

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
September 28, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Country Life Insurance Company and Country Mutual Insurance
Company

v.

Companion Property and Casualty Insurance Company

Opposition No. 91184015
against Serial No. 77238256

Helen Hill Minsker, Marc S. Cooperman, and Katherine L.
Fink of Banner & Witcoff, Ltd. for Country Life Insurance
Company and Country Mutual Insurance Company.

B. Craig Killough and John William Fletcher of Barnwell
Whaley Patterson & Helms, LLC for Companion Property and
Casualty Insurance Company.

Before Grendel, Walsh and Ritchie, Administrative Trademark
Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Companion Property and Casualty Insurance Company
("applicant") seeks registration on the Principal Register
of the mark REAL SOLUTIONS. REAL PEOPLE. REAL SMART. (*in
standard character format*) for services recited as "insurance

underwriting in the field of property and casualty insurance" in International Class 36.¹

Country Life Insurance Company and Country Mutual Insurance Company (collectively "opposer") has opposed this application on the ground of priority of use and likelihood of confusion, alleging that applicant's mark, when used in connection with the identified services, so resembles the following registered marks as to be likely to cause confusion, to cause mistake or to deceive, under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d):

**REAL PEOPLE
REAL ANSWERS
REAL QUICK**

for, "underwriting life, casualty and health insurance" in International Class 36;²

**REAL PEOPLE
REAL ANSWERS
REAL QUICK**

for, "financial services, namely, estate trust management services; financial retirement plan management services; financial estate planning; financial custodial services; financial investment management; financial planning; banking and savings and loan services; financial

¹ Application Serial No. 77238256 was filed on July 25, 2007, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

² Registration No. 2373053 issued on August 1, 2000. Sections 8 and 15 affidavits accepted and acknowledged. Renewed.

investment advisory services;
financial research; financial
estate trust management and
administration; fiduciary
representation services;
investment consultation;
financial analysis and
consultation; cash management;
financial retirement plan
trustee services; financial
management in the field of
farm management services" in
International Class 36;³

Applicant, in its answer, denied the salient allegations of these claims and raised the separate affirmative defenses of laches and estoppel. However, during discovery, applicant admitted that it had "not produced any evidence in support of" either of its two affirmative defenses, (Applicant's Responses to Requests for Admissions #41 and 42). Applicant was likewise unable to respond to interrogatories requesting information regarding the two affirmative defenses, stating only: "Discovery is ongoing in this matter" (Applicant's Responses to Interrogatories #12 and 13). Applicant did not directly discuss the affirmative defenses in its trial brief, nor did it address its failure to do so during discovery.

³ Registration No. 2373053 issued on December 4, 2001. Sections 8 and 15 affidavits accepted and acknowledged.

Accordingly, we consider applicant's affirmative defenses to be waived.

I. THE RECORD AND EVIDENTIARY OBJECTIONS

In addition to the pleadings and the file of the involved application, the record also includes the testimonial depositions of the following individuals:

1. William O. Bearden, Ph.D, dated December 9, 2009, testifying as an expert for applicant.
2. Laura Robinson, Vice President for Claims Administration for Companion Property and Casualty Group, dated December 9, 2009;
3. Doyle Williams, Chief Marketing Officer, for opposer, dated September 16, 2009;
4. Randall Lorimor, Manager of Advertising and Marketing Media for opposer, dated September 15, 2009;

In addition, both parties submitted extensive notices of reliance on each other's discovery responses as well as on various records of the USPTO, and opposer included in its notice of reliance the discovery deposition of Laura Robinson and of Shannon Bedenbaugh, Commercial TPA Claims Manager for Companion Third-Party Administrators.

Opposer objects to applicant's submission of the testimony and report of Dr. William O. Bearden. Opposer contends that, contrary to applicant's assertions, Dr. Bearden is not an appropriate expert in this case and thus should not be qualified as such. (Opposer's brief at 25). In particular, opposer claims that Dr. Bearden's testimony and report are improper expert testimony under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579 (1993), "and will not assist the Board in understanding the evidence or determining any facts in issue." *Id.* Opposer asserts that Dr. Bearden's testimony and report are, contrary to the requirements of FRCP 702 and *Daubert*, not based on "reliable principles and methods reliably applied" *Id.*, at 26. Among other things, opposer objects that (i) Dr. Bearden based his testimony on erroneous legal premises (such as that the target markets for applicant and opposer differ, without regard to their respective identifications); (ii) Dr. Bearden is not sufficiently familiar with the insurance industry in particular, nor with opposer in particular, to be qualified as an expert; and (iii) Dr. Bearden did not proffer any specific methodology in his expert report as the basis for his conclusions, nor did he conduct a survey or study,

although he admitted that these could have been done. *Id.*
at 25-29.

