposition, likelihood of confusion, namely that as used in connection with LED's services, the mark so resembles TCSG's previously-used and registered mark **QUICK START** in connection with "educational services; namely, industrial training of managers and other employees of companies"[2] in International Class 41, as to be likely to cause confusion, to cause mistake or to deceive.

Preliminary Matters

LED objects to substantially all of TCSG's evidence. We will examine each of these objections, as well as make additional evidentiary observations of our own.

Each party to this litigation filed a motion to suspend pending negotiations [December 1, 2009 and January 28,

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[1] Application Serial No. 77648122 was filed on January 13, 2009 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. No claim is made to the exclusive right to use the word "Louisiana" apart from the mark as shown.

[2] Opposer claims ownership of Registration No. 1806463 that issued on November 23, 1993, but as will be discussed in detail, *infra*, failed properly to introduce into the record at any point a status and title copy of the subject registration, so opposer cannot rely upon this registration for purposes of standing or priority.

2010]. TCSG's Motion for Extension of Trial Periods with Consent (October 14, 2010) was accepted by the Board, and a corresponding Order was issued with deadlines as follows:

Discovery Closes:	CLOSED
Plaintiff's Pretrial Disclosures:	December 15, 2010
Plaintiff's 30-day Trial Period Ends:	January 29, 2011
Defendant's Pretrial Disclosures:	February 13, 2011
Defendant's 30-day Trial Period Ends:	March 30, 2011
Plaintiff's Rebuttal Disclosures:	April 14, 2011
Plaintiff's 15-day Rebuttal Period Ends:	May 14, 2011

As of the close of its trial period on January 29, 2011, TCSG had not filed any evidence in support of its opposition. LED timely filed its trial evidence on or before March 30, 2011. On April 29, 2011, after the expiration of both parties' main trial periods, TCSG filed the December 7, 2010, trial testimony of Ms. Heidi Green, with attached exhibits. Then on May 16, 2011, after the close of TCSG's rebuttal period, TCSG filed five Notices of Reliance. On July 6, 2011, TCSG filed a supplemental Notice of Reliance regarding two exhibits to a discovery deposition of a witness affiliated with applicant. On September 2, 2011, LED filed an objection to substantially all of TCSG's evidence. These objections were continued in LED's final brief on the case.

LED objects to all of TCSG's notices of reliance as well as the testimony of Ms. Heidi Green and the exhibits attached thereto. Specifically, LED contends that none of

TCSG's five Notices of Reliance were timely filed, pursuant to 37 C.F.R. § 2.123(k); that TCSG has not authenticated the proffered evidence or specified a reason or purpose such documents would be used in this proceeding, pursuant to 37 C.F.R. § 2.122; that reliance upon these documents for the truth of the contents contained therein would be hearsay; as well as additional specific objections to each category of documents placed into the record.

We will review LED's objections to several broad categories of TCSG's evidence as follows:

TCSG's Notice of Opposition / Getting cited registration into evidence

TCSG's Notice of Opposition averred as follows:

> Opposer is the owner of the incontestable federal registration for **QUICK START®**, Registration No. 1806463, for "educational services, namely, industrial training of managers and other employees of companies" …. Opposer's registration is valid, subsisting and is in full force and effect.

(Notice of Opp. at ¶ 2, Dkt. No. 1). TCSG claims that it "downloaded the '463 Registration to its Notice of Opposition via the Board's ESTTA electronic filing system." While it is true that the ESTTA cover sheet contains a reference to the claimed registration, this does not provide current status of, and current title to, the registration, as required by Trademark Rule 2.122. 37 C.F.R. § 2.122(d). See also TBMP § 704.03(b)(1)(A). Moreover, in its answer,

LED said that "Applicant does however admit the existence of a registered trademark for QUICK START to a registrant other than Opposer and lacks knowledge regarding whether this mark has been validly assigned to Opposer." (Answer at ¶ 2, Dkt. No. 4.) We find that this is not an admission on LED's part, so LED's answer is not deemed to be an admission of TCSG's ownership of this registration or its validity. See TBMP § 704.03(b)(1)(A) n.19 (3d ed. 2011) and cases cited therein.

Even in the absence of a counterclaim attacking the validity of TCSG's '463 Registration, we must carefully scrutinize whether any actions taken by either party to this litigation permits us to treat the registration's currency and ownership by TCSG as having been correctly introduced or that those issues were tried by express or implied consent. *See* Fed. R. Civ. P. 15(b). Hence, if it is neither properly introduced nor tried by consent, TCSG cannot rely on this registration for proving its standing, priority, or likelihood of confusion.

