
To: Retirement Living TV, LLC (Law3@marklitwak.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77534075 - WHAT'S NEXT? - N/A
Sent: 6/29/2009 8:18:26 AM
Sent As: ECOM102@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 77/534075**MARK:** WHAT'S NEXT?**CORRESPONDENT ADDRESS:**

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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Retirement Living TV,
LLC

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
Law3@marklitwak.com

REQUEST FOR RECONSIDERATION DENIED**ISSUE/MAILING DATE:** 6/29/2009

Applicant is requesting reconsideration of a final refusal issued/mailed December 9, 2008.

Applicant's amendment of the description of services to "Entertainment in the nature of an on-going special variety reality show featuring lifestyle makeovers for middle aged people distributed by television, satellite and video media," is accepted.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Applicant argues that since it has limited its services to "Entertainment in the nature of an on-going special variety reality show featuring lifestyle makeovers for middle aged people distributed by

television, satellite and video media”, likelihood of confusion has been eliminated between applicant’s proposed mark WHAT’S NEXT in standard character, and the cited registration for the mark WHAT’S NEXT! WHAT’S NEXT!! WHAT’S NEXT!!! For “Entertainment services in the nature of a continuing live television talk and variety show, featuring songs and music, comedy and satirical social commentary; Entertainment services, namely, providing web sites featuring information, videos and music in the field of comedy and satirical social commentary.” However, given that the marks create the same overall impression based upon use of the identical wording “What’s Next”, as well as the fact that both the Applicant’s services and the services in the cited registration are entertainment shows distributed to the general public for viewing, Applicant’s arguments cannot stand.

The standard for a likelihood of confusion is taking into account the relevant *du Pont* factors; a likelihood of confusion determination in this case involves a two-part analysis. The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. See *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi). Given this standard, Applicant’s arguments do not overcome this two-part analysis based upon the similarities of the marks in issue as to appearance, sound, connotation and commercial impression, as well as the relatedness of the services in issue.

Further, Applicant has not provided any evidence that the viewing audiences and/or consumers for the entertainment shows of the Applicant and of the Registrant are no the same classes of viewers and/or consumers and/or purchasers of such entertainment shows. While the subject matter of the shows is not identical, there is an overlap. Registrant’s shows are described broadly when compared to Applicant’s description of its shows and includes within its scope Applicant’s more narrow description.

Accordingly, applicant’s request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

/Dominic J. Ferraiuolo/
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STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 6/29/2009 FOR
APPLICATION SERIAL NO. 77534075

Please follow the instructions below to continue the prosecution of your application:

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