When asked at his testimony deposition "on what subject
have you been asked to testify?" Dr. Bearden responded as
follows:

"Similarities and dissimilarities of the marks,
commercial impression that they make, appearance
and connotation of the marks, the mark's intended
audience or consumers of the products for the two
companies using the marks, the extent to which
the marks are, similar marks are used in the
marketplace."

(Bearden depo. at 7-8)

Dr. Bearden's expert report discusses these topics and
his conclusions in further detail, as do his testimony and
discovery depositions. We find Dr. Bearden amply qualified
to give his opinion on these topics. His education and
background information make clear that is an expert on
consumer behavior and marketing. He has a bachelor's degree
in industrial management from Clemson University, with a
master's degree in business administration from the
University of South Carolina, where he also obtained a Ph.D.
in business administration. He has a chaired professorship
at the University of South Carolina, where he has been a
full professor for the past twenty years, and he has a list
of publications on consumers and marketing spanning multiple
pages. Although Dr. Bearden has not previously served as an
expert in a Board proceeding, he has been qualified as an

expert in litigations involving trademarks and related matters. With this background, and on this record, we see no reason not to qualify Dr. Bearden as an expert in this proceeding. Neither do we find the topics on which Dr. Bearden is testifying to be at all irrelevant, as opposer suggests. (Opposer's brief at 29). Rather, we will consider Dr. Bearden's testimony for such probative value as it may have.

On the other hand, as applicant in fact urges us, we need not give great credence to the testimony, including the report, of an expert such as Dr. Bearden. Interestingly, applicant in its brief cited for this proposition the case of *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ 1001 (Fed. Cir. 1988).⁴ Dr. Bearden, as we discuss herein under the section marked "Likelihood of Confusion," did not pretend to offer much if any insight into the insurance industry, nor on how consumers of insurance in particular would view the marks at issue in this case. Rather, he focused his findings on an analysis of the meaning of the marks in general, and in the context of some brief background digging (including Internet searches) into how many other, somewhat similar marks exist in the

⁴ We would appreciate it if, in accordance with our rules, counsel would be sure to include the USPQ cites to all cited cases.

insurance industry overall. With this in mind, while we do find him to be an expert on consumer behavior and marketing, it is not anathema for us to also find, as we do, that his testimony and report are entitled to only "modest weight" and are no substitute for our own judgment in this proceeding. *See Id.*; *see also Edwards Lifesciences Corp. v. Vigilanz Corp.*, 94 USPQ2d 1399, 1401-1402 (TTAB 2010), *citing The Mennen Co. v. Yamnouchi Pharma. Co., Ltd.*, 203 USPQ 302, 305 (TTAB 1979) (holding the "opinions of witnesses, including those qualified as expert witnesses, on the question of likelihood of confusion are entitled to little if any weight and should not be substituted for the opinion of the tribunal charged with the responsibility for the ultimate opinion of the question.").

Opposer also objects "that Companion is relying on admissions regarding third party websites" primarily on the ground that the content of those websites is hearsay. (Opposer's brief at 29, citing opposer's responses to Requests for Admissions 116-213). Applicant responds that the website content is not hearsay. The nature of the objection is not entirely clear to us inasmuch as opposer denied the salient requests for most of the admissions requested in the referenced RFAs. Accordingly, we consider the objection to be moot.

II. FACTUAL FINDINGS

Opposer is in the business of insurance and financial services. (Lorimor depo. at 64). Opposer sells various types of insurance, including life, casualty, and health insurance. *Id.* at 32, and Ex. 9 to 42. Opposer sells its insurance products primarily through captive agents, who work exclusively for opposer. *Id.* at 61.

Opposer developed the mark REAL PEOPLE REAL ANSWERS REAL QUICK, as shown below, with the help of an advertising agency, in 1999. (Oppr's Response to Interrogatory #3).

**REAL PEOPLE
REAL ANSWERS
REAL QUICK**

Opposer has been using the marks in association with its insurance services continuously since 1999. (Oppr's Response to Interrogatory #23); (Lorimer depo. at 19, and Ex. 8). Although opposer filed exhibits and testimony containing its advertising budget under a protective order, we note that the number for the past decade was in the tens of millions, with about half spent on mass media. Opposer features the mark on nearly all mass media advertisements, and in all its brochures. *Id.* at 32.