TCSG's Notices of Reliance

On May 16, 2011, TCSG filed five different Notices of Reliance. The materials on which TCSG was relying consisted of: (i) a United States Patent and Trademark Office printout pertaining to TCSG's mark: QUICK START (Dkt. #16); (ii) LED's response to TCSG's Interrogatory No. 3, (Dkt. #17); (iii) additional portions of, and exhibits from, a discovery deposition taken by LED of TCSG's representative, Ms. Jackie M. Rohosky, on September 27, 2010, (Dkt. #18); (iv) excerpts and exhibits from a discovery deposition taken by TCSG of a witness affiliated with LED, Jeff Lynn, on August 31, 2010, (Dkt. #19); and (v) excerpts and exhibits from a discovery deposition taken by TCSG of a witness affiliated with LED, Stephen Moret, on August 31, 2010, (Dkt. #20). Later, on July 16, 2011, TCSG filed a supplemental Notice of Reliance regarding two exhibits inadvertently excluded from the submission of Mr. Moret's discovery deposition (Dkt. #20), (Dkt. #22).

LED argues that each of TCSG's Notices of Reliance were required to be filed during TCSG's testimony period pursuant to 37 C.F.R. § 2.120(j), 37 C.F.R. § 2.122(d) and/or § 2.122(e). *Syngenta Crop Protection Inc., v. Bio-Chek, LLC.*, 90 USPQ2d 1112, 1115 (TTAB 2009) ("A notice of reliance must be submitted during the testimony period of

the offering party.") LED argues that inasmuch as they were not timely and properly filed, TCSG's Notices of Reliance should be disregarded entirely.

Although TCSG responds that it disagrees with LED's characterization of this evidence as untimely and LED's characterization of portions of it as hearsay and/or irrelevant, TCSG notes that it did not rely on these materials in its trial brief or in its reply brief, making this objection moot. Of course, one of the submitted evidentiary matters that TCSG has therefore agreed not to rely upon (according to TCSG's latest response to LED's objections) would have been the notice that placed a status and title copy of TCSG's registration into the record. Accordingly, to the extent opposer intends to rely upon these notices of reliance, we deem them to have been untimely submitted after the close of opposer's main testimony period.

The testimony deposition of Ms. Heidi Green and exhibits thereto

The testimony deposition of Ms. Heidi Green was taken on December 7, 2010. While this deposition appears to have been taken before TCSG's thirty-day testimony period actually began, LED's counsel appeared without objection on the ground of untimeliness at the scheduled deposition. Of course, TCSG's premature scheduling of a deposition is an

error which could have been corrected on seasonable objection, and hence we find that LED has waived this ground for objection. See *Of Counsel Inc. v. Strictly of Counsel Chartered*, 21 USPQ2d 1555, 1556 n.2 (TTAB 1991) (objection to untimeliness of testimony deposition taken two days before period opened was waived); TBMP § 707.03(b)(1) n.2 (3d ed. 2011) and cases cited therein. Hence, we have considered this testimony despite the fact that it was taken outside TCSG's testimony period. Additionally, although this testimony deposition was not served on LED within the time frame set by the rules, Trademark Rule 2.125(a) (requiring service of a copy of testimony "within thirty days after completion of the taking of that testimony"), applicant made no motions to reset its briefing period as a result of opposer's failure to serve this testimony,[3] and so we deem applicant to have waived any objection to timeliness because it did not seek the remedy specified in the rule.

LED also objects to the testimony of Ms. Green inasmuch as she is an employee of the TCSG Department of Economic Development (GDEcD), which is a separate State agency from

[3] "If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate." Trademark Rule 2.125(a).

TCSG. While we agree that we must restrict the scope of Ms. Green's testimony to matters within her direct knowledge, the mere fact she is employed by a different Georgia state agency is not relevant. Ms. Green can testify as to any relevant fact of which she has personal knowledge, and we will accord the probative value to every aspect of Ms. Green's testimony that it is due.

