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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AbleNet, Inc.

Serial No. 78120762

Elizabeth D. Lewen of Sherrill Law Offices, PLLC for
AbleNet, Inc.

Linda E. Blohm, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Quinn, Hairston and Rogers, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by AbleNet, Inc. to
register the mark shown below



for an "electronic educational device with sound recording and play-back units and a plurality of switches for use in combination with a standard publication namely, a book, to provide audible play-back of text read from a designated page or facing pages of the publication by activating a designated switch from the plurality of switches."¹

The Trademark Examining Attorney² has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to the identified goods, would so resemble the previously registered mark BOOKWORM for an "electronic hand-held Braille reading device used for translating Braille,"³ as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs on the case. We reverse the refusal to register.

Our determination under Section 2(d) of the Act is based on an analysis of all the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours and

¹ Application Serial No. 78120762, filed April 10, 2002, which alleges a bona fide intention to use the mark in commerce.

² The present Examining Attorney was not the original Examining Attorney in this case.

³ Registration No. 2,438,958, issued March 27, 2001.

Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key factors are the similarities/dissimilarities between the marks and the similarities/dissimilarities between the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Turning first to a consideration of the respective marks, we find that they are similar to the extent that they share the word BOOKWORM. However, there are specific differences in the marks. Registrant's mark is simply the word BOOKWORM whereas applicant's mark consists of BOOKWORM along with a prominent and fanciful design of a worm reading a book and applicant's name "AbleNet."

Turning next to a consideration of the respective goods, it is well settled that goods need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods or services are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources

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of the respective goods or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991); and In re International Telephone & Telegraph Corp., 197 USPQ2d 910 (TTAB 1978).

Applying these principles to the present case, we find that the Examining Attorney has failed to establish that applicant's and registrant's goods are similar or related in any way that would result in source confusion.

Applicant's goods are an "electronic educational device with sound recording and play-back units and a plurality of switches for use in combination with a standard publication, namely, a book, to provide audible play-back of text read from a designated page or facing pages of the publication, by activating a designated switch from a plurality of switches." Registrant's goods are an "electronic hand-held Braille reading device used for translating Braille."

The Examining Attorney contends that the goods are related because "[t]he function of each of these products is to enhance a users [sic] ability to read a publication." (Brief, p. 6). According to the Examining Attorney, a non-sighted person could very well avail him or herself of applicant's product, and both applicant's and registrant's goods may be sold in electronic stores, bookstores and other specialty stores. The Examining Attorney has

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submitted a printout of a newspaper article about applicant which indicates that applicant produces products for persons with disabilities.

Notwithstanding the Examining Attorney's contentions, we are not convinced that applicant's and registrant's goods would travel in the same channels of trade to the same class of purchasers. It is obvious that the class of purchasers of registrant's electronic hand-held Braille reading device used for translating Braille is non-sighted persons. While applicant's identification of goods contains no limitations as to class of purchasers, i.e., non-sighted persons are not excluded, it nonetheless seems to us that an electronic educational device with a plurality of switches and a book with regular text is not the type of device that would usually be marketed to non-sighted persons. In point of fact, there is no evidence in the record to indicate that this type of device is marketed to non-sighted persons. Further, although it appears that applicant produces products for persons with disabilities, there is no evidence which suggests that applicant produces products for non-sighted persons. The respective goods, as identified, do not appear to be competitive or complementary, and there is no evidence on which we may conclude that the goods are otherwise related in any way.

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