Applicant is also in the insurance business. (Robinson depo. at 7-8). Contrary to opposer's use of captive agents, applicant sells policies exclusively through independent agents. *Id.* at 8. Nevertheless, applicant sells the same types of insurance, including property and casualty. (Appl's response to RFA #2).

Applicant developed its mark, REAL SOLUTIONS. REAL PEOPLE. REAL SMART. in conjunction with an internal company contest. (Robinson depo. at 21-22); (Benenbaugh depo. at 15-16 and Ex 4). Although applicant currently has an intent-to-use application, it has also admitted to use of the mark in connection with its insurance services since "on or about August 22, 2007." (Appl's Response to Interrogatory #2).

IV. ANALYSIS

A. Opposer's Standing and Priority

Opposer's standing is a threshold inquiry made by the Board in every *inter partes* case. In *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), the Federal Circuit enunciated a liberal threshold for determining standing, i.e., whether one's belief that one is or will be damaged by the registration is reasonable and reflects a real interest in the case. *See also Jewelers Vigilance*

Committee Inc. v. Ullenberg Corp., 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); and *Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Opposer has properly made its pleaded registrations of record. We consider this sufficient to establish opposer's interest and, therefore, standing to oppose registration of applicant's mark, in this proceeding. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000).

Moreover, because opposer has established that it owns valid and subsisting registrations of its pleaded marks, Section 2(d) priority is not an issue in this case as to the marks therefore and goods and services covered thereby. See *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); and *Carl Karcher Enterprises Inc. v. Stars Restaurants Corp.*, 35 USPQ2d 1125 (TTAB 1995).

B. Likelihood of Confusion

Our determination under Section 2(d) must be based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*,

396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). Opposer must establish that there is a likelihood of confusion by a preponderance of the evidence.

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). See also *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein. The relevant *du Pont* factors in the proceeding now before us are discussed below.

For our analysis of the likelihood of confusion, we have chosen to focus on the most relevant registration pleaded by opposer, Registration No. 2373053, since it covers the most relevant services. If we find a likelihood of confusion with applicant's services vis-à-vis this mark, then the analysis will be moot as to opposer's other pleaded registration. Likewise, if we do not, then we would not find it for the other.

The Services

The application identifies "insurance underwriting in the field of property and casualty insurance" while Registration No. 2373053 identifies "underwriting life, casualty and health insurance." We find these to be legally identical. Accordingly, we find that this *du Pont* factor strongly favors finding a likelihood of confusion.

The Channels of Trade and Classes of Purchasers

Under the third *du Pont* factor, we consider evidence pertaining to the similarity or dissimilarity of the trade channels in which and the purchasers to whom applicant's and opposer's services would be marketed. Notwithstanding applicant's arguments to the contrary regarding the actual, current channels of trade and classes of purchasers, with no limitations or restrictions as to trade channels or classes of purchasers in their respective identifications of services, we note that neither applicant nor opposer is restricted in its marketing devices. Accordingly, we must presume that each enjoys the possibility of marketing through standard channels of trade and to all classes of purchasers as would be available for its identified services, regardless of what the evidence might show to be the actual trade channels and purchasers for their services. *Packard Press Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351 (Fed. Cir. 2000); *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990).

In this case, because opposer's services and applicant's services as identified in the application and Registration No. 2373053 are legally identical, we presume that the respective services are or will be sold in the same trade channels and to the same classes of purchasers. *Brown Shoe Co. v. Robbins*, 90 USPQ2d 1752 (TTAB 2009); *Genesco Inc. v. Martz*, 66 USPQ2d 1260 (TTAB 2003); *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994). Accordingly, we find that this *du Pont* factor also weighs heavily in favor of finding a likelihood of confusion.

Consumer Sophistication

Applicant argues that insurance customers are sophisticated and that insurance is not an "impulse purchase." (Appl's brief at 24, citing Bearden depo. at 19-20). However, we note that Dr. Bearden was brought on as an expert in marketing and consumer behavior. There is no indication of record that he has any particular background in, or knowledge regarding, the insurance business nor the sophistication of consumers therein.