Opposer's Reliance Upon Deposition Excerpts for Jackie Rohosky

As we discussed earlier in the context of LED's objection to the timeliness of TCSG's notices of reliance, this deposition is another one of the submitted evidentiary matters that TCSG has apparently agreed not to rely upon according to TCSG's response to LED's objections. However, LED also argues that while TCSG said in its notice that this discovery deposition was taken by opposer, this deposition was clearly scheduled and taken by LED. Accordingly, inasmuch as under Trademark Rule 2.120(j) a party may not ordinarily rely upon the discovery deposition of its own agent, we find that this discovery deposition this deposition does not properly form a part of the record herein. See *Visual Information Institute, Inc. v. Vicon Industries, Inc.*, 209 USPQ 179 (TTAB 1980); and *Rogers Corporation v. Fields Plastics & Chemicals, Inc.*, 172 USPQ 377 (TTAB 1972).

Moreover, given that LED had earlier submitted part of this discovery deposition, TCSG was entitled to introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by LED, the submitting party. However, in such a case, the notice of reliance filed by TCSG must be supported by a written statement explaining why it needs to rely upon each additional part listed in TCSG's notice. Inasmuch as TCSG failed to do this, we have not considered these additional parts. 37 C.F.R. § 2.120(j)(4); and TBMP § 704.09, n.1 (3d ed. 2011) and cases cited therein.

The Record

In light of the resolutions above of LED's objections, TCSG's evidence is limited to the testimony deposition of Ms. Heidi L. Green, taken on December 7, 2010. A copy of the transcript of the deposition and exhibits were filed with the Board on April 29, 2011. (Green Test. Dep., Dkt. No. 15.)

LED took the testimony deposition of its Executive Director, Jeff Lynn, on March 9, 2011, and a copy of the transcript of the deposition and exhibits were filed with

the Board on March 30, 2011. (Lynn Test. Dep., Dkt. Nos. 12, 14.).

Also on March 30, 2011, LED filed Notices of Reliance on the following:

- Excerpts from the discovery deposition of Ms. Jackie M. Rohosky, Economic Development Programs Assistant Commissioner of Georgia Quick Start, taken on September 27, 2010. (Rohosky Disc. Dep., Dkt. No. 11); and
- Third-party registrations for educational services wherein the marks contained formatives of FAST-, QUICK-, JUMP-, etc. (Dkt. No. 13).

Standing

As we noted recently in the case of *Syngenta Crop Protection,* 90 USPQ2d at 1118:

> Opposer must demonstrate its standing to pursue this opposition, *i.e.*, that it has a reasonable belief that it would be damaged by registration of applicant's mark. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). … As noted above, opposer failed to properly introduce the pleaded registration … .

Nonetheless, the testimony of Ms. Heidi L. Green establishes that at some point opposer likely used the mark Georgia Quick Start in connection with business training services as pleaded by opposer. Green Test. Dep., Dkt. No. 15, at 9-47. This testimony is sufficient to support

opposer's allegations of a reasonable belief that it would be damaged by registration of applicant's mark. We note that proof of standing in a Board opposition has a low threshold, intended only to ensure that the plaintiff has a real interest in the matter, and is not a mere intermeddler. *See e.g., Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999).

Priority

Having found that Ms. Green's testimony about TCSG's use of the Georgia Quick Start mark is sufficient to demonstrate TCSG's standing, we turn then to the question of whether her testimony is sufficient to allow TCSG to prevail on its priority / likelihood of confusion claim. Had TCSG properly introduced its trademark registration, the registration itself would have been sufficient to remove priority as an issue to be proven. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). But having found that TCSG has not proven ownership of a trademark registration in its Notice of Opposition or in later, untimely-filed Notices of Reliance, TCSG must rely upon the testimony of Ms. Green to establish its ownership of a prior common-law service mark right. She was not asked to prove ownership of this registration, nor is it clear she

had such knowledge. Accordingly, it is TCSG's burden under Section 2(d) of the Lanham Act to demonstrate that it owns a common law service mark that was used prior to LED's mark, and not abandoned.

Ms. Green worked on former Georgia Governor Sonny Perdue's transition team (2002) and served for four years (2003-2007) as Governor Perdue's director of intergovernmental affairs and as his senior advisor in economic development. Green Test. Dep., Dkt. No. 15, at 7. In mid-2007, she became Deputy Commissioner of the Georgia Department of Economic Development (GDEcD) for Global Commerce.[4] Then in mid-2010, Ms. Green became Commissioner of that department – the position she held at the time of her testimony herein, on December 7, 2010. *Id.* at 8-9.

It is clear from her testimony that TCSG's own Georgia Quick Start workforce training program works closely with the GDEcD, for purposes of business recruitment projects for the state of Georgia. *Id.* at 9-47.