To the contrary, documents from the advertising agency that created opposer's mark note that customers include laypersons with no special sophistication, who give little thought to their insurance purchase. See Williams depo. Ex 73, a 2008 memo stating:

Insurance is a relatively low-involvement category, . . . Most people don't give it a lot of thought unless they are shopping for a policy, which is usually precipitated by an increase in

their premium or a change in benefits by their current insurance company.

Acc. Williams depo. at 33. We note that the applicable standard of care is that of the least sophisticated consumer. *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004). Accordingly, we find that, at best, this *du Pont* factor is neutral. It certainly does not weigh significantly in applicant's favor, as applicant argues.

The Marks

Preliminarily, we note that the more similar the services at issue, the less similar the marks need to be for the Board to find a likelihood of confusion. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

In comparing the marks, we are mindful that the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-

1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The mark in the Registration No. 2373053 consists of the six words REAL PEOPLE REAL ANSWERS REAL QUICK, as shown below.

**REAL PEOPLE
REAL ANSWERS
REAL QUICK**

The mark in the application also consists of six words, REAL SOLUTIONS. REAL PEOPLE. REAL SMART. We note that there is substantial overlap in the words used in these marks. Both contain the words "REAL PEOPLE," and both contain the pattern REAL ___ REAL ___ REAL ___. Moreover, while opposer uses the term "REAL ANSWERS," applicant uses "REAL SOLUTIONS." Although both Dr. Bearden and Ms. Robinson insist that "solutions" are not quite the same as "answers," neither is (nor professes to have consulted) a linguistics expert. Opposer, meanwhile, has submitted ample evidence that in fact the dictionary indicates otherwise. Indeed, they are synonyms.

When confronted with a dictionary definition from Webster's, Dr. Bearden agreed that the definition of "answer" was shown to be "the solution to a problem." (Bearden depo. at 37). Asked if he agreed with the definition, he stated: "The solution to a problem. You can use the word, it can be used interchangeably in some context." Dr. Bearden further agreed that the words "REAL PEOPLE" were the same in both marks. *Id.* at 105 ("If you wrote Real People up on the wall twice, I mean, the two words are identical.") Nevertheless, overall, Dr. Bearden indicated that in his expert opinion, the commercial impression of the marks differ. *Id.* at 12. In particular, he noted that the visual placement of "REAL PEOPLE" is different, and that the short interpretation by consumers is different (people, answers, quick v. solutions, people, smart). While Dr. Bearden's brief, if unelaborated conclusions are interesting, we note again that he admits to not having performed any tests, or otherwise obtaining any empirical evidence, to prove them. Accordingly, they are not dispositive in our analysis, and we accord little probative value to his conclusions. We keep in mind that consumers (including unsophisticated ones) will be confronted with overlapping words, in the same pattern, containing in-part the same meaning when looking for the

same insurance services. That is, in addition to the marks both containing the words "REAL PEOPLE" and "REAL ANSWERS" (or its synonymous "REAL SOLUTIONS"), we find that consumers are likely to find similarity in the identical structure of the marks, found in the pattern of REAL ___ REAL ___ REAL ___, three times. With all this, we also keep in mind that opposer's mark is arbitrary for its services.

In sum, the marks in their entirety have similarities in appearance, sound, connotations and commercial impressions. Accordingly, we find this *du Pont* factor to favor finding a likelihood of confusion.

Number and Nature of Third Party Use

Applicant argues that under the sixth *du Pont* factor, it is important that we consider in this case, the "number and nature of similar marks in use on similar goods." To this end, applicant submitted into the record via various means third-party registrations and third-party websites containing various iterations of the term "REAL PEOPLE," or in some cases a pattern of REAL ___ REAL ___ in double, or in at least one case triple as in the two marks at hand REAL ___ REAL ___ REAL ___.

It is axiomatic that absent evidence of actual use, third-party registrations have little probative value because they are not evidence that the marks are in use on a commercial scale or that the public has become familiar with

them. See *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973) (the purchasing public is not aware of registrations reposing in the U.S. Patent and Trademark Office). See also *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983).

[I]t would be sheer speculation to draw any inferences about which, if any of the marks subject of the third party (sic) registrations are still in use. Because of this doubt, third party (sic) registration evidence proves nothing about the impact of the third-party marks on purchasers in terms of dilution of the mark in question or conditioning of the purchasers as their weakness in distinguishing source.
In re Hub Distributing, Inc., 218 USPQ at 286.

The third-party websites, similarly, are not especially helpful in showing the extent of consumer exposure.

In particular, applicant cites the following third-party registrations and uses as evidence of the weakness of opposer's mark:

| MARK | COMPANY | TYPE OF USE |
|-----------------------------------------|----------------------------------|----------------------------------------------------|
| Real People. Wise Choices. ⁵ | Sterling Life Insurance Company. | Used on website to sell life and health insurance. |
| Real Service. Real Savings. | GEICO | Registration No. 3314725 |

⁵ The evidence indicates that this mark was changed after a cease and desist letter sent by opposer objected to Sterling's use of "Real People. Real Choices. Real Service." (Williams depo. at 85).

| | | |
|------------------------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------|
| Real Choices (SM) Medical Plans. | ASSURANT | "Use" in evidence by testimony (Robinson depo. at 28) |
| Real Select. | AIG | Testimony states: "Insurance product called Real Select" <i>Id.</i> at 29. |
| Real Advice from Real People. | Independent Capital Management | "Use" in evidence by testimony. <i>Id.</i> at 29. |
| Real Fast for Business Owners. | Guardian Life Insurance Company | "Use" in evidence by testimony. <i>Id.</i> at 29. |
| Real Life Stories. | Life and Health Insurance Foundation | Specific "use" not in evidence. ⁶ |
| Real Stories Real People: One Woman's Experience. | Mutual of Omaha | "Existence of webpage" admitted to by opposer. |
| Auto Insurance - | Stackpoint.com | "Existence of |

⁶ See Robinson depo. at 30, as cited in applicant's brief at 20:
Q: Are you familiar with Life and Health Insurance Foundation
Insurance for Education?

A: I am from looking on the Internet. It's a foundation, if you
will, that - very sad. It's life insurance for parents and the
children have gone on to use the death benefits to provide
educational opportunities for themselves. They have "Real Life
Stories" on their mark.

| | | |
|--------------------------------------------------------------------------|----------------------------------------|------------------------------------------------|
| Real Answers by Real People. | | webpage" admitted to by opposer. |
| "Testimonials from Real People." and "Success Stories from Real People." | Vital One Health | "Existence of webpage" admitted to by opposer. |
| Solving Real Problems for Real People. | Justhealthnow | "Existence of webpage" admitted to by opposer. |
| Real People Paying Attention to People Like You. | Union State | "Existence of webpage" admitted to by opposer. |
| Real People. Real Savings. | Americaninsureall.com | "Existence of webpage" admitted to by opposer. |
| Real People. Real Savings. | Expressinsurance.com | "Existence of webpage" admitted to by opposer. |
| Real people working together for your . . . | Eckert Insurance | "Existence of webpage" admitted to by opposer. |
| Real People. Real Benefits. | Delta Dental. | "Existence of webpage" admitted to by opposer. |
| Providing Real Life Financial | Fidelity National Financial Solutions, | "Existence of webpage" admitted |

| | | |
|------------------------------------------|-------------------------------|------------------------------------------------------|
| Solutions. | Inc. | to by opposer. |
| Real Insurance. Real Time. Really! | Smokey Insurance Company | "Existence of webpage" admitted to by opposer. |
| Real Data. Real Time. | Affiliate Network Service. | "Existence of webpage" admitted to by opposer. |
| Real People - Real Service. | RHSC | "Existence of webpage" admitted to by opposer. |

We do note that none of the marks cited by applicant are exactly the same as those at issue in this case, nor do many have the exact pattern of three times showing REAL ___ REAL ___ REAL ___. Nevertheless, we do find that the number of marks with the shared term "REAL PEOPLE" in the insurance industry, coupled with the number of at least two times REAL ___ REAL ___ pattern (not necessarily together with "REAL PEOPLE") makes an adequate showing that the term "REAL PEOPLE" perhaps has a highly suggestive significance in the insurance business.

We deem this *du Pont* factor to favor applicant somewhat.

Conclusion

In summary, we have carefully considered all of the evidence and arguments of record relevant to the *du Pont*

likelihood of confusion factors including those not specifically discussed herein. We conclude that despite a number of third-party uses of the term REAL PEOPLE showing some possibly suggestive significance of the term, with legally identical services moving in the same channels of trade to the same purchasers, and similar marks, there is a likelihood of confusion between applicant's REAL SOLUTIONS. REAL PEOPLE. REAL SMART. mark for "insurance underwriting in the field of property and casualty insurance," and opposer's Registration No. 2373053 for

**REAL PEOPLE
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for "underwriting life, casualty and health insurance."

Decision: The opposition is sustained.