Georgia Quick Start is allegedly administered by applicant, the Technical College System of Georgia (TCSG), formerly Georgia's Department of Technical and Adult

[4] We do note instances of confusion on Ms. Green's part about the dates on which she served in various state government positions. *E.g., Id.* at 7:17-27; 8:8-9; 50:15-24.

Education (DTAE). *Id*. at 11, 59. In short, TCSG, through Georgia's system of technical colleges, oversees the state's economic and workforce development programs. *Id*. at 10-15. The Georgia Quick Start program is a TCSG satellite program located in the same building with the GDEcD. *Id*. at 12.

The following exchange reflects the most definitive information that Ms. Green provided about the timing of TCSG's adoption and use of the mark:

> Q [Mr. Needle]: Are you familiar with the Quick Start program?
> A [Ms. Green]: Yes, I am.
> Q: The first use of it, as far as stated in the trademark registration for Quick Start from the federal government indicates a use of July 1, 1968.
> To your knowledge, has that use of Quick Start been continuous since then?
> A: As far as I am aware, yes.
> Q: When did you first become aware of the Quick Start Program?
> A: That would have been when I started with Governor Perdue in 2003.
> Quick Start – I traveled the United States and the world with Governor Perdue both in my current capacity and when I worked for him as his policy advisor.
> And Quick Start is one of the – it is our leading workforce training program and one of the programs that he often refers to as he is out talking about the economic development success of Georgia.
> Q: I see references sometimes to the nature of the services of Quick Start being a comprehensive workforce solution.
> Is that a definition of the services that you agree on?
> A: Yes, definitely.
> Q: What does it mean comprehensive customized workforce solutions?

A: Well, that means that when a new company is coming into the state and adding jobs or an existing company is here that Quick Start will come in and provide a customized training program to help that company get up and running or to expand here in Georgia.

And it's very important the customized tailored piece because it really shows – it is a service that the state of Georgia provides above and beyond most other training programs in the country. And it's [tailored] specifically for that company.

Q: Is there an entity within the Department of Economic Development that oversees this training program, this Quick Start training program?

A: No. That is really overseen by Quick Start. It falls within the Georgia Technical College System.

And, however, Quick Start is really considered part of the – informally part of the Department of Economic Development's team, we actually are all in the same building…

Id. at 9-11.

Ms. Green's testimony does not indicate when opposer began using its Georgia Quick Start mark. She certainly has no first hand knowledge of relevant events dating back to the 1960s, and did not provide any foundation (e.g., review of previous business records, etc.) for the vague assertion in her testimony ("As far as I am aware, yes") as to continuous use of this mark since 1968. Inasmuch as the 1968 date is simply recited into the record by opposer's

counsel, it does not constitute evidence of opposer's first use or priority.

Ms. Green testified that she first became aware of the existence of the Georgia Quick Start program in early 2003, and then in 2007 started working informally with the TCSG personnel working on the Georgia Quick Start program who were located on another floor from the GDEcD but in the same building. *Id*. at 10-12. We infer that as of 2003, she was "aware" that the service mark was being used in connection with the recited educational services. Accordingly, we find that Ms. Green's testimony on this point is minimally sufficient to establish that TCSG was using the mark at least as early as 2003, and has used the mark continuously since then.

Applicant may rely without further proof upon the filing date of its application as a "constructive use" date for purposes of priority. *See* Trademark Act § 7(c) (contingent upon registration); and *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 36 USPQ2d 1328, 1332 (TTAB 1994). The subject application was filed on January 13, 2009, before any date that opposer has established for the use of its mark.

Although we have no testimony establishing exactly *when* opposer's use commenced, we find that TCSG has demonstrated

that its mark was in use prior to LED's date, and not abandoned. Accordingly, in this case, although opposer failed properly to introduce its trademark registration into the record, we find that opposer has met its burden to prove by a preponderance of the evidence that its use predates the filing date of the subject application.

Likelihood of Confusion

We turn, then, to the issue of likelihood of confusion under Section 2(d) of the Trademark Act. Our determination must be based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

Relationship of the services

LED has applied to register its mark for "business training services, namely, training in the fields of headquarters operations, call center operations, operations of distribution centers, technical training related to product manufacturing and team skills and leadership training." According to the testimony of Ms. Green, TCSG offers comprehensive, customized educational programs for

employees as an incentive for businesses to expand or relocate to the state of Georgia. Whether denominated as "educational" services or "business training" services, we find these services to be highly related inasmuch as both programs are essentially in the business of workforce training. We find this to be true even if there may be a dearth of testimony about particular, named businesses for which LED and TCSG were in active contention. Accordingly, this *du Pont* factor favors a finding of likelihood of confusion.

The similarity of trade channels

Opposer argues that the parties' workforce training services are offered through overlapping trade channels and to the same classes of customers. Certainly, neither party has placed any restrictions on claimed trade channels. According to the testimony of record, both LED and TCSG market their services to both U.S.-based and international businesses. Lynn Test. Dep. at 70-71, Ex. 18, Green Test. Dep. at 9-10, 14, 17. Moreover, they target similar industries (e.g., automotive, biotech, pharmaceutical, etc.). Green Test. Dep. at 20-21, 25-26; Lynn Test. Dep. at 20, 90, Ex. 19 at 1.

According to the testimony of Mr. Lynn and Ms. Green, both organizations follow similar processes in pitching their respective state's incentives, including workforce training. While the details may differ, both are in the business of offering customized training program based on the specific needs of a business's operations. Hence, this *du Pont* factor also favors a finding of likelihood of confusion.

Strength of QUICK START mark

TCSG alleges that it has used its "Quick Start" mark in connection with its customized workforce training program for over forty years. TCSG claims that its Quick Start program is the premier program in the United States. Green Test. Dep. at 13. For more than a decade, the hundreds of projects lured to Georgia by opposer and other state agencies have brought average annual investments exceeding $2 billion. We acknowledge that this appears to be a successful program on behalf of the state of Georgia. On the other hand, there is not a sufficient showing to find that the mark is famous for purposes of our likelihood of confusion determination.

As to the inherent strength of the Quick Start mark, we agree with applicant that this is clearly not an arbitrary

choice. The enabling legislation for this program describes it as follows:

> [T]here is hereby established within the State Department of Education, a supplemental program to provide special ***quick start*** training to meet the employment needs of new and expanding industry. The program shall be administered by the State Board of Education. (***emphasis*** supplied).

Clearly, this suggests that newly-trained employees can quickly start working with businesses relocating to the state of Georgia. This concept is not a novel one in the area of educational services. For example, LED has introduced the following examples of third-party registrations in the field of educational services:

Quick Start	for "two week training program for new California real estate agents" in International Class 41;[5]
PR QUICKSTART	for "educational services, namely, providing web-based training in the field of public relations" in International Class 41;[6]
DP QUICKSTART	for "educational services, namely, providing instruction and training in the fields of warehousing, distribution, and material lifting, transporting and handling equipment" in International Class 41;[7]

[5] Registration No. 3054751 issued on January 31, 2006.

[6] Registration No. 3574863 issued on February 17, 2009. No claim is made to the exclusive right to use the letters "PR" apart from the mark as shown.

[7] Registration No. 3380170 issued on February 12, 2008.

FASTART	for "educational services, namely, instructing individuals in the use of the required software and hardware prior to a business quality control methodology training program" in International Class 41;[8]
FAST START	for "educational services; namely, conducting courses and seminars in the field of real estate" in International Class 41;[9]
FAST START	for "educational services, namely, conducting interactive workshops concerning technical systems analysis, development and implementation" in International Class 41;[10]
	for "training services in the field of teaching sales skills to new and current sales associates in the financial industry" in International Class 41;[11]
JUMPSTART	for "educational services, namely, conducting classes, seminars and workshops in the field of multiple sclerosis to be taken by people who have multiple sclerosis, their families and support partners and distributing course materials in connection therewith" in International Class 41.[12]

Applicant has also shown that states offering similar workforce training services are using marks that are substantially similar to opposer's mark: **QUICKJOBS**

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[8] Registration No. 3021421 issued on November 29, 2005.

[9] Registration No. 1661997 issued on October 22, 1991; renewed.

[10] Registration No. 2194878 issued on October 13, 1998; renewed.

[11] Registration No. 2985314 issued on August 16, 2005.

CAROLINA,[13] **VWCC QUICK CONNECT**,[14] **QUICK RESPONSE TRAINING**,[15] **OKLAHOMA FASTFORWARD**,[16] **FASTTRACK TENNESSEE**,[17] **RAPID RESPONSE**,[18] and **RURAL FAST TRACK**.[19] Hence, the term "Quick Start" alone is highly suggestive for TCSG's services.

We also note that inasmuch as TCSG failed to get its registered mark into the record, the actual form of its source identifier in its most frequent common law usage becomes more critical. As noted by LED, TCSG admits that it often refers to itself as "Georgia Quick Start."[20] Its website is http://georgiaquickstart.org. On the "About Us" web page of opposer's website, the page header is "About Georgia Quick Start" while the email address for "Georgia Quick Start" is marketing@georgiaquickstart.org.[21] Hence, in many cases, the service mark actually appears to be "Georgia Quick Start," not just "Quick Start" alone.

On balance, therefore, we find that this *du Pont* factor favors a finding of no likelihood of confusion.

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[12] Registration No. 3055438 issued on January 31, 2006; Section 8 affidavit accepted and Section 15 affidavit acknowledged.
[13] South Carolina, Lynn Depo. Test. Dep. at 42-44, Ex. 5.
[14] Virginia, Lynn Depo. Test. Dep. at 48-50, Ex. 6.
[15] Florida, Lynn Depo. Test. Dep. at 51-52, Ex. 7.
[16] Oklahoma, Lynn Depo. Test. Dep. at 52-53, Ex. 8.
[17] Tennessee, Lynn Depo. Test. Dep. at 53-54, Ex. 9.
[18] Iowa, Lynn Depo. Test. Dep. at 54-56, Ex. 10.
[19] Utah, Lynn Depo. Test. Dep. at 56-58, Ex. 11.
[20] Green Test. Dep. at 48; Lynn Depo. Test. Dep. at 18.
[21] Lynn Depo. Test. Dep. at 18, Ex. 1 at 2.

Similarity of the marks

As to the *du Pont* factor focusing on the respective marks, we compare the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Because the similarity or dissimilarity of the marks is determined based upon a comparison of the marks in their entireties, the decision cannot be narrowed to a focus on select parts of the marks. *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 entireties. *In re National Data Corp.,* 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

In the case at hand, LED's mark, **Louisiana FastStart,** begins with the state name "Louisiana." TCSG claims the mark "Quick Start." As seen several places in the record, TCSG often refers to itself as ***Georgia Quick Start***. As shown above, the designations "quick start," "fast start," and similar designations cannot be considered strong for educational programs. Hence, within the composite mark for which LED seeks protection, the word "Louisiana" has to be considered the dominant element. Even without the addition of the leading word "Georgia" to TCSG's "Quick Start" term, the word "Louisiana" would seem to create a strong dissimilarity in the marks. To the extent that the state name, "Georgia," is combined with "Quick Start," we find that ***Louisiana Faststart*** does not resemble ***Georgia Quick Start*** as to sound, appearance, connotation or commercial impression. In the instant case, we find that this factor is significant. *See Kellogg Co. v. Pack'Em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

The sophistication of purchasers

Opposer makes the argument that the determination herein should be affected by the mere possibility of pre-sale confusion, and especially among representative of international businesses. Presumably some foreign nationals

may confuse various states within general regions of the United States, like "the South," and may not be aware that "individual states have any particularized interest" that competes with the interests of another jurisdiction.

Applicant, on the other hand, contends that the undisputed evidence in this record makes it clear that the decision to locate a company in a distant state "is a complex and time-consuming decision that is only made after careful evaluation by sophisticated business people." The record shows that the Georgia Department of Economic Development has permanent offices located around the world. Former Georgia Governor Sonny Perdue allegedly traveled the globe for eight years pitching the state of Georgia with a great deal of success. Inasmuch as the governors of most states are similarly engaged in this kind of competition, it seems likely that most foreign ventures contemplating the planting of a large business enterprise in the United States will be well aware that fifty separate states within our federalist system are all competing for their investments. Accordingly, we agree with applicant that it is a fairly remote chance that some foreign national will inadvertently be led to invest millions of dollars into the wrong state based on the superficial resemblance of these two marks.

Conclusion on Likelihood of confusion

After careful consideration of the evidence and the parties' briefs, in spite of the fact that the services are quite similar and both parties may well occasionally find themselves in competition for the same businesses, given the overall suggestiveness of the "Quick Start" mark, the leading term "Louisiana" in applicant's mark, the fact that opposer often uses the term "Georgia Quick Start," the frequency with which "Quick Start" and similar marks are used in connection with educational services, and the overall sophistication of the potential purchasers, we conclude that opposer has failed to shown by a preponderance of the evidence that the use of **Louisiana FastStart** on applicant's services will result in a likelihood of confusion with the **Quick Start** mark.

Decision: The opposition to the registration of the mark **Louisiana FastStart** is hereby dismissed under Section 2(d) of the Lanham Act.